

Town of Freedom
PUBLIC HEARING
January 13, 2020 7:00 P.M.

Board Members Present: Jolene Esposito, Dustin Bliss, John Hill, Geoff Milks,
and Supervisor Randy Lester

Other Officials: Legislator Joe Boberg, Grievance Board Member Barb George,
Justice Mary Zink and Constable Rob Harrington

Others: 44

Meeting called to order at 7pm by Supervisor Randy Lester

I. **PLEDGE TO THE FLAG:** Led by Supervisor Randy Lester

II. **PUBLIC HEARING**

Purposed Local Law #1-2020
The Wind Energy Facility Law

Comments

1. Denise Willard- From Freedom- See attached document #1
2. Charles Malcomb- From Buffalo- He stated that he represents Invenergy and the Ally Catt project. He said it appears that despite the prior Town Board thoughtful consideration of prior Local Law over a year. This Board seems poised to rush to judgement without the proper review necessary to consider this type of Law. He noted it appears the open meeting law been violated in several instances. He stated at the last meeting Councilmen Geoff Milks came in with several documents pre drafted and agreed to by the Board majority in advance. He said Ginger Schroder, Stephanie Milks attorney likely prepared them and handed them to Mr. Milks. He said Mr. Milks has been colluding with an attorney that has sued the Town, he should be conflicted from all consideration with respect to litigation about the Town and to respect to consideration of Local Law. The open meeting law requires open government, it requires members to deliberate in public. Charles stated when the Board comes in with a stack of documents that appeared to be prepared by an attorney presently suing the Town with no public discussion over the contents of the resolution, nearly voting on them, that indicia of a closed meeting in violation of the open meeting law. Those determinations that the Town Board makes, and all the determinations that follow those are subject to judicial challenge under open meetings law. He asked the Board to take their time and review this. He stated that there would be people making comments about the water law, that maybe there is unattended consequences with respect to what's been put out there. It demonstrates that there haven't been any foresights, there hasn't been any consideration

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to the draft. He said it appears we are holding a Local Law a week later not giving the public an opportunity for public to review it, not respecting the community, not respecting regulated party's and throwing this out there without any discussion, without consultants. Charles asked has anyone discussed this with Dave Britten with coming up with this draft, the Town hired him to provide advise with wind issues. Charles said he guesses no; his guess is Geoff took it from Ginger Schroder and dropped it on everyone desk at the last board meeting. He stated that they respectfully request that the Town puts the brakes on this. He said to deliberate in public. Find out where all those documents came from, where did the loft draft come from, where did all the resolutions come from, who's calling the shots behind the sense, who's giving Mr. Milks his marching orders, and conduct a fair process.

3. Stephanie Milks- From Freedom- See attached documents #2
4. Daniel Meyers – From Freedom- See attached document #3
5. Jane Ross- From Freedom- She stated she lived in West Seneca and moved here to Freedom, based on the country side, the beautification of the Town, and she does oppose the wind project but stated if it has to go through she agrees with the resolutions that have been put forth and she hopes that the Town Board votes on it positively. There is restriction in there that the citizens want, property protection, wells and she hope that they vote positively for them.
6. Donnis Morgan- From Freedom – A resident of Freedom almost 45 yrs. She is still concern about the adverse effects of turbines. It seems to be money verses concern for the welfare of the residence and the surrounding country side and its inhabitants. She said yes vibration, infrasound, flicker, noise, possible ruination of wells, devastation of our woods and forest, killing our birds and bats are all very real effects to be concerned about. Those with Arcade water should also be concerned, because your water comes from right here in Sandusky. She's in support of the more protective wind law and water law and property value guarantee agreements. Further setbacks, shadow flickers limits, and following the world health organization guide lines for noise. Thank you to the new Town Board.
7. Marsha North – From Freedom- She has been a resident for 14 years. She moved to Freedom because its a very pretty, beautiful, rural area, she does not think that the Ally Catt wind farm fits into that. Her biggest concern with the Ally Catt wind farm that is now in the wind law is the property value protection guarantee agreement. Other areas that do have wind farms, some of the people property values have decreased. Also, a concern about recouping and having money just like lease holders are looking forward to having money for the wind turbines. She also concerned about 15 acres of trees that would be removed. Trees are important for all that likes green energy. Well water is very important. She talked about resolutions in for the noise level and for the flicker. She very

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happy to see these resolutions that people have expressed concerns for 2 years, the previous concerns have fallen on deaf ears. She is glad for the residence that have concerned their issues, they are finally being heard. She thanked them and appreciates that.

8. Bruce Acquard- From Freedom- He is a lease holder with Invenergy. He stated the new wind law, he is in support of that. He wants to make sure with the decommissioning that they get the proper money on the record in bonds for decommissioning if this project goes south after it gets started, that they pay to have it decommission not the land owner. Because he is a landowner and a lease owner and they sold him out. They sold him a bunch of crap Bruce said. He wanted them to beware what they say doesn't go.
9. Chadd Bishoff- From Freedom- See attached document #4
10. Barb George- From Freedom- She is a 40-year resident of the Town of Freedom, dairy farmer, and former Supervisor in the Town. She is opposed to these two new laws. She said basically she sees them as anti-business, she thinks the residence should be protected, but she thinks the two laws are extreme. She is opposed to them.

Purposed Local Law #2 – 2020
Drinking Water and Conservation Area Protection Law

Comments

1. Nathan Rudgers- From Pavilion- See attached document #5
2. Rich Pecnik- From Collins- See attached document #6
-Councilmen John Hill asked what does Gernatts think is a good number? Rich stated you have to look at it by a case by case basis, he thinks it should be determined by someone with a hydrogeologic back round and expertise in it. He said that Gernatts mine below water table in 6 different towns, in this county including the Town of Freedom. They have had no impact on quantity or quality of water in any of those mining operations. They mine with in 100 ft of water supply wells. We mine at the Freedom location with in a few 100 ft of a commercial water well, that supplies water for commercial operation. They have had no impact of quantity or quality. The impact of mining below water table seems to results in what they call a reservoir affect, where there is more water available because sand and gravel been removed, and that reservoir provides additional water capacity to the wells that water system supplies. They have extensive history mining below water table, been doing it for 50 years, with no impact.
3. Dave Heitzhaus- From Strykersville- He manages Schwab Aggregates on Pigeon Hill RD in the Town of Freedom. He asked for the following to be on Town record, and

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Freedom Local Law #2 of 2020 Drinking Water and Conservation Area Protection Law. The Schwab family owns and operates Schwab Dairy Farm and Schwab Aggregates with 845 acres of farm land and 75 acres of gravel mines, in the Town of Freedom. Both businesses employ 47 people all of whom live in the area. We have been operating a DEC permitted gravel mine in the Town since 2010, at their location on Pigeon Hill RD. They are leasing a newly permitted gravel mine that is adjacent to Lafarge on Lime-Lake Elton RD, which is operated by them. Aggregated mines from our sites are distributed within the Town and also to multiple locations and businesses within a 60 mile radius outside of our Town. He said the mines excavate sand and gravel much closer to the 1,000 ft from water supplies with no negative impacts, on most water sources. Our gravel mining in Freedom is conducted under permit issued by New York State Department of Environmental Conservation. They regulate how sand and gravel reserves are to be cured and processed. The DEC permit process addresses all potential impacts from mining including, impact to air, water, traffic, fish, wild life, and surrounding community and more. The process requires to obtain a DEC mining permit allows the Town and public input on mining plans before any permit is issued. Also, when ever a permit is substantially modified. The DEC permits are issued only after a thorough professional review and transparent process where all comments raised are considered. The Town of Freedom is familiar with their permitted operation, they have reviewed their permit in 2010 and in 2017. The Town has always been included in the permit process. The enactment of proposal Local Law 2 of 2020 would be devastating to their mining operations in the Town by severely limiting where their business could be conducted. Limitations of a 1,000 ft of separations between a commercial excavation mine or any water well in the Town would rule out many locations where quality sand and gravel reserves are located. These glacier deposit and materials do not exist uniformly across our region, however their value for use in public and private projects extends across our region and beyond. The materials can only be recovered from sites where they exist.

4. Charles Malcomb- From Buffalo- He is representing Invenergy and Ally Catt. He stated what your hearing and seeing is what happens when a rush to adopt something that no one's really evaluated. He addressed to Supervisor Randy Lester by saying in the opening comments are rules and proceeding Randy mentioned that we are not to ask any questions of the Board unless Randy allows it. Charles said he would like to know from Councilmen Geoff Milks where this draft came from, who is the mystery drafter that put this together, and what experts were consulted in putting the material together. Geoff Milks stated many citizens worked together on that law and he said they are not here for a vote tonight, they are there to hear from the citizens, and it's still work in progress. Charles said you have not done your due diligence and there obviously some mystery drafter that came up with this document. It has not been thought through, he stated Geoff has not considered some important land use in the community. The rush to harm the wind project, you have done other damage to the community. You're on a path to do that damage, and that's why you have to take your time review the law and involve experts, which you guys have not done, and it's shameful. Geoff milks said it will be done. Charles stated not to repeat himself but to reincorporate all my prior comments with

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respect to the violation of law. On this local law including conflicts and open meeting law violations and the fact that there obviously was an effort to come to consensus by members of the Board outside of the public meeting. Any preserving those arguments for judicial review.

