

To: Town Board of Town of Italy, State of New York  
From: Planning Board/Zoning Board of Appeals, Town of Italy  
Subject: Recommendation on referral.  
Date: April 3, 2008

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Results of four well attended meetings, and over 13 hours of deliberation, concerning a referral by the Town Board to examine the comprehensive plan & potential wind incentive district on Town of Italy's southern border area.

**By Resolution:**

The Planning Board/Zoning Board of Appeals for the Town of Italy has examined these issues in depth, and recommends by 3 to 0 vote, that this idea has merit and potential benefits to the Town of Italy as a whole, and we recommend the Town Board consider taking positive and timely action on this matter.

**Purpose and Benefits:**

To keep the future decisions on such land use 'in Italy' with the Town of Italy Town Board.  
To further protect the town from litigation, and the costs thereof.

To help 'preempt' possible future 'Article X' legislation which intend to bypass all local community boards and local laws.

To 'free up' the just under 100 'participating' landowners on the southern border of Italy who are currently being prevented from taking advantage of this opportunity on their own land, by local law.

To give the Town Board the ability to negotiate and address the most important, if not all of the 'weaknesses', identified by the community in the Town of Italy Comprehensive Plan.

Make Zoning and existing protections stronger, by allowing said activity in a finite and limited area in town, an area where Town of Italy residents are already affected by such projects in Steuben County.

To protect and preserve the remaining roughly 95 % of town's open spaces and scenic views from industrial development as required by the Town of Italy Comprehensive Plan and Town of Italy Zoning Code.

## **Comprehensive Plan:**

We examined the Comprehensive plan in depth, and all agreed it was well done, represented the people's wishes, and required little or no change.

We suggested that potentially only one sentence in the Comprehensive Plan should be changed, the one that says: "Industrial Wind Towers are inappropriate anyplace in the Town of Italy."

### Incentive Zoning & potential 'district'.

Procedures and criteria set forth in 7:17 of NY Zoning law and practice recommended by Planning Board by motion:

First: Only Industrial Wind can be 'incentivised'.

- i) Incentives which may be granted to applicant are: setbacks of all types.
- ii) Community benefits or amenities which may be accepted by town. The Comprehensive Plan currently lists 13 'weaknesses' in the community. In order of most important or 'highest priority' they are listed as:
  - a) High Taxes
  - b) Lack of Zoning
  - c) Low Tax base
  - d) Nothing for children
  - e) No community programs
  - f) Lack of Businesses
  - g) Lack of Employment opportunity
  - h) Weak property Values
  - i) Unpaved roads, no medical services, no places to 'shop', poor development, lack of public communication.

After some discussion, it was determined that most if not all of the weaknesses identified in the Comprehensive Plan are provided for by the private sector, and the town cannot do anything 'directly' to solve them.

For example, the town cannot just 'create' a Wal-mart, or restaurant or new productive employment opportunities or a new medical service establishment.

However fixing the highest priority weakness, (high taxes) would automatically start to solve all the other weaknesses.

Significantly lowered or completely eliminated property and land taxes would: encourage service or product providing businesses and families to locate here, put more prosperity into the hands of existing businesses and residents, help the churches who provide community programs and parks, put more prosperity into the hands of businesses which provide productive employment opportunities, and also reduce 'holding costs' of open spaces thus reducing the

demand & need to develop or subdivide in order to compensate or pay for those 'holding costs' of open land.

Lower taxes on a property or land also raises the value of that property or land.

Further benefits to such a strategy are: rarely, or never again, will a resident of Italy have their home or land seized due to a town 'tax foreclosure'.

It'll help to 'end the economic malaise' and increase prosperity, increase employment and reverse trend of people and businesses leaving our area of NYS.

Besides eliminating 'town tax', further benefits could be applied as direct payments to citizens, possibly to help offset County or other taxes.

Another possible amenity or 'incentive payments', could be towards 'critical infrastructure' in the Town of Italy which would otherwise be charged to taxpayers.

- iii) Criteria for approval and determining adequacy of amenities. Another benefit of this approach, is that all incentives and amenities are simply and easily measurable in the form of: dollars of direct or indirect relief to residents and landowners. Length of time of benefit must also be considered. ('one time' versus 20 years of benefit)
- iv) Procedure and applications would be handled by the Town of Italy Town Board, which controls finances of town and is directly accountable to the citizens. Also the addition of 'incentive zoning' administrative language should be amended into the code.
- v) We suggest an 'informational mailing' to explain the facts we've found, why the Planning Board/Zoning Board of Appeals feels this is in the best interests of all residents in the Town of Italy, and to also: urge citizens to support the Italy Town Board on this issue, should you decide to proceed.

