

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF CODINGTON)

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT

TIMOTHY LINDGREN and
LINDA LINDGREN,

14CIV19-000303

Plaintiffs,

vs.

CODINGTON COUNTY, *a political subdivision of the State of South Dakota*,
CODINGTON COUNTY BOARD OF
ADJUSTMENT, *an agency of Codington County, having issued a certain Conditional Use Permit, # CU018-007*,
CROWNED RIDGE WIND, LLC,
CROWNED RIDGE WIND II, LLC,
BOULEVARD ASSOCIATES, LLC,
all other Persons having present or future interests in #CU018-007, and
SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION, *having issued a certain Facility Siting Permit, Docket EL19-003, and all other Persons having present or future interest in a certain Energy Facility Permit issued by the South Dakota Public Utilities Commission in Docket EL19-003,*

Defendants.

AFFIDAVIT OF
PLAINTIFF
LINDA LINDGREN
(November 1, 2019)

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF CODINGTON)

LINDA LINDGREN, residing at 16050 464th Ave., South Shore, SD 57263, being duly sworn, deposes and states to the undersigned authority:

1. The Complaint, at ¶ 31, et seq., references a certain Wind Farm Lease and Easement Agreement (“Easement Agreement”), dated June 11, 2014, concerning the Lindgren Farm, and in favor of Boulevard Associates, Inc. This instrument is structured as an option to

acquire a number of easements and leases on Plaintiffs' farm, having both an initial option term of three years and an extended option term of two years (total of five years). If exercised, the instrument would have had a term of 50 years. This instrument, however, expired at the close of June 10, 2019, without exercise by Boulevard.

2. Attached hereto and marked as Exhibit 1 is a full, true and complete copy of the referenced Easement Agreement, with the exception of a three-page final attachment labeled "Exhibit D," Lease & Easement Compensation, which has been withheld under the agreement of counsel for Plaintiffs and Defendant Crowned Ridge Wind. Further, the final two pages of the Easement Agreement are merely "holding pages" for intended Exhibit A-2, which is or was to be delivered with the "option notice" (when exercised), and also Exhibit B, a so called preliminary lease and easement plan to be delivered with the option notice. I do not have possession of any such further documents, as no option notice or exercise was delivered.

3. From my understanding and knowledge, Defendant Crowned Ridge Wind could have exercised the option (as described in Section 3.5 of Easement), but, thankfully, chose not to do so.

4. The Easement Agreement, as annexed hereto, includes many provisions, but in particular Section 5.2, "Effects Easement" and also Section 11.4, "Permits and Approvals."

5. Attached as Exhibit 2 is a print of PUC *Exhibit A53*, being a project map of the Crowned Ridge Wind farm, which envelops and surrounds the Lindgren Farm. At the time this was prepared by someone for Crowned Ridge (in or about May or June 2019), the Lindgren Farm was still marked as the site for CR-56 and CR-57 (wind turbines), but marked also in a mauve color with the key "Under Option but Likely to Expire/Not Resign."

6. After signing the Easement Agreement (or option) in June 2014, both of us (Tim and I) underwent a dramatic change of heart as we learned more about the negative impacts this

wind farm would have for us. We both appeared before the Codington County Board of Adjustment in July 2018 to object to our inclusion in this wind farm, to no avail. Later, as the PUC permit was sought, we also spoke out against this project at several of the public meetings, but we did not participate in the appeal taken to Circuit Court, due to our concerns about Section 11.4 of the Easement Agreement.

7. All this time, we both continued to have concerns about the meaning of “cooperate” as used in Section 11.4 of Easement Agreement, as well as our waiver of any “zoning restrictions” as further referenced in that section. We were advised, more than once, that Crowned Ridge Wind might bring a legal action to punish us, and we could end up in an even worse position than might otherwise be the case. Thus, we decided to “wait it out” and see if Boulevard would exercise the option on our farm, before we would try to formally intervene before the PUC.

8. Once the option finally lapsed on June 10 or 11, 2019, my husband and I decided we should immediately seek to intervene in PUC Docket EL19-003, and requested our attorney to proceed. Attached as Exhibit 3 is a true copy of our “Application for Party Status,” dated June 13, 2019.

9. As I recall, Crowned Ridge Wind did *not* seek to prevent us from intervening in the case, while PUC staff (including those representing the agency in this case) submitted a written response urging that, while submitted very late in the case, the Commissioners should approve our request. However, on June 26, 2019, the PUC voted on a 2-1 basis (Chairman Hanson, dissenting) to deny our Application. A true copy of the PUC order of that date is attached as Exhibit 4.

10. According to my understanding, only those persons who have applied for and been granted “party status” have standing to appeal a final decision of the PUC. About one month after

denying our Application for party status, the PUC issued the final decision, approving a permit to Crowned Ridge Wind for the wind farm that will be built all around and in every direction from the Lindgren Farm.