5. Richard Uplinger- From Freedom- He has lived in the Town and paid taxes for 21 years. This proposed water law will jeopardize his job by stopping Gernatt asphalt and gravel products from being able to mine close to a well, because they have wells close to them everywhere. As far as Rich knows there is no impact on the water table.

6. Ron Preivity Sr. – From Freedom- He has been a tax payer in this town for 48 years. He stated he has one of the worst business in the Town, a junk yard. It takes a lot to keep it straight. DEC works with them, they check them. They have license for transfer station, they have to run water test twice a year. Plus, the DEC gives them a lot of visits. They don't criticize what they do there, they seem to like it. He says this law comes up about the wells, he has two wells on the property that have a junk yard on it. What does that mean? What does it mean if he decided to sell the place? Ron said he was told it was grandfathered in he said that is baloney. Grandfathered in does not work after 10 years. He feels that's a problem. The other thing he feels is a problem like the other gentleman said, what did it cost the tax payers to have this written up wrong. The other thing that bothers Ron is that there is water coming down the other end of this road, goes out 98, down the right side of 98, to Arcade, goes through a filter system comes back and you buy it. He said there is no law saying that you have to tap into it today, but there's going to be. Ron said if you can not vertically drill under a road how they going to put the water lines through. Ron said to the Board to think about the longevity in life.

7. Peter Sorgi – From Williamsville- See attached document #7
-He also stated he agrees with what Mr. Malcomb said he's wondering where this law came from as well, because the Town of Farmersville is having the exact same public hearing on the exact same law. He said there has got to be something happening here, it disturbing. He's not here on behave of wind farms he is there on behave of his clients. Whether it intended or unintended this would have purely devastating impact to there businesses. As Ron Preivity pointed out there is nothing in law that says its grandfather in, they would have to fight that in court. It also does not allow any expansion. This proposed law basically takes an incredibly negative and unbalanced approach. Federal and State Law require the balancing of economic and environmental factors. You really can't have one without the other. The law does not do that at all. He stated the businesses that are represented are already regulated. He submitted NYS regulation permits which means stormwater, pollution, discharge, elimination permits. It's 300 pages of regulations that just one portion of it. He stated he could have printed out 1,000 of the pages. Couple of things they object to is that commercial excavation is defined as any excavation of 10 ft. or more. No one could not put in a commercial building for that. Blasting and horizontal drilling is combined with there use. Sand and gravel excavation do not require blasting or horizontal drilling. They are not sure why they are lumped in with that. The letter that is attached #7 he said he detailed in that letter the finding. He stated at some

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points they just completely miss state the law. The one says the constitution obligates you to do certain things. It does not, he stated it leaves certain things to the state, like the regulation of that what the Town is trying to regulate. He said the word "may" appears about 35 times in this Local Law. He also stated because there are no studies, no nothing. They say they base this on precautionary principal and that in this Local Law basically, means we are going to guess, we are going to hope this is the worst-case scenario, we are throwing science out the window and go with this. So, we simply ask that you deny this Also Cattaraugus County comprehensive plan is quoted in as supporting this law. There was a survey conducted by residence and there were two things that are important they said, economic development, and infrastructure. This would destroy both of those.

8. Ryan Marrs- From Gutchess Lumber Freedom- He operates as the company engineer. They purchased the plant in 2007, they have expanded to employ almost 100 people. Local Law 2 of 2020 will cripple them and their ability to operate with our foot print in Freedom. They believe that this law is arbitrary and capricious. He stated its absolutely ridiculous, it's absurd, and uncalled for. It is the last-ditch effort to stop something that already probably going to go through. This is going to hurt our business, not just Gutchess, but a lot of local gravel and farming. He would not be able to build a new building if he wanted to on the Freedom plant. We as Gutchess Lumber want the Town Board to know we are against this, and if this goes forward, they will be doing there best to stop it.
9. Allyson Zyrawski- From Lafarge- See attached document #8.
- She said she is a licensed perfectional engineer and environmental land manager from Lafarge.
10. Also Submitted but did not speak was a letter from Lawrence Haley III. See attached document #9

BOARD COMMENTS:

Councilmen John Hill- Stated with the wind energy law he has heard and listened, and he stated he thinks everyone else on the Town Board had listened. He stated we all know that Supervisor Randy Lester and him have had a disagreement on how wind mills will help our community. He stated the proposed wind law is taking an approach to protect all the residence of the Town of Freedom. The Drinking water law, he did not have enough time to look at this. He is very concerned the way that its written. He stated he will not be accused of trying to break up business in the Town of Freedom. He feels he would want to look at revamping, and redoing, also getting professional input on the local drinking water law, to see how we can protect wells, but allow business to do what they need to do to stay in business. He thinks they should step back at this and not even look at this until we have a lot more information on it.

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Councilman Geoff Milks- Thanked everyone for coming. He said this is exactly what this meeting is for, brought up some good points to it. The intent is not to harm business that are here, the intent on both laws are for protections for our people in our Town. Geoff agrees the water law has a little more conversation to be had. Its protection for the residence with wells. He has documents of a local farm that had drilling by them done, and they almost lost their farm over there wells being polluted. He stated not by the work of anyone of the audience.

Councilwomen Jolene Esposito- She stated she's with John, she does not want to put any local business out of commission. She stated that they should redo this local law.

Councilmen Dustin Bliss- Thanked everyone for coming. He said there is a fine people that both feel apprehensive about wind project and are in support of it. However with this new wind law his problem with it is, it's not a wind law it's a moratorium. He said anyone who knows any thing about the wind project, this wind law would kill any wind project. He would like a little more openness that if some people on the Town Board want to kill the wind project, they just pass a moratorium, rather than trying to miss lead the public. Dustin said his other problem with this wind law that he was not on the previous Town Board, there was over a year of deliberation before the last wind law was passed, and lots of people against the project. The previous Town Board rushed to judgement and tried cramming down a wind law that was favorable to wind project, yet here we are with a possible time table of this Town Board voting on Local Law 1 of 2020 at the next Town Board meeting. He said if a year was not long enough, he does not know how a month can be justified. He would ask everyone to practice what they preach. As far as the water law, he doesn't believe any of the Board drafted any of these laws. His beliefs are Local Law 2 is a back stop in case Law 1 is struck down by Article 10 by the State of New York, and this water law would kill that. Crafty, deceptive, smart lawyering, his problem with whoever wrote this is not aware of the history, and economic, and social fabric of this Town. What worries Dustin is this one person attempted to turn our local area into their version of a rural oasis bedim community. We cannot afford to be a bedim community like Marilla. If there weren't farms, if there weren't forest, sawmills, gravel pits all these things. He said drive to Lyndon or Short Tract, if you want those roads, then by all means pass this and kill business. Its insulting to me that this was brought up to him at the last Town Board meeting in the mater that it was. He ran on the position of trying to return civility back to the Town politics. He will not attack people either on the Town Board or in this room that are residence personally, but he would just ask that people take a long look at this and understand the ratification to it. For these reasons he looks forward to voting no on both of these laws.

Supervisor Randy Lester- He would like to go back a week regarding a new attorney came into Town. He still a defendant in one of the lawsuits that was discussed last week. He made know he would maintain relationship with previous Town Attorney Jim McAuley as his attorney representing him in that matter. Randy learned that new Town Attorney Eric Firkel indicated to the appellate court that he represents Randy. Randy said

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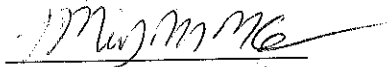
he has never represented him, and that Eric lied, Randy ask if he is the type of attorney we want in Freedom.

III. ADJOURNMENT:

John Hill made the motion to adjourn the meeting at 7:56 pm. Seconded by Dustin Bliss.

Roll call: Ayes-5 Jolene Esposito, Dustin Bliss, John Hill, Geoff Milks, and Supervisor Randy Lester.