#### **Location of potential District:**

For all the reasons identified in the Comprehensive plan.

Plus the fact that the proposed area in South Italy is unique due to it:

1. borders the Steuben line, where existing towers are being built very close to Italy residents who will be 'affected' and some of whom may want to take advantage of the opportunity.
2. has the highest elevations in both the Town of Italy and Yates County.
3. has the only major existing electrical transmission line which runs roughly east-west parallel to southern border. (this why two sub-stations are located there)

4. has few scenic view-sheds that are affected by proposed incentive district on or near the Steuben line, which mainly point 'away' from proposed incentive district and should be affected to a minor degree.

We recommend that the only place(s) Italy Town Board should consider creating a 'district' would be on or near, the Steuben border limited by Wells road on the east, and 500 feet west of Wells road on the portion north of Emerson, to a line parallel to the Town Line road generally along the northerly edge of the ridge or 'crest' north of Emerson road about ½ mile south of Italy Valley road, to Burke Hill road on the west.

Another smaller zone could be located at an area near U.P.C. wind's project site in Prattsburgh roughly where Chute Road intersects the southerly line of the Town of Italy.

These areas of Town are among the highest elevations, and adjacent to the Town of Prattsburgh, where large wind tower developments will occur.

**It was also recommended that:**

1. an informational mailing about incentive zoning, and simple survey be sent to landowners and residents before establishment of any district by either the Town Board or Planning Board/Zoning Board of Appeals to inform them of the issue and facts, and collect opinions from those who may be vacationing in Florida or unable to attend the Public Hearing.
2. a 'backup' plan should be in place in case of default, to allow compensation to the community in case of bankruptcy or default by developers, to include possible 'repossession or seizure for resale'.
3. a plan should be put in place to protect 'non-participating landowners' within 3 miles of any proposed towers. This could possibly be or include a 'buyout guarantee' for a set number of years at most recent tax assessment value or (assessment plus...).

This is to protect the interests of neighbors who are 'non-participants' of the proposed project, to give them a 'final option' should they continue to be unhappy with the final results, and let them 'walk away' unscathed (at least financially).

We did discuss many other reasons why we felt the above motions were appropriate, which may come out in the minutes (at least they're on tape), -but I think the above listed, are the most salient.

We also heard extensively from the citizens present.

The reasons 'for' mirrored what I outlined above, plus the fact that almost 10% of total landowners in Italy (all in the South) have already become 'participating' leasees, signed

'agreement contracts' or have already sold their land, and thus want the freedom to do on their land, -what they wish.

Presently the Town is preventing them from 'cashing in' on these potentially lucrative private deals.

Many of these landowners are looking at towers being built directly adjacent to their properties in Steuben County.

The reasons 'against' basically came down to two things:

1. possible loss of value of properties within sight of towers.
2. fear of 'flying blind', & the possibility of developer eventually abandoning an uneconomic project. Since it's dependent on tax subsidies, there is significant danger that the political winds could shift years from now and project could be abandoned, thus the need: for some kind of 'backup plan' for default, and the prevention of local govt. spending expanding dramatically due to the income from the project.

We found four valid 'valuation' arguments,

1. Data provided by a citizen who suggested that properties with close and clear views of the towers may lose value, perhaps as much as 10 or possibly 25%.
2. However to the contrary, other data provided by current residents in the southern area of Italy, who described personally how their valuations have increased dramatically recently, all due to wind companies paying 'big dollar' high prices for land and properties in the affected area, thus driving up valuations and assessments.
3. The economic fact that one of the primary benefits recommended by the Planning Board/Zoning Board of Appeals is a decrease in taxes, which would increase values. For example if taxes on your property drop by half, the value of your property goes up, -since buyers are willing to pay more. This is an effect that we would anticipate may occur throughout the entire Town of Italy.
4. The fact that the landowners most affected by the sight of the towers are also going to be affected by towers in Steuben County regardless. For example, if a homeowner living in or near the southern part of the Town of Italy is looking at 12 towers in Steuben County, 2 more towers next to them inside Italy won't make much difference in overall impact. However, the difference is, that unlike the 12 towers they're looking at in Steuben, -the two in Italy will be bringing benefits to that landowner or resident possibly directly (as a participant) or indirectly (through negotiated benefits or amenities to the Town of Italy)

Taxable Value: We also heard from a citizen, who proposed that there is almost 9 million dollars worth of taxable land and property in the affected area of the Town of Italy near the

Steuben line. He suggested that this is the dollar value that would be at risk of a potential 10% or even 25% reduction in value.

