

SENATE COMMITTEE ON LOCAL GOVERNMENT
TESTIMONY IN SUPPORT OF SB 325
SUBMITTED BY Debra Witwer Cramer

January 23, 2022

Chairwoman Senator McGinn and members of the committee, my name is Debra Cramer, a private citizen that has had previous occupations with county government in the State of Kansas, trained in areas of appraisal, data collection, mapping, which allows me to work with county documents and departments, and in banking with bookkeeping.

I am, a graduate of Ozark Christian College, am currently involved in ministry. I am a fifth generation Kansans, and I've have lived in Kansas most of my life, the last forty-four years in Mound Valley, a small town of fewer than 500 residents in southeast Kansas. I have a farm background and a love for my county and my state.

I appreciate the opportunity to submit this testimony in support of SB 325, which I believe is necessary to provide safe, fair, equitable, legislation to especially protect the citizens of small towns and cities, and rural communities of Kansas. Also, to provide guidance to county commissioners so they are adequately equipped to govern their counties concerning wind development because of all the complex details of industrial wind energy developments, and to establishing necessary management overseeing the wind development industry in Kansas.

To aid the committee I'm providing a very detailed orientated testimony, believing it is necessary to show you what I have discovered from examining wind developers leases of individual landowners so that you may pass necessary regulations, and provide guidance in counties across Kansas. Also, to make you aware of other leasing issues that comes from wind developers leasing before regulatory approval. **Leasing practices without regulatory permission** allows a wind developer to lease in a county of choice as early as they choose. They can lease where they decide they want to develop, and in areas they should never be allowed to lease in. And this leasing can be done without giving notice to county officials, small cities, or local residents living in the leasing areas. By the time a non-leasing resident realize this has happened (because of the gag orders from those who lease and the holding of leases) you find yourself on the defense to protect to uphold your landowner and property rights.

Background information This is what took place in Labette County. So let me share. I became involved in wind energy in the spring last year (2021) after Labette County Commissioners Lonnie Addis, Cole Prohel, and Brian Kinzie began holding town hall-style meetings to ask residents as to our thoughts on Wind Developers; *RWE Renewables (RWE)* proposed *Elm Creek-West Wind Generation Farm*, as our city was in the footprint.

After a few of these meetings, word through the grapevine was that **RWE** already had properties leased in close proximity to Mound Valley. This leasing would involve many town leaders and their family members. I became concerned of zoning with setback protections for the city if one should develop.

Realizing a wind developer's lease is an agreement between a developer and a property that grants the developer the necessary rights to develop turbines at an agreed-upon location but that only the county commissioners can grant the development, and with the county and city possibly on the same page of wind energy this could leave the residents inadequately protected. A wise attorney, taught in a Kansas court room, if the county and the wind energy are on the same page, the petitioners can be inadequately represented.

I needed to see if the grapevine talk was true, and so, I went to the Register of Deeds office, and with an open record request (KORA) I asked for information for **RWE** leases and received a document that is titled Record Management Report which provided information and from it came answers, questions, and issues of concerns that I believe that the state needs to be aware of. Most surprising that leasing around Mound Valley was true, and shockingly revealed, nearly 18,000 acres were already leased by **RWE** by May 13th, 2021.

Commissioners were just holding meetings with the public as Labette County was in the early stages to consider development. In 2019 Moratoriums had been passed that dealt with Commercial Wind Energy Project in. Resolutions 2019-25-L Nov 8, 2019, and 2019-26-L on Oct 31, 2019 that should have been holding the development! Documents can be furnished on request. I questioned how was it even possible for **RWE** to lease with moratoriums in place that dealt with Commercial Wind Energy Project in Labette County?

The Records Management Report showed the first Memorandum of lease filed by **RWE** with register of deeds was on 1/9/2020 in checking the lease was signed just a few days after the moratoriums were adopted in Labette County. This had not allowed adequate time for the County Commissioners to check "*the potential impact of the development*" of a wind generation project being built in the county as the moratorium made mention of?