Respectfully Submitted



Mindy M. Holland
Freedom Town Clerk

1/18/2020

Good Evening, my name is Denise Willard, I'm a 20+ year resident of Freedom, but have had a connection to the Town of Freedom my entire life, through my grandparents, and my mother has been buried in the Freedom cemetery since February of 1976. I would like to state that I am opposed to the Alle-Catt project, especially after talking to my neighbors. When I found out about the project (through Facebook friends, not the wind company), I looked up the turbine location map and noticed that there were supposed to be 7 turbines across the road from us, at least one of those directly across the road. We talked to our neighbors and found out that Invenergy had lied to them when they called him and told him that his neighbors had signed with them, so he should too, but checked with some of the neighbors and found out that none of them had signed a contract, so he called Invenergy back and pretty much told them where they could go. He, Gordon Bukaty, has written a comment as to how he feels about the project and Invenergy on the DPS site. Plus, I chose to not live in an industrialized area, and drive an hour drive to and from work on purpose, I wanted the peace and tranquility of the country life. My opposition has increased over the last 2 years because of the misleading and/or lack of information by Invenergy and their intentional corruption of local town boards and I'm sure that everyone has read about some of those instances either in a letter to the editor that I have written, an ad I placed, or in one of my several entries on the DPS site. Seriously though, why would any company that was on the "straight and narrow" ask people to sign a contract with a non-disclosure agreement? Why would a responsible and trust worthy company hand in an Article 10 application that comes back with 36 pages of deficiencies? I was absolutely disgusted when Ann Marie Dixon would say, "I asked Invenergy and they said....." are you kidding me Ann Marie, asking the Wind Company if their product is safe is like asking the tobacco company if cigarettes cause cancer, you're not going to get the truth. One of the straws that broke that camel's back was when Ann Marie Dixon voted on a negligent Host Community and Road Use Agreements and then resigned or when Dan Meyers asked what we should do if something happened to our well water and Randy's response was, "I don't care, I have town water". No person that has even a smidge of conscience does or says those things and now more than ever, I can honestly say that I'm always disappointed when a liars pants don't actually catch on fire.

Anyway, with all that said, this.....[hold up 56 page proposed wind law], this right here is beautiful, I love everything about it!! I especially the Property Value Guarantee Agreement that the residents have been asking for since the beginning. I swear, you guys have thought of everything, from not allowing modifications, which would have prevented Invenergy from doing what the lady from Canisteo warned us that, attended the DPS Public Information of, fire protection plan, wildlife plan, a decommissioning plan, an Environmental Plan, a Maintenance Plan and so much more. It protects the Town, the

resident, the NYSDOT, and the Catt. County Highway Department. I am very proud of all the work that went into this. After taking a drive to Honeoye Falls on Friday to visit my youngest horse, I can't thank you enough for all the protections in this wind law. You see, I usually take Route 39, but this time I took Route 39 to Route 362 to Route 78 purposely to see more of the turbines. It was absolutely disgusting to see that every one, let me repeat that, every one of the turbines that I saw from the road was leaking oil or grease from the Generator & Gear Box/Control System section down the tower. There was one on the North side of Route 78 that was black with oil and/or grease. I'm a little confused as to how that is green or environmentally safe that can be. Thank you to the town board for taking the concerns we have expressed over the past 2 years into consideration, this is what a wind law should look like. I'm so glad to see more protective 3,000 ft. setbacks from property lines but would rather see the 1.5 mile recommendation that the Chautauqua County Department of Health recommended. Thank you for shorter turbine heights and shadow flicker limits. Thank you for an escrow account to protect everyone, especially the leaseholders so they are not stuck with the decommissioning costs. And, thanks for a water protection law since all of Freedom sits on top of a sole source aquifer. I also love how you have taken the financial responsibility off the taxpayer and put it on the applicant/operator and there is not more use of the "in good faith". I love the protections for the Amish, as once last fall, the same person that used to ride her horse to Earl's to get ice cream, rode her horse down our county road and I'll be sure not to do that again.

Thank you,
Denise Willard
Freedom Resident

Freedom Public Hearing
Wind Law 2020
Water Law 2020
January 13, 2020
Submitted by: Stephanie Milks

My name is Stephanie Milks, concerned mother and Freedom resident for over 16 years. I took on the role of President of Freedom United to address the adverse impacts of industrial turbines and hold the Freedom Town Board accountable for upholding Article IX of the NYS Constitution and the obligation to protect our health, welfare and safety. I am all for appropriate recyclables, renewables and preserving our planet, however, I am opposed to the corruption and exploitation surrounding the Alle-CattAlle-Catt Project and the unethical misconduct of Invenergy and conflicted town officials.

I would first like to announce that the appeal of Local Law 1-2019 was dismissed by the 4th Department Appellate Division this afternoon along with Invenergy's motion to intervene. This matter has been put to bed, as it should be, and further demonstrates the underhanded, backdoor tactics that Invenergy is willing to take in conjunction with town officials that are willing to participate. Charles Malcomb of Hodgeson and Russ, former Freedom Town Attorney, Jim McAuley and Randy Lester were among those participants willing to abuse their positions and exploit the Freedom residents in hopes that they could get away with it. Beware of the intentionally misleading information spewed from their lips. *Can only make guesses*

Local Law 3-2007 remains in full effect at this time without further dispute.

I would like to thank the current town board majority for putting forth a much more protective wind law and addressing the constant concerns Freedom residents have expressed for the past 2 years. Of equal importance is the protection of our wells as we sit on the Cattaraugus County Creek Basin sole source aquifer. We have been faithfully and diligently doing our research, approaching the town board and making these requests and couldn't be happier to have a town board majority willing to uphold their oaths of office and take our health, welfare, safety and property rights seriously. The provision I am most excited to see included is the Property Value Guarantee Agreement for residents within a 2 mile radius of industrial wind turbines! I am also incredibly thankful for the Shadow Flicker limits as mimicked from the state of New Hampshire and for following the World Health Organization (WHO) for noise limits. I am submitting further supporting documentation of testimony submitted by Miguel Moreno-Caballero of the NYS Department of Public Service that aligns with the guidelines of this proposed wind law. Please see attached.

The 3,000ft setbacks are a simple solution to a multitude of adverse impacts and will help guard against property value decline, excessive shadow flicker, noise, ice throw, blade fragmentation, stray voltage and the risk of an industrial turbine catching on fire.

There are only 63 Freedom leaseholders.

14 of those leaseholders did not end up with project components.

30 of the Freedom leaseholders do not even live within the project area. They live in Orchard Park, Kenmore, Clarence, West Seneca, Yorkshire, Tonawanda, Alaska, etc. *Which is why we see so many non-Freedom residents here tonight.*

This is precisely why we need to have the Freedom residents, who actually live here, protected to the fullest extent and why the grand majority of the Freedom residents have repeatedly requested these protections. I support John, Jolene and Geoff and the laws designed to protect each and every Freedom resident.

BEFORE THE
STATE OF NEW YORK
BOARD ON ELECTRIC GENERATION
SITING AND THE ENVIRONMENT

In the Matter of
Alle-Catt Wind Energy LLC

Case 17-F-0282

October 4, 2019

Prepared Testimony of:

Miguel Moreno-Caballero
Utility Engineering
Specialist 3
(Acoustics)
Office of Electric,
Gas, and Water

State of New York
Department of Public
Service
Three Empire State
Plaza
Albany, New York 12223-
1350

1 considered participating if they have signed an
2 agreement with ACWE or are discussing such an
3 agreement with ACWE." This leads me to believe
4 that not all the receptors identified in the
5 Application as "participating" may in fact be
6 participating. If the Applicant is discussing
7 an agreement with some non-participating
8 receptors, that does not make them
9 "participating". This may have potential
10 implications in the interpretation of results of
11 sound impacts as the real number of non-
12 participating receptors exceeding relevant
13 thresholds may be greater than as indicated in
14 the Application. This also shows that the
15 number of participating and non-participating
16 receptors is not final and studies may miss the
17 identification of some receptors. This happened
18 in the Cassadaga Wind Project after the
19 Certificate was granted and required the
20 Application of a Noise Reduction Operation on a
21 few turbines to comply with the noise limits of

1 the Certificate in the Compliance Filings. For
2 all these reasons, the certificate conditions on
3 noise should relate to existing residences as of
4 the issuance date of the Certificate, not to the
5 residences identified in the noise report
6 provided with the Application.

7 Q. What is the limit that you recommend for this
8 Project and why?

9 A. I am proposing a short-term regulatory noise
10 limit of 42 dBA Leq (8- hour) at any non-
11 participant residence existing as of the
12 issuance date of the Certificate. That is the
13 limit that is necessary to comply with the World
14 Health Organization Guidelines of WHO-1999,
15 2009, and 2018.

16 Q. Please explain why a 42 dBA Leq (8- hour) at any
17 non-participant residence is necessary to comply
18 with the WHO recommendations of 1999.

19 A. In 1999, WHO recommended a maximum short-term
20 noise limit of 30 dBA-Leq (8-hour) indoor to
21 prevent sleep disturbance during nighttime

1 inside bedrooms. (Exh. MMC-1, Table 1). The
2 recommendation is still applicable as it was
3 retained by WHO in the most recent guideline
4 (WHO-2018). This is a level that DPS Staff has
5 adopted as indoor design noise goal for non-
6 participating receptors.

7 Q. Do you recommend measuring indoor noise levels
8 inside bedrooms?

9 A. No, I do not. It is more practical to estimate
10 the equivalent short-term outdoor noise limit
11 based on the noise reduction provided by the
12 residences (e.g. windows, exterior walls and
13 roofs) and then measure the outdoor noise levels
14 for compliance after the project is built.