We felt perhaps 9 million is in fact somewhat optimistic, since there is only approximately 45 million in taxable value in the entire Town of Italy, and the area of South Italy does not include the most highly valued properties alongside Canandaigua Lake, and also doesn't include the most densely populated areas such as the Hamlet.

However, assuming the 9 million dollar is correct, and assuming a full 25% loss of value is realized despite the contrary assertions by residents living in the area that assessments and values have actually risen significantly since the wind companies started signing leases and buying up properties.

The potential loss of value at worst case would be  $9 \times .25 = 2 \text{ and } \frac{1}{4}$  million dollars.

The single wind project proposed near the southeast corner of the Town of Italy is conservatively valued at approximately 1 million dollars per megawatt. Although the original size of almost 60 megawatts is unlikely to ever be reached the eventual taxable value at today's market (after the PILOT and amenities expire) would potentially be over 60 million dollars, not even including the substations. (which we've heard conservative estimates of 2-5 million in value each).

Approximate 45 million total existing tax base, potentially minus  $2 \frac{1}{4}$  million plus 60 million plus two substations (approx. 5 mil. combined) = almost 108 million dollars as a new tax base for the Town of Italy.

This figure does not include, another possible incentive area near Clute.

A careful weighing of the facts by our Board, shows us that the benefit in added taxable value to the Town of Italy vastly outweighs, any potential loss in taxable 'base' due to towers being visible.

Thus we found the potential negative valuation arguments to be either mitigated or vastly outweighed by the positive benefits of allowing bordering Town of Italy landowners the freedom to participate if they wish to, and the potential benefits to the Town of Italy as a whole from incentive zoning.

We found the 'subsidy' arguments to be somewhat interesting. However, politically supported and subsidized industries can last for many decades or longer, -as long as the political will and the treasury are available to pay for them.

The danger of potentially going 'bankrupt' or becoming obsolete, exists for all businesses, politically supported with public tax money or not. So we don't believe this is a persuasive argument.

We also feel landowners, residents or the Town of Italy should be free to take advantage of the existence of such businesses or programs while they do exist, which may in fact be into practical perpetuity.

One reason for recommending that the benefit or amenities primarily roll down directly to the residents and landowners in the Town of Italy is just for that reason, -to prevent a town 'crisis' upon potential failure of such businesses to continue agreed payments or amenities, which mitigates any damage to the Town on such an occurrence. Overall, we see major potential benefits to the entire community if the Town chooses to embrace 'incentive zoning', (see "Purpose and Benefits" above, and little or no downside.

**In Summary:**

The Planning Board/Zoning Board of Appeals for the Town of Italy has examined these issues in depth, and recommends by 3 to 0 vote, that this idea has merit and potential benefits to the Town of Italy as a whole, and we recommend the Town Board consider taking positive and timely action on this matter.

**Vote:**

Jamie Hawk: Aye

David Ferry: Aye

Michael Salotto: Aye

Thank you again,  
for the opportunity to serve.

Your Planning Board / Zoning Board of Appeals

Town of Italy

Attached:

Ed Brockman's proposed Draft of potential Comprehensive Plan Amendment

**Draft**  
**Town of Italy**  
Comprehensive Plan Amendment  
Wind Energy Incentive Zoning

**Introduction**

In June 2004 and July 2005 the Town of Italy adopted and amended a Comprehensive Plan to guide future land use decisions in the Town. The State enabling legislation, under which the Comprehensive Plan was adopted, recognizes that the best comprehensive plans are fluid and flexible documents, which are subject to periodic modifications. The proposed amendment to the Comprehensive Plan continues the planning process by using a specific power available to towns to utilize a unique resource of the Town to bring otherwise unavailable benefits to the community.