Wind Developer for **RWE** Brandon Hernandez had just stated to the press that **RWE** would not know until data from the MET Weather Towers, had collected enough data to let them know if wind development was possible, meaning it would be around March or September of 2021. *Wind Watch March 10, 2020 article quoting Parsons Sun*

Matt Tulis, the Communication Manager for **RWE**, said to the Kansas City Star, "*There are several studies that must be completed to ensure the project's viability. But private landowners have already begun signing leasing agreements, as is standard practice.*" Oct 10, 2021 — **Kansas City Star Article** 'Ready to go to war'. <https://www.kansascounties.org/news/news-releases>

A compelling question arose, why were early leasing agreements of commercial wind farms before regulatory permission from county commissioners' standard practice for RWE?

As I looked into the scope of early leasing as standard practice in counties across Kansas, for the development of commercial wind farms I learn that it played an important role, especially if opposition developed, and I found this is not just a Labette County Issue this is a State of Kansas issue.

Across our state Wind Developers have, for nearly twenty years have used early leasing of land to their own advantage, a trait that is favorable for the company as it allows the developer an early foothold into a county, building a base of supporting landowners, and position landowners that have leased for development of turbines on their land to uphold landowner, and private property rights as leverage, at the county level for approval, and in the courts, if there is any opposition from the county or residents through the legal system, that also puts wind energy in a better position should litigation develop.

WABAUNSEE COUNTY Kansas is an example of a legal challenge in Kansas, where landowners' rights of those who leased land for development early, before conditional use permit was granted in Zimmerman et al. v. Board of Wabaunsee County Commissioners.

posted: October 30, 2009 • Aesthetics, Filings, Kansas, Ordinances

Zimmerman et al. v. Board of Wabaunsee County Commissioners

The Author of my information is: Kansas State Supreme Court

- Defendant is the three-member Board of County Commissioners of Wabaunsee County.
- Intervenors are the owners of wind rights concerning other properties in the county.
- Plaintiffs are owners of land in Wabaunsee County who have entered into written contracts for the development of commercial wind farms on their properties.

RENO County Kansas, experienced the same, when "Next ERA and some 69 landowners who had contracts with Next ERA to put turbines on their land filed the suit in district court in early July. attempting to reverse the county's denial of a conditional use permit for a commercial wind farm in the southeast part of RENO County." Information is from the National Wind Watch reported on Feb 10, 2020. Source National Wind Watch Feb 10, 2020.

Across our state wind developers have leased land early, before regulatory permission of conditional use permits were granted, while moratoriums were in place and before counties were even aware they were leasing. I'm sharing this so that you will look deeper into what I have brought to your attention and carefully look at what follows.

The leasing of land by industrial wind developers 'as standard practice' before regulatory permission-works as a ploy, a plan of action designed to turn a situation to one's own advantage, and because this has crossed county lines it has aided Wind Developers in the establishing of wind energy across Kansas. And it needs to stop, to safeguard the counties and the State of Kansas from Industrial Wind Energy Developers using a person landowner and personal property right as leverage, or a ploy, for the development of a wind energy!

Leasing practices of wind developers continues without regulatory oversight and **RWE's** development in Labette County continues and last I checked around 21,467 acres are now leased.

Holding of leases: last year **RWE** decided to develop in a neighboring county of Cherokee, and in checking **RWE** has leases registered, but **how many leases our counties have is not known** as there is **no law to force them to record the leases** and so the wind developer **can hold them**.

Data collection

Labette County had twelve held more than thirty days, some held three months, one held seven months, and another around one year, our longest was with the Lloyd D. Jones lease signed on 25th of November 2019 but the lease was not filed by **RWE** until May 13, 2021.

Bourbon County held the record in holding leases, according to the data collection, of the forty-four early leases by APEX, Jayhawk Wind Development, 32 of the leases were not recorded until after the signing of the conditional use permit on March 13, 2021. Forty-nine leases in all were held over 30 days before being recorded.

McPherson County data collection could not tell the amount of held leases, as "The rub is, none of our leases have a signed date on them. Only the date they were filed and the date the lease was returned to the company."

Time has not allowed me to compile all that I discovered however, enough data is known that we need a law to stop the holding of leases and force wind developers to register with the pertinent information essential for registering leases, and that uniform standards be established. I would suggest that leases be filed within 45 days which allows extra time for leases with Revocable Trust to be worked before they are filed at the Register of Deeds, and that they not be allowed to be registered if they do not have the necessary information.