15 Q. What should be that outdoor equivalent limit and
16 why?

17 A. The outdoor noise limit should be between 40 dBA
18 Leq 8-hour and 42 dBA Leq 8-hour. This is based
19 on a 10 dBA to 12 dBA noise reduction provided
20 by a residence with windows fully open. (30 dBA
21 + 10 dBA = 40 dBA and 30 dBA + 12 dBA = 42 dBA).

1 Q. Why do you think that the outdoor to indoor
2 noise reduction should be between 10 dBA to 12
3 dBA?

4 A. As stated in the most recent guideline (WHO-
5 2018), the difference between outdoor and indoor
6 noise levels in a room is typically 10 dBA when
7 the windows are completely open. Although WHO
8 also states that the difference could be 15 dBA
9 for tilted or half-open windows and about 25 dBA
10 for closed windows, those conditions are not
11 relevant to the evaluation of short-term noise
12 impacts because the main concern is the 8-hour
13 time period when people open the windows
14 completely which may happen specially in summer,
15 but also in other seasons such as spring or
16 fall.

17 Q. Can the outdoor to indoor noise reductions be
18 lower than 10 dBA or 12 dBA?

19 A. Yes. WHO-2018 guidelines recommend a reference
20 for more accurate estimates of the outdoor to
21 indoor noise reductions which is included in my

1 testimony as Exhibit MMC-5. This reference
2 analyzed 115 measurements for open windows and
3 found noise reductions as low as 1.7 dBA and as
4 high as 17.3 dBA. (Exh. MMC-5, Table 2, p. 7).
5 The study concludes that the median difference
6 between outdoor and indoor levels is 10 dBA +/-
7 2.9 dBA, in other words, most of the outdoor-to-
8 indoor noise reductions were between 7 dBA and
9 13 dBA.

10 Q. The studies were conducted in over 100 buildings
11 in Switzerland. Are they Applicable to other
12 countries?

13 A. Yes. The study concludes that for the "windows
14 open" condition the opening of the windows is
15 the most important factor rather than the
16 specifications of the façade and therefore the
17 results have general validity and might be
18 applied in other countries too.

19 Q. The reference cited by WHO-2018 refers to
20 outdoor-to-indoor noise reductions from
21 transportation noise. Are those results

1 applicable to wind turbine noise?

2 A. Yes. Outdoor-to-indoor noise reductions for
3 wind turbine noise are expected to be lower
4 than, or at most equal to, but not higher than
5 those obtained for transportation noise sources.
6 This is supported by the discussion in the
7 abstract of Exhibit MMC-6. (MMC-6, p. 2 of 10).

8 Q. Are there any other references showing outdoor-
9 to-indoor noise reductions lower than 10 dBA or
10 12 dBA for open windows?

11 A. Yes. Exhibit MMC-6 also discusses the outdoor
12 to indoor noise reduction of wind farm noise for
13 two rural residences in Australia and showed
14 that for one of the houses tested (House 2), the
15 noise reduction against wind turbine noise with
16 windows open was neglectable (Exh MMC-6, Page 5
17 of 10), in the order of 8 to 9 dBA (Id. Figure
18 7, p. 9 of 10)

19 Q. Can the outdoor to indoor noise reduction
20 against wind turbine noise with windows open be
21 lower than 10 dBA or 12 dBA in the United

Daniel Meyers 50 yr Resident of Freedom

I'd like to thank the board for listening to our concerns and appropriately adding them to the new windlaw in the next couple of weeks.

It's nice to ^{see} ~~see~~ the ^{LAW} ~~law~~ ^{STATES} ~~state~~ no more than 450ft windmills instead of the 600ft windmills that definitely don't conform to our small town.

I'd also like to see protections added for our wells. Not all of us get our water from Arcadia, we have wells we need to depend on. It's well documented at other windfarm projects that there wells have been contaminated. Ex. Chatham-Kent project in Ontario charged wind developers with well water contamination with Toxic sludge. Of course the wind developers deny all this saying it's just a coincidence that it happen at the same time the project was in full swing of construction. To ask it for what it's worth these companies are looking out for one thing themselves and greed.

The other concern is most of us don't have cable, we have to rely on satellite for internet and TV. How is this project going to affect our reception, also our phone service a lot of people only get one or 2 Base of service, we need protection from these possible interferences.

And to be honest why do we have all these concerns. Well the answer is simple, because they have already happened at other mindfarm projects

These are concerns based on facts

Read during Local Law 1

(4)

I live and pay taxes in Freedom for the last 15 yrs. I do not own property involved in the Alle-Catt wind farm. I do however work heavy construction and like dozens of my neighbors will benefit from good paying construction jobs created by this project.

I would like to point out that the last project like this put in excess of 150 tradesmen to work. This project did have a couple of dozen out of town people working but local hires out numbered them 10 to 1 !!!

I stand in support of the Alle-Catt wind project.

By Chadd Bishoff

4363 Federal Drive, Batavia, NY 14020-4105

800.929.1350 • 585.815.1900

Fax: 585.815.1901

FarmCreditEast.com

January 13, 2020

**Town of Freedom
Local Law #2 of 2020, Drinking Water and Conservation
Area Protection Law
Public Hearing Comments
To Be Incorporated into the Record of Hearing, January 13,
2020**

Mr. Supervisor and Town Board Members,

Please incorporate the following comments into the public hearing record on the Town of Freedom Local Law #2 of 2020 entitled "Drinking Water and Conservation Area Protection Law", subject to hearing on January 13, 2020 at 7 o'clock pm.

Good evening. My name is Nathan Rudgers. I am the former Commissioner of the Department of Agriculture and Markets for New York State. Currently I serve as the Director of Business Development for Farm Credit East. I consult for Schwab Aggregates and Schwab Dairy Farm as part of my practice. Schwab Aggregates is a gravel enterprise started by Jason Schwab and his family. Jason also operates Schwab Dairy Farm, a 1250 cow dairy that operates roughly 2500 acres; 845 acres in the Town of Freedom, 776 acres in Farmersville, and the balance in Machias and Franklinville in Cattaraugus County and Yorkshire in Erie County. Schwab Dairy Farm and Schwab Aggregates employ 47 people full time in Freedom. Schwab Aggregates supplies sand, gravel and stone products to Towns, homeowners, contractors, commercial enterprises in a 60 mile radius around Freedom. The Lafarge, Gernatt and Schwab facilities are the primary source of Filter Sand used in Residential/Commercial Septic Systems in Cattaraugus, Chautauqua, Erie and Niagara Counties, the source of Concrete Sand for the largest Ready-Mix Concrete Producer in Cattaraugus, Erie and Niagara Counties, the fine aggregate supplier of Haley Concrete another local business employing 14 local residents, and a significant source of bedding sand used by dairy farms in the region to bed their cows. Notwithstanding the substantive legal arguments in opposition

to this law, which others are commenting on, it is clear that proposed statutes are seeking to severely restrict economic activity and reasoned and reasonable land use. The proposed statutes would employ the precautionary principle, "a strategy for approaching issues of potential harm when extensive scientific knowledge on the matter is lacking." This approach is flawed, disingenuous and cynical in this case, in that, with the exception of horizontal drilling, which is currently banned in the State anyway, excavation below 10 feet for construction purposes is an activity that has been permitted and monitored in the town for decades. As such, this activity is not a new innovation, is associated with extensive scientific knowledge of the activity and its impacts, and it has been successfully deployed in Freedom, again, for decades.

Additionally, it is not at all clear that agriculture is exempted from this statute. We have heard that this lack of clarity is intentional. Large barns, manure storages and bunk silos can easily exceed the 10' excavation limit. If agriculture is not excluded, it would make farms subject to the \$15,000 permit fees and onerous regulation. Incidentally, the definition of "farm operation" referenced in the proposed statute does not match the one that is currently established in State Statute. For the above reasons, It is our belief that the proposed statute may be in violation of the unreasonably restrictive local ordinance provisions of the NYS Agricultural Districts law, and we are strongly opposed to this proposed legislation.

Respectfully Submitted:



Nathan L. Rudgers
Director of Business Development



13870 Taylor Hollow Rd.
Collins, NY 14034
716-532-3371
716-532-9000 (fax)
www.gernatt.com

January 13, 2020

**Town of Freedom
Local Law #2 of 2020, Drinking Water and Conservation Area Protection Law
Public Hearing Comments
To Be Incorporated into the Record of Hearing, January 13, 2020**

Mr. Supervisor and Town Board Members,

Please incorporate the following comments into the public hearing record on the Town of Freedom Local Law #2 of 2020 entitled "Drinking Water and Conservation Area Protection Law", subject to hearing on January 13, 2020 at 7 o'clock pm.

