

# Basic Real Property Value Protection Agreement

*This was derived from an [agreement](#) written by Illinois attorneys. These words have been adopted into local ordinances in North Carolina (e.g. [here](#)), New York (e.g. [here](#)), North Dakota (e.g. [here](#)), etc. Use these words as a basis to create your own law to provide some property value protections for landowners whose property is located near the wind project site: Copy-Paste-Edit...*

## **EXHIBIT X: REAL PROPERTY VALUE PROTECTION PLAN**

A Wind Energy Facility (WEF) is proposed for our community. See Exhibit Y for the site map. The WEF Owner(s) ("Applicant") assure our representatives that there will be no loss in real property value near their WEF.

To legally support this claim, the Applicant hereby consents to this Real Property Value Protection Agreement ("Agreement") as a condition of approval for the WEF. This Agreement provides assurance to nonparticipating real property owners (i.e. those with no turbines on their property) near the WEF, that they have some protections from WEF related real property values losses.

Applicant agrees to guarantee the property values of all real property partially or fully within two (2) miles of the WEF. Any real property owner(s) included in that area who believe that their property may have been devalued due to the WEF, may elect to exercise the following option.

1 - All appraiser costs are paid by the Applicant, from the **Escrow Account**. Applicant and the property owner shall each select a licensed appraiser. Each appraiser shall provide a detailed written explanation of the reduction in value to the real property ("Diminution Value"), if any, caused by the proximity to the WEF. This shall be determined by calculating the difference between the current Fair Market Value (FMV) of the real property, and what the FMV would have been at the time of exercising this option, assuming no WEF was proposed or constructed.

- a. If the higher of the Diminution Valuations submitted is equal to or less than twenty five percent (25%) more than the other, the two values shall be averaged ("Average Diminution Value": ADV).
- b. If the higher of the Diminution Valuations submitted is more than twenty five percent (25%) higher than the other, then the two appraisers will select a third licensed appraiser, who shall present to Applicant and property owner a written appraisal report as to the Diminution Value for the real property. The parties agree that the resulting average of the two highest Diminution Valuations shall constitute the ADV.
- c. In either case, the property owner may elect to receive payment from Applicant of the ADV. Applicant is required to make this payment within sixty (60) days of receiving said written election from property owner, to have such payment made.

## 2 - Other Agreement Conditions:

- a. If a property owner wants to exercise this option, they must do so within ten (10) years of the WEF receiving final approval from the Town.
- b. A property owner may elect to exercise this option only once.
- c. The Applicant and the property owner may accept mutually agreeable modifications of this Agreement — although the Applicant is not allowed to put other conditions on a financial settlement (e.g. confidentiality). If the property owner accepts some payment for property value loss, based on an alternative method, that is considered an exercise of this option.
- d. This Agreement applies to the property owner of record as of {date of the WEF announcement}, and is not transferrable to subsequent owners.
- e. The property owner of record as of {date of the WEF announcement}, must reasonably maintain the property from that time, until they choose to elect this option.
- f. The property owner must permit full access to the property by the appraisers, as needed to perform the appraisals.
- g. The property owner must inform the appraisers of all known defects of the property as may be required by law, as well as all consequential modifications or changes to the property subsequent to {date of the WEF announcement}.
- h. This Agreement will be guaranteed by the Applicant (and all its successors and assigns), for ten (10) years following the WEF receiving final approval from the Town, by providing a bond (or other surety), in an amount determined to be acceptable by the Town.
- i. Payment by the Applicant (per 1-c) not made within sixty (60) days will accrue an interest penalty. This will be twelve (12) percent annually, from the date of the written election from property owner.
- j. For any litigation regarding this matter, all reasonable legal fees and court costs will be paid by the Applicant.
- k. Upon application, Applicant shall provide a performance bond (or equivalent) in an amount determined by the Town, and held by the Town. This surety account will ensure execution of all aspects of this Agreement (including compensation of eligible property owners in the case of default by Applicant). Failure to maintain this surety account shall be cause for revocation (or denial of renewal) of the WEF Operational License.