I have attached some documents that I have obtained with a KORA I disclose to you that I am sharing this information with no intent to sell, in compliance with K.S.A. 45-220 (c); K.S.A. 45-230, but to disclose what I have found, or others had brought to my attention.

To assist you in understanding how I arrived at my documentation the following lease is being submitted as an example. Upon request the entire document can be submitted.

If you would like to visit with me more about this subject I would make myself available to visit with the committee.

According to the lease example below when you check the date recorded in comparison to the date the lease was signed, the lease was held 3 months 11 days.

RWE Memorandum of lease and Easement tAgreement

LEASE EXAMPLE

Date recorded
Deeds Office July 14,
2020

Julie Becker, Labeite County
Register of Deeds
Book: X0127 Page: 345
Receipt #: 44925 Recording Fee: \$174.00
Pages Recorded: 10 (John, Cedar)

Date Recorded: 7/14/2020 10:23:15 AM
(ELECTRONICALLY FILED)

DOCUMENT PREPARED BY:
Shirrie Garcia
RECORDING REQUESTED BY:
RWE Renewables Development, LLC

AND WHEN RECORDED MAIL TO:
RWE Renewables Development, LLC
701 Brazos St, Ste 1400
Austin, TX 78701
ATTN: Shirrie Garcia

THIS SPACE FOR RECORDER'S USE ONLY

Memorandum of Lease and Easement Agreement

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by Law
Shirrie Garcia

Elm Creek – West Wind Farm
Labeite County Recording
Prepared by Shirrie Garcia

Return to Shirrie Garcia
RWE Renewables Development, LLC
701 Brazos St, Suite 1400
Austin, Texas 78701

SIGNATURE PAGE

Book: X0127 Page: 345

Date Signed
April 3, 2020

EXECUTED as of the date first set forth above.

OWNER:

By: [Redacted]
Name: [Redacted] Winters

Address: [Redacted]
P.O. Box [Redacted]
Mound V [Redacted]

STATE OF Kansas §
COUNTY OF Lebo-He §

This instrument was acknowledged before me on the 3 day of Apr, 2020, by David H. Winters a/k/a David Winters.

Ken McNickle
Notary Public, State of Kansas
[place seal directly below]

My Commission Expires: 3-9-21

KEN McNICKLE
NOTARY PUBLIC
STATE OF KANSAS
My Appl Exp: 3-9-21

Documents obtained through Kansas Open Records Request (KORA).

Back to my compelling question – why was **RWE** leasing early as common practice? Using Wabaunsee case as an example Labette County landowners who leased with **RWE** can uphold their landowner and private property rights in court if our County Commissioners should deny development and **RWE** can come along as Intervenors, the owners of wind rights should litigation be necessary. And the landowners have an incentive in the form of “MONEY” to do so.

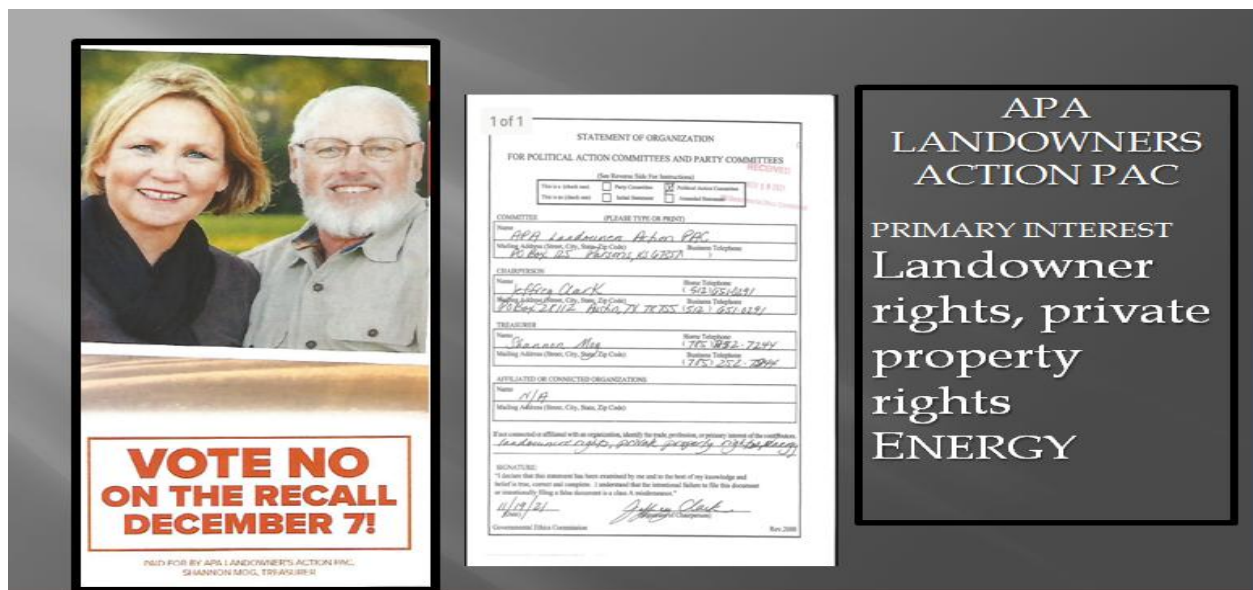
According to MATT Tullis Communications developer for RWE