11. The lapse of the option means we are not in privity of contract with Crowned Ridge Wind, and that the Lindgren Farm will not host either CR-56 or CR-57. The fact remains that, according to the predicted “Effects” coming our way from other nearby wind turbines, Crowned Ridge Wind still intends to make an unwelcome and adverse use of our property and residence. While the duration of Shadow Flicker is predicted (at last submission) to be reduced to around 16 hours annually, down from about 27 hours, we continue to regard this coming intrusion as an extreme annoyance, and a burden on our property interests, since we have executed no instrument, now or hereafter of record and in effect, giving Crowned Ridge Wind or affiliates the legal right to make such a use of the Lindgren Farm.

12. Likewise, the volume of noise that is to be visited on our property and home may be in line with the Zoning Ordinance, but the Zoning Ordinance itself gives blessing to a predicted noise level at *our* property line. This is not the same as what is required by the County’s CLUP, claiming the Zoning Ordinance will establish a noise level at the property line of the parcel on which a wind turbine is constructed. We believe the Zoning Ordinance does not follow the outline of the CLUP’s stated policy. The relevant pages from the CLUP is attached hereto as Exhibit 5 (namely, pp. 71 and 72 of the Codington County Comprehensive Land Use Plan, adopted October 22, 2012), while that part of Zoning Ordinance # 68, adopted by the County Board on June 7, 2018, concerning “noise,” is attached hereto as Exhibit 6 (this being an unnumbered page from Section 5.22 which includes both subsection 12, “Noise” and subsection 13, “Flicker Analysis”). The difference in what is called for by the CLUP as a “policy” (*see Exhibit 5*, “policies” as described in the second and eleventh bullet points on second page of

exhibit) , and what is actually applied by the Board of Adjustment by and under the Zoning Ordinance, is not a trifle. This seems particularly so as the buffering effect and further distance of intervening tracts of land (with no occupied dwellings) are never considered by the Board of Adjustment.

13. The Ordinance, from 2018, imposes no limits on the sound levels that the CLUP, as adopted in 2012, declared important as a “policy.” The Board of Adjustment, per the Zoning Ordinance, focuses only on the sound level at the property line of the parcel with the affected or afflicted dwelling. In our situation, our home is placed pretty close to our west and north property lines, so sound from those directions, and at those lines, will not have decreased very much before reaching our home’s exterior walls.

14. It is also my belief the PUC, in the Facility Siting Permit matter, approved the predicted noise levels at our property line – and at our residence - that are in excess of what the PUC and its experts had recently approved in other similar cases. So, it seems the citizens of Codington County may be subjected to greater noise levels at or within their homes – to be more annoyed than others? Under what law?

15. Not having been a party to the *Johnson* case, decided by Circuit Judge Spears in March 2019, I do not know whether the issue referenced in ¶ 12 of this affidavit - *does the Zoning Ordinance faithfully follow the CLUP* - was raised in that case. Even if that issue has been decided against us, the Zoning Ordinance (as to noise, sound and Shadow Flicker), along with the CUP issued by the Board of Adjustment (along with the same levels of noise, etc., as sought by Crowned Ridge Wind and approved by the Board), is still an intrusion upon the Lindgren Farm and a detriment to our use and enjoyment of the property. This would include our right – being a *Permitted Use* under the Zoning Ordinance – to continue to use our property exactly as we wish, including uses expressly approved by the Zoning Ordinance, without intrusion or substantial

diminution in enjoyment because of a nearby *Conditional Use* (which actually entails dozens and dozens of noisy wind turbines perched high above any natural or living barriers).

16. The Conditional Use Permit issued by Codington County in July 2018, along with the Facility Siting Permit of the PUC issued just this year, together, comprise an official governmental license or permit to engage in these intrusions. We have not approved of any of these burdens, and have not consented to the “taking” of or a “damage” to our property. These are burdens that are or will become long-term servitudes upon the Lindgren Farm.

17. Should the CUP and the operations authorized prove to be highly damaging to our property, the value of our property, or to our health, once this “wind farm” is fully constructed and operational, are these specific governmental approvals (being necessary licenses and permits that do not seem to expire), as entered in July 2018 (Codington County Board of Adjustment), and in July 2019 (PUC), what is our remedy? The government agency approvals seem to be beyond further legal challenge at this point.

18. To us, these licenses and permits, combined, seem more like a permanent, “de facto easement” for Defendants’ continuing use of the Lindgren Farm, just as if the option had been exercised by Boulevard, and Section 5.2 of the Easement Agreement was now in effect. We are thankful that the option expired. But, when use of our farm persists, because of the closeness of this wind farm, are we without a remedy? We are asking this Court to now consider whether these determinations or licenses by local and state governmental agencies violate or offend our rights, as property owners and as citizens of South Dakota, arising under the South Dakota Constitution (as referenced in the Complaint).

19. On the other hand, if this Court determines that we have nothing left but our constitutional rights as citizens of the United States, we will then attempt to pursue those rights in due course.

Dated:

November 1, 2019

Linda Lindgren
LINDA LINDGREN

Subscribed and sworn to before me, a Notary Public, by LINDA LINDGREN, personally known to me, the date below:

Date: November 1, 2019

Albert O. Uo
NOTARY PUBLIC - SOUTH DAKOTA

My Commission Expires:

Oct 17, 2019
2022