Good evening. My name is Richard Pecnik and I am the Director of Regulatory Affairs for Gernatt Asphalt Products, Inc. ("Gernatt"). Our company has been mining ("commercially excavating") sand and gravel reserves from properties in the Town since 1987, and in Western New York since 1955, in compliance with Federal and State laws and regulations. The Gernatt Freedom mine is the primary source of filter sand used in residential/commercial septic systems in Cattaraugus, Chautauqua, Erie and Niagara counties. It is also the source of concrete sand for the largest ready-mix concrete producer in Cattaraugus, Erie, and Niagara counties. This plant supplies coarse aggregates for local business Haley Concrete. It is the source of aggregates for hot-mix blacktop plants in Cuba, Delevan, Springville, Collins, Dunkirk, Westfield, and West Seneca. The high-quality aggregate from the mine is used in the manufacture of QPR 2000, a high-performance cold patch material used in 10 western New York counties. This aggregate is found in bagged Quikrete products sold locally and distributed throughout western New York and northwestern Pennsylvania. This mine is the source of preferred chipping stone used by State, County and Town highway departments. Gernatt is a large volume customer of Crabb Oil, while paying and generating sales tax revenue. We pride ourselves on being a good neighbor and a valuable part of the Town. On behalf of myself and the 200 employees of Gernatt, I submit the following comments on Proposed Local Law #2 of 2020.

Aggregates recovered from Gernatt mines in Freedom are distributed within the Town and also to multiple locations and businesses outside of the Town. In addition to Freedom, we conduct sand and gravel mining operations in nine other western New York Towns, several in Cattaraugus County. We currently hold 29 New York State mining permits, from small sites to large, spread over the western southern tier. Many of our mines excavate sand and gravel within 1000 feet of water supply wells (including in Freedom), with no negative impacts on those water sources. Gernatt routinely mines below the local groundwater table in at least six towns (including Freedom), and in many cases closer to domestic water supply wells than 1000 feet, also without negatively impacting water quality or quantity to surrounding water users. The general result of mining below the water table is that a reservoir effect is realized where local water users actually have more quantity available to their wells after removal of the sand and gravel reserves.

Gernatt's operations in Freedom are conducted under the authority of the Federal Government and the New York State Department of Environmental Conservation ("DEC"). Their permit programs regulate how sand and gravel reserves are procured and processed. These laws address all potential impacts from mining, including impacts to air, water, traffic, fish and wildlife, the surrounding community, and more. The processes required to obtain approval to mine allow for Town and public input on mining plans before any permit is issued, and also whenever a permit is substantially modified. These permits are issued only after a thorough, professional, expertly reviewed, and transparent process where all comments raised are considered and addressed, if necessary. The Town of Freedom is familiar with Gernatt's permitted operations as there have been several permit renewals and modifications over the years. The Town has always been included in the permit process.

The enactment of proposed Local Law #2 of 2020 would be devastating to Gernatt's mining operations in the Town, severely limiting the locations where our business could potentially be conducted. The limitation of a 1000-foot separation between a "commercial excavation" (mine) and any water well in the Town would rule out many locations where quality sand and gravel reserves are located. These glacial deposits of materials do not exist uniformly across our region, however their value for use in public and private projects extends across our region and beyond. These materials can only be recovered from sites where they exist, and their availability is limited geologically in western New York. A blanket restriction to access, like that proposed, will eliminate many potential sources of these valuable materials. How was it determined that a 1000-foot separation adequately "protects" the water well? Local Law #2 provides no supporting documentation, study or evidence justifying that 1000 feet (or any distance) is a sufficient separation distance where potential impacts to water are no longer a concern.

Sand and gravel (aggregates) are the basic ingredients in concrete and blacktop pavement. Because they are high bulk materials, aggregates are expensive to move around. Having sources of these materials available in multiple locations limits the distances they have to be moved for use and keeps the costs of projects lower. If reserves are eliminated from availability, as they would be under Local Law #2, the costs to complete local projects will go up significantly when these materials must come from other locations. Multiple trucks trips will be needed to retrieve these materials from more distant sources, resulting in increased truck traffic, more fuel being burned and many more man-hours being expended (and paid for). Since most road work and public works projects are taxpayer funded, this results in taxpayer dollars being spent much less efficiently, while driving up costs on those projects unnecessarily. I'm sure you are all well aware of the poor condition of much of our infrastructure locally, and limiting access to reserves needed to improve those conditions will only exacerbate that situation.

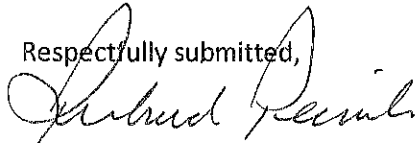
This proposed law uses the term "may" in several instances in attempting to justify the need to regulate commercial excavation to prevent potential impacts to water. If the Town is going to legislate based on speculation, where is the consideration for other speculative impacts to water beyond just excavation? No mention is made of the lack of a public waste water treatment system in the Town. Currently everyone handles their septic on-site, resulting in all human and domestic waste water being flushed/drained into the groundwater. In many cases in Freedom, the domestic well and septic systems are within sight of each other on the same parcel, yet this potential impact to groundwater is completely ignored in this proposed law. What about water soluble chemicals, pesticides and herbicides used commercially and privately (but not by mining operations) within the Town? Does anyone apply these substances to their lawns and gardens, where they dissolve into the ground and ultimately into the groundwater? Why weren't these materials, many coming with serious manufacturer's warnings about potential hazards from use, included in this proposed law? One can safely conclude that these types of substances surely present at least as great a threat, if not infinitely greater, to groundwater than commercial excavating poses.

Our Country supports, as a basic freedom, the concept of private land ownership. In many cases land ownership includes the rights to minerals within the boundaries of that land. Proposed Local Law #2 would take the potential value of those minerals away from many private landowners by making the resources unavailable for recovery and use. With mining being as highly regulated as it is, a private landowner should be able to realize the value of his resources through sale if one is able to secure the necessary permits. Who is the Town to limit this constitutionally granted right to private property?

There is a popular theory circulating locally that this hastily presented legislation is intended to be a stopping point for any wind farm development in the Town. To write this rule so it severely limits such a vital use as mining, which has been part of the fabric of the Town forever, is short-sighted and off target. Our business, which consistently supplies high quality products used primarily for society's benefit, should not become collateral damage from a proposed law that is possibly meant to achieve a different purpose.

Gernatt has a long history in the Town. We would like to continue to operate and provide high quality materials for projects both in the Town and wherever our materials are needed. Proposed Local Law #2 of 2020 does not paint an encouraging picture for future operations like ours. We hope the Town will re-consider this proposed law for the reasons stated above and not pass it into law. Thank you.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Richard Pecnik".

Richard Pecnik

Regulatory Affairs

Gernatt Asphalt Products, Inc.

Attached to # 6



Votorantim

Cimentos



VCNA United Materials, L.L.C.
3374 Walden Avenue, Suite 120
Depew, New York 14043
www.unitedmaterialsllc.com

Office: (716) 213-5832
Fax: (716) 213-5850
Concrete Dispatch: (716) 213-5800
Sales Fax: (716) 473-5481

January 13, 2020

Freedom Town Board
1188 Eagle Street
PO Box 89
Sandusky, NY 14133

Re: Local Law #2 of 2020, Drinking Water and Conservation Area Protection Law
Comments for the record

Dear Town Board Members:

VCNA United Materials, LLC submits the following comments in opposition to the Town of Freedom's proposed Local Law #2 of 2020, Drinking Water and Conservation Area Protection Law.

As a regional supplier of Ready Mix Concrete the availability of high-quality Sand and Gravel Aggregate that we purchase from the Gernatt Asphalt Products Mine is essential to operation. United Materials is a long-time customer of the Gernatt operation and view this operation as our sole supply for Concrete sand. The Freedom Plant's function is critical to our daily operation at our Facilities in Ashford, Orchard Park, Lancaster, Buffalo and Sanborn. A natural resource of this regional significance must not be hindered by unnecessary local legislation when the protection sought is assured by NY State Laws.

This law will also affect the commercial and agricultural construction customers of United Materials as the law will eliminate the potential to access sand and gravel. This by the proposed restriction on "excavating land for non-residential purposes that is done to a depth of ten (10) feet or more," and the prohibition of industrial or commercial facilities with one thousand (1000) feet of any water well. These restrictions ignore the decades of safe and environmentally sound operations of existing mining operations and inhibit future development.

It appears that our supplier the Gernatt Freedom plant could become collateral damage from a proposed law that is possibly meant to achieve a different purpose. Please for the sake our 150+ employees reconsider the hasty decision to adopt the unnecessary law.

Sincerely,

Brian Kirchmeyer
General Manager

SERVICE • QUALITY • EXPERIENCE

Supplying Ready-Mixed Concrete and Construction Materials to the Niagara Frontier
Lancaster • Orchard Park • Sanborn • Springville • Depew • Tonawanda • Alexander

attached to #6

DOLOMITE PRODUCTS COMPANY, Inc.
ROCHESTER ASPHALT MATERIALS
NORTHRUP MATERIALS



MANITOU CONSTRUCTION COMPANY
IROQUOIS ROCK PRODUCTS
A.L. BLADES

January 13, 2020

Freedom Town Board
1188 Eagle Street
PO Box 89
Sandusky, NY 14133

Re: Local Law #2 of 2020, Drinking Water and Conservation Area Protection Law (Comments for the record)

Dear Town Board Members:

The Dolomite Group (A.L. Blades), submits the following comments in opposition to the Town of Freedom's proposed Local Law #2 of 2020, Drinking Water and Conservation Area Protection Law.