- RWE plans to pay landowners with 200 acres leased and a turbine between \$9 and \$15,000 a year
- Landowners whose property is part of the project but does not end up with a turbine could make as much as \$6,000 a year.

What can happen when commissioners are on the same page as wind developers? The non-leasing residents of the county can be inadequately represented and have unfair and unsafe regulations passed to protect them!

Last November, Labette Commissioner Brian Kinzie, who was removed from office in a recall election, said to the Parsons Sun News *“To me it is about landowners’ property rights ... I’m going to fight to the end for the landowners. They have a right to have revenue on their property.”* Statement from “The Parson Sun News’ article “Kinzie seeks to save his commission seat.” Nov, 23, 2021

And for his support, wind energy out of Austin Texas, where RWE Renewables has offices came alongside Commissioner Kinzie in his recall campaign and through a PAC formed with the primary interest listed as landowner and private property rights of energy paid for full-page newspaper ads, mailed flyers influencing voters to vote no to remove Kinzie.



Commissioners Kinzie ensured the citizens of our county *“I feel like if it (implying wind energy) was unsafe ... the state... would be putting more regulation and tell us what setback should be. “and that not happening”!* Statement from Parson Sun News, article *Kinzie seeks to save his commission seat.* Nov 23, 202

According to Labette County Neighbors United, 14 times from Jan through April 30 Commissioner Kinzie had phone conversations with RWE. Document can be provided.

Document can be provided upon request.

Commissioners Brian Kinzie and Cole Prohel, also on the same page with wind developers RWE, had a KOMA violation, from a phone conversation, that took place around April 27, 2021, and RWE was mentioned according to the letter received back from the AG's office. Three days later on April 30th Commissioner Cole Prohel, introduced the following setbacks, and it was passed with the support of Commissioner Brian Kinzie.

Labette County Resolution #2021-31-L (DOCUMENT COPY PROVIDED)

1. Setbacks

a. 1.1 times height of turbine or 500 feet from public roads and non-participating property lines.

b. 1,600 feet from non-participating residences

c. Follow federal guideline for water and wildlife habitat

d. 1 mile from in-locate towns within Labette County.

Committee please let "statewide setbacks" happen. Establish setbacks that are both equitable fair, and safe. As protecting residents in incorporated towns 5,280 feet from turbines, and the residents in the un-incorporated towns, and rural residents, 1,600 feet is not fair and equitable.

Beside setback distances – establish NO Lease for TURBINE so wind developers will not be able to constructed turbines in areas they should NOT across the state!

Out of regard for a community, safety especially for children you would think with **RWE Renewable**, knowing the risks associated with turbines, having wind projects established in Texas, and Oklahoma they **would have considered setback distances** as a **standard practice** and **not leased land** in certain areas **but with NO STATE LAWS TO KEEP THEM FROM DOING SO in Kansas**, they leased properties **bordering** three of our **smaller cities**, Altamont, Edna and Mound Valley, and near two of our **USD 506 schools**, in close distances of under 1,500 feet. They even leased in areas outside of the footprint they told the community they would be developing in.