Town Law §261-b authorizes towns to adopt an incentive zoning provision as part of their land use plans. Such a provision permits an allowable use, “on condition that specific physical, cultural or social benefits or amenities would inure to the community.” Benefits or amenities can be specific items, like Town Facilities, or cash-in-lieu-of benefits. A change to the comprehensive plan could allow the use of a rare resource, wind energy, to obtain benefits identified by prior versions of the Plan. A wind power incentive zone could be limited to a small area of the Town, while keeping most of the area of the Town free from wind turbines.

Specifically, in its Comprehensive Plan, the Town identified a number of needs and concerns that could be addressed through incentive zoning. Respondents to a Town survey noted that most services in the Town were good, but that road maintenance was only adequate. Other weaknesses cited in the plan were high taxes for limited services and related economic pressures. An incentive zoning provision is a means to address those needs by providing for the construction and/or funding of programs while reducing the added tax burden on Town owners.

**Plan Amendment**

The balancing of strengths, weaknesses and opportunities identified in the original Comprehensive Plan of the Town of Italy can be advanced through adoption of an incentive zoning provision which combines the benefits and amenities the community needs with the opportunity to utilize the Town’s wind energy potential in a limited area of the Town. The two paragraphs added to the Comprehensive Plan in July, 2005, and printed on page 27 of the July 2005 Plan, be amended as follows:

The geological structure of the Town of Italy creates scenic vistas which also provide the natural resource of wind energy resources sufficient to power wind turbine electric generators. Commercial wind generating facilities can provide significant benefits to the Town by increasing the tax base and providing revenue sources for land owners.

The Town Board believes that the Town, and in particular future generations of the community, are best served by allowing opportunities to exploit wind resources in a limited area of the Town. The position of the Town Board is that wind energy development in a limited area of the Town will provide benefits to the Town generally.

The location of a high voltage electric transmission line in the southern portion of the Town of Italy, in an area of exceptional wind resource, would be an appropriate location for two (2) wind energy incentive zones. The placement of such a zone bounded by Wells Road on the east, Burke Hill Road on the west, Town Line Road on the south and a line parallel to Town Line Road generally along the northerly edge of the ridge would be one such zone. An additional smaller zone could be an area located where Clute Road intersects the southerly line of the Town of Italy. This area of the Town is adjacent to the Town of Prattsburgh where a large wind turbine tower development will occur.

Large wind generating facilities will have an impact on the visual character of the portion of the southern area of the Town where they are located but those impacts will be mitigated by the Town receiving compensation that benefits the Town generally in return. The implementation of wind energy development in a specific, limited areas of the Town that has wind resources and proximity to a high voltage electric transmission power line may be authorized as part of an incentive zoning program where, after full review, the Town Board may determine that it is receiving benefits for amenities commensurate with the impacts on the community.

The types of benefits or amenities that would justify the granting of incentives, are those which address the community's needs as identified in this Plan and any amendments, as well as those identified as examples in the New York enabling statute, Town Law §261-b. These include, but are not limited to, road improvements and maintenance, equipment, upgrades to community facilities, permanent protection of the remainder of the Town from wind turbine development, cash-in-lieu-of benefits or amenities listed herein. In determining the compensation for the grant of the incentive, the Town Board will emphasize benefits or amenities that will be available to the community over the full life of any project granting an incentive.

The second paragraph of 2005 amendment would be amended to read:

**2008 Amendment: Land Use Recommendation 2:** the Scenic Protection Overlay District adopted based on the July 2005 recommendation in the Plan Amendment, should be amended to allow wind energy development, after completion of a Visual Impact Analysis. This will allow the Town to balance the opportunity and impacts of a wind energy development under an incentive zoning plan in a limited area of the Town which will benefit the whole community.

In summary, the adoption of an amendment to the Comprehensive Plan of the Town of Italy to allow for energy incentive zone would result in the following:

1. Wind turbine towers would be limited to two (2) areas on the southern periphery of the Town of Italy where wind resources are found in proximity to the NYSEG electric transmission line.
2. Approximately 90% of the Town of Italy would remain zoned to prohibit industrial style wind turbine tower.
3. The presence of a wind energy zone would allow the Town to negotiate for zoning incentives and host community benefits which would offset tax burdens on the property owners in the Town of Italy.
4. Zoning incentives could provide major improvement to the Town government facilities, including highway barn, salt shed, highway equipment and the like.
5. Terminate present and future litigation with Ecogen, which has to date, amounted to approximately \$100,000.00.