The Dolomite Group (A.L. Blades) is a regional supplier of Hot Mix Asphalt and we depend on the availability of high-quality Sand and Gravel Aggregate that we purchase from the Gernatt Asphalt Products Mine, as it is essential to our operation. The Dolomite Group (A.L. Blades) is a long-time customer of the Gernatt operation and we view this operation as our primary supply for all of the aggregate used at our Cuba location. The Freedom Plant's function is critical to our daily operation at the Cuba Facility and also supplies some aggregate into our Hornell and Bath locations. A natural resource of this regional significance must not be hindered by unnecessary local legislation when the protection sought is already assured by NY State Laws and their NYSDEC operating permit.

This law will also affect the commercial and agricultural construction customers of The Dolomite Group (A.L. Blades) as the law will eliminate the potential to access sand and gravel. This by the proposed restriction on "excavating land for non-residential purposes that is done to a depth of ten (10) feet or more," and the prohibition of industrial or commercial facilities within one thousand (1000) feet of any water well. These restrictions ignore the decades of safe and environmentally sound operations of existing mining operations and inhibit future development.

It appears that our supplier, the Gernatt Freedom plant, could become collateral damage from a proposed law that is possibly meant to achieve a different purpose. Please for the sake our over 100 Southern Tier employees and our customers that rely on this location for their livelihoods, reconsider the hasty decision to adopt this unnecessary law.

Respectfully,
THE DOLOMITE GROUP (A.L. Blades)

Pasquale (Pat) A. DiLucia
Vice President

Attached to # 6



NEW YORK CONSTRUCTION MATERIALS ASSOCIATION
11 Century Hill Drive
Latham, NY 12110-2151

Phone: 518.783.0909
Fax: 518.783.0969

January 13, 2020

Freedom Town Board
1188 Eagle Street
PO Box 89
Sandusky, NY 14133

Re: Local Law #2 of 2020, Drinking Water and Conservation Area Protection Law
Comments for the record

Dear Town Board Members:

The New York Construction Materials Association, Inc. ("NYMaterials") submits the following comments in opposition to the Town of Freedom's proposed Local Law #2 of 2020, Drinking Water and Conservation Area Protection Law.

NYMaterials is a statewide, not-for-profit, trade association representing the business and regulatory interests of companies involved in the production of construction aggregates, ready mixed concrete and hot mix asphalt. According to "The Economic Impact of the New York State Mining and Construction Industry", the mining, concrete and asphalt industries contribute approximately \$5 billion to New York's economy, generates wages of approximately \$1.3 billion, pays at least \$101 million in taxes and employs approximately 30,000 people.

As the Statewide representative of approximately 80% of the State's mining industry, NYMaterials is uniquely situated to provide relevant background on the mining industry in New York State, the uses and need for quality construction aggregate and why the proposed Local Law #2 is ill conceived. We urge the Town Board to consider the following before voting, and ask that these comments be entered into the formal record of the proceedings.

By way of background, the mining industry in New York is responsible for producing the vital building materials that are used in literally every construction project in New York. These materials are the products of the State's mineral deposits – primarily stone, sand and gravel – and are, quite literally, the building blocks of the State's infrastructure. The State's roads and bridges, as well as public and private office buildings, industrial facilities, retail stores, airports, railways, dams, churches, schools and homes are all dependent upon the construction aggregates that are produced from the State's mining facilities. About 400 tons of mineral products are used in the construction of the average home. Every mile of interstate

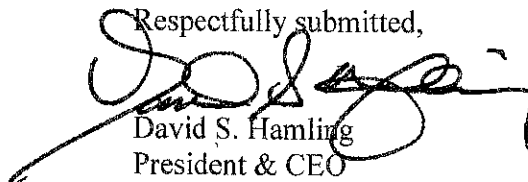
highway contains in excess of 38,000 tons of construction aggregate. Stone products are used in steel and glass production, water and air pollution control devices, fertilizer and many other products. On average, each individual consumes about 50 pounds of mineral products each day. In short, the State's mineral reserves are a critical natural resource.

Unfortunately, deposits of stone, sand and gravel and other minerals that are suitable for mining are increasingly scarce. This fact is especially true in New York's Southern Tier. In the case of the Town of Freedom, significant deposits of high quality sand and gravel are available, and those deposits have served the region for many years. Local Law #2 will effectively sterilize this important natural resource making it forever unavailable. In particular, the law will eliminate the potential to access sand and gravel by the proposed restriction on "excavating land for non-residential purposes that is done to a depth of ten (10) feet or more," and the prohibition of industrial or commercial facilities with one thousand (1000) feet of any water well. Both of these restrictions ignore the decades of safe and environmentally sound operations of existing mining operations. Moreover, eliminating access to these naturally occurring deposits will significantly drive up the costs of needed infrastructure projects borne by taxpayers, both locally and regionally.

Mineral reserves are a non-renewable resource, which is why the NYS Legislature declared it the policy of the state to "foster and encourage the development of an economically sound and stable mining industry, and the orderly development of domestic mineral resources and reserves necessary to assure satisfaction of economic needs compatible with sound environmental management practices." Passage of the NYS Mined Land Reclamation Law and State Environmental Quality Review Act assures ample environmental protection without sterilizing resources. Local Law #2 of 2020 ignores the state policy and protective state laws by creating an outright prohibition. Your action on this law will largely determine the economic viability of the region served by the existing operations.

Based on the foregoing, NYMaterials urges the Town to reconsider the proposed Local Law #2 of 2020 and protect the important aggregate resources located in the Town of Freedom.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David S. Hamling", is written over the typed name and title. The signature is fluid and cursive, with a long horizontal stroke extending to the left.

David S. Hamling
President & CEO



7

January 13, 2020

Freedom Town Board
1188 Eagle Street
Sandusky, New York 14133

Re: Proposed Town of Freedom Local Law 2-2020

Dear Freedom Town Board:

Our law firm represents Gernatt Asphalt Products, Inc. ("Gernatt") and Schwab Dairy Farms and Schwab Aggregates (collectively, "Schwab").

Gernatt is the owner of eight parcels of real property consisting of 385.69± acres in the Town of Freedom. Seven of those parcels, consisting of 360.24± acres, comprise Gernatt's mining operation in the Town of Freedom located at 11216 NYS Route 98 ("Freedom Mine"). Portions of the Freedom Mine have been mined for sand and gravel since the 1970s and Gernatt has been mining there since 1987.

Schwab is the owner of fourteen parcels of real property consisting of 844± acres in the Town of Freedom, utilized both for dairy and mining operations.

The purpose of this letter is to document Gernatt's and Schwab's opposition to the proposed Town of Freedom Local Law 2-2020 ("Local Law 2020") and this letter and its attachments are submitted as part of the Record of the Public Hearing held on January 13, 2020 before the Freedom Town Board regarding Local Law 2020.

It is clear that the purpose of Local Law 2020 is to prevent the siting of Wind Energy Facilities in the Town of Freedom. Article 10 of the New York State Public Service Law removed the final local land use approval authority from municipalities such as the Town of Freedom, meaning the Town of Freedom does not have the authority to prohibit large scale Wind Energy Facilities (and other large scale energy facilities) by Local Law.¹

¹ See NY Public Service Law § 172

Since the Town of Freedom does not have the authority to disallow such use, its only option is to propose a local law that applies to a wide range of commercial and industrial uses with the goal of having the applicability of such local law prevent the siting of large scale Wind Energy Facilities. However, in doing so, Local Law 2020 would prevent numerous land uses that are currently and historically been a part of the Town of Freedom's land use patterns, character of the Town, economic development and employment, including sand and gravel mining.

As is detailed below, Local Law 2020 does not truly seek to regulate certain land uses, but instead seeks to disallow them by enacting restrictions which would not allow numerous commercial and industrial businesses to exist in the Town of Freedom. These businesses are already regulated extensively by Federal and New York State Laws and Regulations, however both the Federal Government and New York State recognize that laws and regulations seeking to protect various environmental concerns cannot do so by eliminating necessary commercial and industrial businesses. This legal requirement mandates that environmental concerns be regulated by working with businesses, not by eliminating them. For instance, the New York State Environmental Quality Review Act ("SEQRA"), in its regulations promulgated by NYSDEC, state at 6 NYCRR 617.1, entitled "Authority, Intent and Purpose," stresses the legal mandate of balancing environmental factors with economic factors:

It is the intention of [SEQR] that a suitable balance of social, economic and environmental factors be incorporated into the planning and decision-making processes of State, regional and local agencies.

However, Local Law 2020 does not adhere to this legal mandate, rather its enactment would have devastating results on local businesses and landowners.