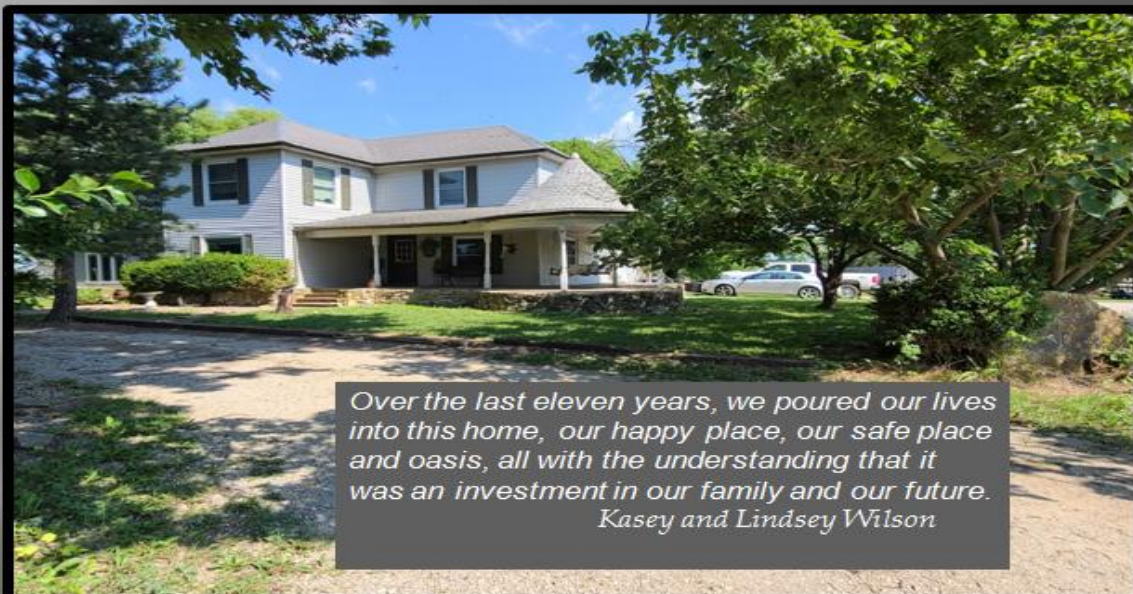
They leased on two sides of the **Altamont City Lake**, on three sides of **THE K-STATE EXPERIMENTAL LAND**, LEASED NEAR the **hunting and fishing area** of Kansas Department of Wildlife Parks & Tourism's and near **Big Hill Lake**.

NON-PARTICIPATING landowners distance to turbines



Picture and data provided by consent of home owner Carrie March.

In viewing the previous picture, and realizing that Labette County Resolution only allowed 1600 feet for rural residents and un-incorporated city from turbines, you can understand why Labette County residents Kasey and Lindsey Wilson are concerned.



Commissioners setback distances from turbines for non-participating rural residents was **1,600 feet**

Bartlett Kansas is an un-incorporated town in Labette County where a USD 506 Grade School is located and the school yard is the distance of a 30' alley from the city limits. The resolution passed in 2021 gave the school 1630 feet from turbines locations.

Bartlette City is un-incorporated
setback provided only 1600 feet from turbine

BARTLETTE GRADE SCHOOL	AERIAL VIEW 30' ON THE WEST SIDE FROM CITY LIMITS
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Bartlette also has Labette counties largest grain storage. Grain Elevators are a friend to rural communities, so please protect them.

City of Bartlette received setback
of only 1600 feet from turbine because it is unincorporated

BARTLETTE COOP ELEVATOR	AERIAL VIEW CITY OF BARTLETTE
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Grain elevators are a friend to the rural community, protect them with safe setback distance!





Courtesy leasing by wind developer need to be stopped Due to **NO state regulations** wind developers get by with 'courtesy' leasing. Meaning property leased outside of the footprint area they have told the county and community they plan to develop in, and so any property not in zoned or restricted area can be leased.



Pictured was USD 506 Labette County High School property located in the City of Altamont. RWE leased land across the road from it. This lease is outside of the footprint that RWE

Another example of 'Courtesy' leasing by wind developers



The need of state wide setbacks are evident, as is establishing *'No lease for turbine areas'* state-wide to specifically protect small cities, and unincorporated towns, schools areas, grain elevators, K-State Research Farms, county and city lakes, recreational areas and parks, etc.