For example, the following provisions of Local Law 2020 would have devastating impacts on sand and gravel mining operations in the Town:

Article I, Section 4 of Local Law 2020 defines Commercial Excavating as "excavating land for non-residential purposes that is done to depth of ten (10) feet or more." Article I, Section 2 then states that "No Blast or Commercial Excavating shall be permitted to occur within one thousand feet of any water well or Conservation Area." These two sections, being read together as required, means that no sand and gravel mining can occur within 1,000 feet of any water well. Gernatt's Freedom Mine, which has been mined since the 1970s, would be violating Local Law 2020 as soon as it is enacted. Schwab's operations would be negatively impacted by this as well. Additionally, these two sections would result in most agricultural operations as well as any new non-residential construction being prohibited.

Article I, Section 2, as well as several other sections of the 2020 Local Law, also group blasting and commercial excavating together. There is no rational basis for this as the type of mining that occurs in the Town of Freedom does not require or use blasting. Accordingly,

mining without blasting should not be regulated the same way that mining with blasting is proposed to be regulated.

The basis for Local Law 2020 are its Legislative Findings, which are flawed, misleading and factually inaccurate and also completely fail to consider the massive amount of regulations and laws that agricultural, commercial and industrial businesses are already required to adhere to by the Federal Government and New York State:

Local Law 2020: Article I, Section 2: Legislative Findings:

The Town Board of Freedom hereby finds and determines that the Town must protect surface water, groundwater and the aquifer within its borders, particularly such sources used for drinking water. The Town finds that it needs to protect the sensitive areas that rely on such water, including Conservation areas and that in limiting industrial and commercial activities, blasting and HDD, it is best to employ precaution, in view of substantial costs that could be incurred to remediate polluted water. The Town Board of the Town of Freedom adopts this 2020 Local Law also to protect the Town's drinking water supply, and conservation areas that may rely on such supply from the potential impacts on that supply by non-agricultural industrial and commercial facilities, blasting, excavating and horizontal directional drilling (HDD) beneath sensitive surface water in the Town in order to protect the public health, safety, and welfare of the residents so that the same will not be unreasonably jeopardized.

Response:

First, nowhere within Local Law 2020 is any evidence provided that the existing businesses and land uses in the Town have created negative impacts to "surface water, groundwater and the aquifer." Protections of surface water impact already exist in Federal and New York State laws and regulations and are regulated and enforced by numerous Federal and New York State regulatory agencies. By way of example, Article 17 of the New York Environmental Conservation Law, entitled "Water Pollution Control" states in New York Environmental Conservation Law § 17-0101 as follows:

It is declared to be the public policy of the state of New York to maintain reasonable standards of purity of the waters of the state consistent with public health and public enjoyment thereof, the propagation and protection of fish and wild life, including birds, mammals and other terrestrial and aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods to prevent and control the pollution of the waters of the state of New York.

To implement this Public Policy to protect water quality, New York State has enacted Title 8 of Article 17 of the New York Environmental Conservation Law, entitled "State Pollutant

Discharge Elimination System,” commonly referred to as SPDES, which describes its purpose at New York Environmental Conservation Law § 17-0801:

To create a state pollutant discharge elimination system (SPDES) to insure that the State of New York shall possess adequate authority to issue permits regulating the discharge of pollutants from new or existing outlets or point sources into the waters of the state, upon condition that such discharges will conform to and meet all applicable requirements of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq.) hereinafter referred to as the “Act”, and rules, regulations, guidelines, criteria, standards and limitations adopted pursuant thereto relating to effluent limitations, water quality related effluent limitations, new source performance standards, toxic and pretreatment effluent limitations, ocean discharge criteria, and monitoring, and to participate in the national pollutant discharge elimination system (NPDES) created by the Act.

As set forth at New York Environmental Conservation Law § 17-0801, the SPDES requirements are required by and consistent with the Federal Clean Water Act and the laws contained therein. This is accomplished by NYSDEC Regulations set forth at 6 NYCRR Part 750, entitled “State Pollutant Discharge Elimination System” which contain 117 pages of regulations and which is administered and enforced by the NYSDEC under requirements set by the United States Environmental Protection Agency (“EPA”).

Companies such as Gernatt and Schwab are already regulated by EPA and NYSDEC regarding the protection of “surface water, groundwater and the aquifer.” Moreover, mining operations have additional regulations they must adhere to, including Article 23 of the Environmental Conservation Law and agricultural operations have additional regulations they must adhere to, including the New York State Agriculture and Markets Law.

Finally, there is no rational basis to treat activities such as blasting and HDD the same way as other businesses that do not require or utilize such activities.

Local Law 2020: Article I, Section 2(A): Legislative Findings:

The New York State Constitution’s Bill of Rights for Local Governments (Article IX, §2-10) obligates local legislators to protect the health, safety and well-being of their community.

Response:

The above cited section of Local Law 2020 is not what Article IX, §2-10 states. Rather, it accurately states:

In addition to powers granted in the statute of local governments or any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government: The government, protection, order, conduct, safety, health and well-being of persons or property therein.

It is disturbing that the authors of “Local Law 2020” have completely mischaracterized this important provision of the New York State Constitution. Even more disturbing is that this is proposed formal “finding” to substantiate the enactment of “Local Law 2020”. While there are several mischaracterizations, the most egregious is the use of the word “obligates” which is an attempt to make it appear that the Town Board has no choice to enact this law. This is absurd. The actual text of Article IX, §2-10 of the New York Constitution delegates from the State of New York to local governments the “power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects” – there is nothing mandatory or obligatory about the actual text of the law, rather it is clearly optional.

In the New York Court of Appeals Decision in Empire State Chapter of Associated Builders & Contractors, Inc. v. Smith, 21 N.Y.3d 309, 314, 992 N.E.2d 1067, 1069 (2013), the Court of Appeals explains that “article IX, § 2 of the State Constitution [is referred to as] the Home Rule section.” The Court of Appeals further stated that the Home Rule section “intended to prevent unjustifiable state interference in matters of purely local concern,” however Local Law 2020 has direct and related implications that extend far beyond “local concern” as it clearly has State Wide implications and is intended to circumvent the public policy of the State of New York by creating a law purported to be generally applied in the Town of Freedom but actually to disallow uses that the New York State Legislature have deemed vital.

As set forth above, “Local Law 2020” effectively prohibits sand and gravel mining and energy generating facilities like wind and solar by the imposition of general regulations. However, these uses are deemed by the State of New York to be of State Concern, rather than

local concern as expressed by the below New York State policy statements and enactments removing local control of regulation so the State of New York can ensure that this vital land uses be encouraged:

1. MINING: New York Environmental Conservation Law § 23-2703, entitled "Declaration of Policy," states:

The legislature hereby declares that it is the policy of this state to foster and encourage the development of an economically sound and stable mining industry, and the orderly development of domestic mineral resources and reserves necessary to assure satisfaction of economic needs compatible with sound environmental management practices.

2. POWER GENERATION INCLUDING WIND AND SOLAR: New York Sponsors Memorandum, 2012 A.B. 8510 (New York State Legislative Memorandum Supporting Article X of New York State Public Service Law, enacted in 2011

An important element of increasing the availability of new power generation is enacting a simplified regulatory process to site new power plants. Power NY would reestablish the siting process under Public Service Law Article X, which expired on January 1, 2003. Under the expired siting law, facilities sized 80 MW or larger were handled by a multi-agency siting board that included public representatives. Currently, developers must deal with multiple levels of government, the jurisdiction of multiple agencies, and various protocols.

Local Law 2020: Article I, Section 2(B): Legislative Findings:

Regulation of industrial and commercial facilities, blasting, commercial excavation and HDD is necessary for protecting the water supply for the health, safety, and well-being of all residents and property owners, the general public, the local economy and local ecosystems.

Response: Again, there is no rational basis to treat activities such as blasting and HDD the same way as other businesses that do not require or utilize such activities.

Local Law 2020: Article I, Section 2(C): Legislative Findings:

Industrial and commercial facilities, blasting, excavation and HDD may impact drinking water supplies and private wells and may be inconsistent with Cattaraugus County's Comprehensive Plan's ("Vision 2025") goals which are to:

- a. Preserve and maintain the County's vital and rural character and support protection of the natural beauty, farmland, forests, environmentally sensitive areas and the vibrant plant, ecosystem and human communities that makes up the County;*
- b. Preserve and promote the County's agricultural heritage and economy;*
- c. Protect the County's farmland;*
- d. Protect the County's important environmental assets for both their ecological and economic value;*
- e. Support stewardship of wells, sole source aquifers, wetlands, forests, mineral resources, rivers and other environmental assets;*
- f. Support public education about how these features contribute to the health of the environment in the County, the economy, rural character and quality of life of residents in the County, including the Town of Freedom;*

Response:

Again, there is no rational basis to treat activities such as blasting and HDD the same way as other businesses that do not require or utilize such activities. Additionally, the use of the word *may* several different times in the same sentence above is an obvious sign that there are no documented negative impacts and the legislative finding is purely speculative and conclusory. Without any such documentation or expert studies of actual effects, the finding and passage of Local Law 2020 would be arbitrary and capricious.

In terms of preservation or agriculture, Local Law 2020 greatly limits or ends agricultural uses. Moreover, the businesses that Local Law 2020 would devastate have been long established in the Town of Freedom and are a part of the "rural character" that Local Law 2020 deems should be preserved.

Local Law 2020: Article I, Section 2(D): Legislative Findings:

The Town finds that possible contamination of and/or other adverse consequences to the aquifer and well water throughout the Town may result from industrial and commercial activities and construction of said facilities as well as blasting, excavating and HDD and that the same may raise concerns that Residents in the Town who use private wells may be endangered unless certain industrial and commercial facilities occur far enough away from sources of water in the Town such as to prevent water contamination and such adverse consequences.

Response:

Again, there is no rational basis to treat activities such as blasting and HDD the same way as other businesses that do not require or utilize such activities. Additionally, the use of the word *may* several different times in the same sentence above is an obvious sign that there are no documented negative impacts and the legislative finding is purely speculative and conclusory. Without any such documentation or expert studies of actual effects, the finding and passage of Local Law 2020 would be arbitrary and capricious.

Local Law 2020: Article I, Section 2(F): Legislative Findings:

Constructing commercial and industrial facilities, blasting and/or excavating and HDD may create and/or exacerbate drainage problems through erosion and lack of sediment control which may harm water supply, farmlands and agriculture through construction methods utilized and arable land conversion to industrial purposes.

Response:

Again, there is no rational basis to treat activities such as blasting and HDD the same way as other businesses that do not require or utilize such activities. Additionally, the use of the word *may* several different times in the same sentence above is an obvious sign that there are no documented negative impacts and the legislative finding is purely speculative and conclusory. Without any such documentation or expert studies of actual effects, the finding and passage of Local Law 2020 would be arbitrary and capricious.

Moreover, numerous New York State and Federal laws and regulations exist which regulate erosion and sediment control and additionally, any mining application must contain both written and graphic documentation as to how these issues will be handled prior to any NYSDEC Mining Permit being issued.

Local Law 2020: Article I, Section 2(G): Legislative Findings:

Because of all of the above the Town Board chooses to use the precautionary Principle in regulating all of this area.

Response:

As detailed above, there are no documented negative impacts and the legislative finding is purely speculative and conclusory. Without any such documentation or expert studies of actual effects, the finding and passage of Local Law 2020 would be arbitrary and capricious. This entire premise of simply guessing as to what *may* happen is the foundation and problem with the "Precautionary Principle" that Local Law 2020 indicates that the Town Board has chosen.

Numerous law review articles and legal journals have explained the perils and illegality of the use of the "Precautionary Principle." A few examples are:

- "The precautionary principle--a doctrine that endorses regulation in the absence of causation--turns this understanding of property rights and environmental restrictions upside-down."²
- "The Precautionary Principle risks compromising legal and scientific procedures by treating obscurantism as a virtue necessary to counteract expert authority."³
- "Detractors [of the Precautionary Principle], some of whom have called it 'the most reckless, arbitrary, and ill-advised' new concept in environmental policy over the past quarter century."⁴

Local Law 2020: Article I, Section 2(H): Legislative Findings:

In formulating this 2020 Local Law, many documents as well as web based resources were reviewed and consulted, including, but not limited to ... (1) a document describing the "sole source aquifer" which is described in the "Water Pollution Control, Cattaraugus Creek Basin Aquifer System in Cattaraugus, Erie, Wyoming and Allegany Counties New York, Sole Source Aquifer Final Determination" contained in the Federal Register, Volume 52, No. 186 (Friday, September 25, 1987). This sole source aquifer shall hereinafter be referred to as the "CCB Aquifer System." (2) The Genesee/Finger Lakes Regional Planning Council publication: Protecting Water Resources through Local Controls and Practices: An Assessment for New York Municipalities. (3) The EPA Alumni Association's documents and web based materials in support of its "Half Century of Progress." (4) Cattaraugus County materials and Cattaraugus County Comprehensive Plan.

Response:

First, these studies were not readily available for review, likely because they were outdated as demonstrated by one of the studies being 32 years old. It seems that the only current study is the Cattaraugus County Comprehensive Plan, which does not support the Legislative Findings of

² Brian T. Hodges & Daniel A. Himebaugh, Have Washington Courts Lost Essential Nexus to the Precautionary Principle? Citizens' Alliance for Property Rights v. Sims, 40 Env'tl. L. 829, 830-31 (2010)

³ David E. Adelman, Scientific Activism and Restraint: The Interplay of Statistics, Judgment, and Procedure in Environmental Law, 79 Notre Dame L. Rev. 497, 560 (2004)

⁴ Brian T. Hodges & Daniel A. Himebaugh, Have Washington Courts Lost Essential Nexus to the Precautionary Principle? Citizens' Alliance for Property Rights v. Sims, 40 Env'tl. L. 829, 837-38 (2010)

Local Law 2020. In fact, in the Cattaraugus County Comprehensive Plan, Cattaraugus County residents were surveyed. One question asked what the most important of the 13 topics were to them and the most important, with 63.5% saying it was "Very Important" was "Infrastructure (upgrading and repairing roads and bridges, water lines, sewer line, other public facilities, etc.)." Economic Development was the second highest of the 13 topics with 60.3% saying it was "Very Important". Clearly, infrastructure cannot be upgraded and repaired without a local source of sand and gravel and both the mining and agricultural industries lead to economic development.

Finally, it is important to stress Local Law 2020 violates New York Municipal Home Rule Law § 22 and must comply with all conditions precedent to enactment, including but not limited to compliance with SEQRA and New York General Municipal Law § 239-m.

In conclusion, Local Law 2020 would have devastating economic impacts upon Gernatt, Schwab and many companies in the Town of Freedom, as well as the economic viability of the Town of Freedom. Local Law 2020 is flawed as to its legislative findings and there exist numerous procedural and legal bases for a legal challenge which will cost the Town of Freedom and its businesses substantial sums of money and resources. It should not be enacted.

Sincerely,

HOPKINS SORGI & MCCARTHY PLLC



Peter J. Sorgi, Esq.

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10432 Delevan-Elton Road | Delevan, New York | 14042

January 13, 2020

Town of Freedom Town Board
1188 Eagle Street
PO Box 89
Sandusky, New York 14133

RE: Opposition to Local Law Number 2 of 2020: Drinking Water & Conservation Area Protection Law

Dear Town Board,

On behalf of Lafarge (operating under the name Redland Quarries NY Inc.), we strongly oppose the passing of Local Law Number 2 of 2020, as it would negatively impact our employees, our company, our customers, and the construction industry as a whole.

It is our understanding that the purpose of this law is to prohibit the construction of wind turbines; however, it would seem one unintended consequence would be that the passage would halt all mining and excavating activities in Freedom. Lafarge operates the Freedom Sand & Gravel Pit located at 10432 Delevan-Elton Road, Town of Freedom, Cattaraugus County since 2001. This facility has supplied sand and gravel construction materials throughout New York State since 1971. The high quality sand is used in the manufacturing of ready-mix concrete and the friction aggregate for asphalt paving.

Voting in favor of this Local Law would directly impact eight employees at the Freedom Pit, as well as, 40 employees in our western New York concrete ready-mix business, 12 employees in our western New York asphalt business, and over 100 customers who purchase material produced at the Freedom Pit. There are countless other indirect impacts to peripheral businesses that would also occur as a result of this law including to construction contractors, haulers, small residential construction projects, larger highway construction projects, etc. Negative impacts to the Town would include the loss of tax revenues.

Lafarge always has been and will continue to be a great neighbor and corporate steward to the Town of Freedom. The Freedom Pit received the National Sand, Stone, and Gravel Association's (NSSGA) Environmental Excellence Silver Award in 2018, which is awarded to operations actively contributing to the maintenance of the environment in and around their operations as evidenced by a commitment to the exemplary use of environmental controls and systems. We invite the Board members to visit our operation, better understand the importance of the materials we provide, and most importantly to meet the employees that make our operation the great workplace that it is. We would ask that you visit with us before voting on a Local Law that has the potential of immense negative impacts on our local site.



10432 Delevan-Elton Road | Delevan, New York | 14042

We greatly appreciate your consideration of our opposition to Local Law 2. We would also ask before any action is taken on the proposed law that you sit down with our plant manager to better understand the importance of Freedom Sand and Gravel to the community and the State.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Allyson M. Zurawski', written over a horizontal line.

Allyson M. Zurawski, P.E.
Environmental and Land Manager
Lafarge Redland Quarries NY Inc. | Great Lakes East
☎ (716) 243-5612
✉ allyson.zurawski@lafargeholcim.com

HALEY CONCRETE, INC.
10413 DELEVAN ELTON RD
DELEVAN, NY 14042

Town of Freedom
1188 Eagle Street
P.O. Box 89
Sandusky, NY 14133

Dear Town of Freedom,

Our company employs fourteen (14) individuals in the local area and has a customer base of a 50 mile radius.

We oppose the local law 2-2020 and the negative impact on construction business along with the increased costs to import materials.

As proposed, this law would force me to close my business.

Sincerely,

Lawrence Haley, III