K-State Research – the Experiment Station Mound Valley, Kansas



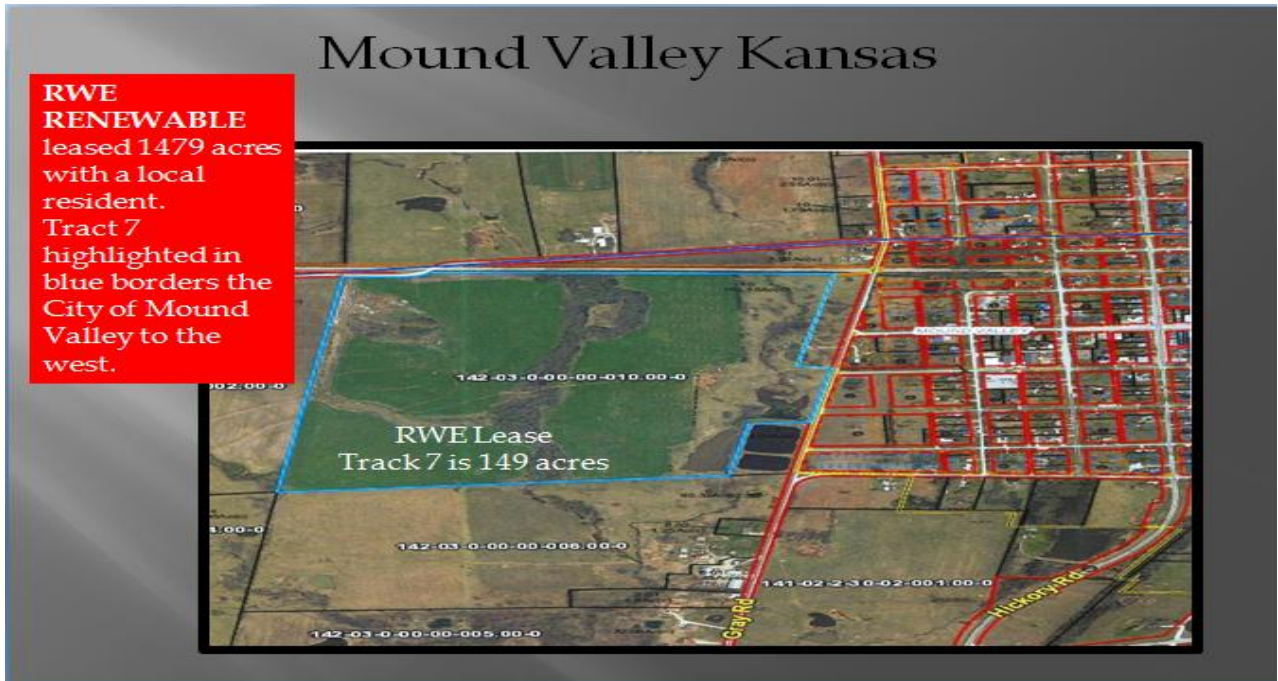
The research at this station is valuable to our state and the world, provide it regulatory setback protection in distance as RWE Renewable has leases in close proximity.



Red shows RWE leased land around the K-State Experiment Station west of Mound Valley.

Without laws to stop leasing before regulatory setback for turbine locations wind developers are permitted to lease in areas they should never be turbines set to operate.

Mound Valley – Wind Developers **RWE RENEWABLES** leased 1,479 acres with a local resident. Track 7 outlined in blue is a 159-acre track, bordering the city on the west about half of the length, and as close as **875 feet** (more or less) from the Mound Valley grade school at one point.



Tract seven enlarged below to show how close it is to the city and our grade school.



Your attention, one last time, if we set aside issues of early leasing before regulatory permission, commissioners on the same page as wind energy, conflicts of interest, and just consider the Industrial Wind Development itself. Because of all the complex details of industrial wind energy developments and their operation! I do not believe most commissioners are adequately equipped to know how to rule without some guidance from the state.

Remember my questioning as to how **RWE** could be leasing during our moratorium. I was shocked the moratorium on *Commercial Wind Energy Projects* established in 2019 allowed for it. Right on the first WHEREAS of the RESOLUTION instead of a temporary suspension of activity that moratoriums are suppose to do, our commissioners gave a come on in and do your leasing, while we decide what needs to be done.

LABETTE COUNTY, KANSAS
RESOLUTION 2019-25 - L

**A RESOLUTION ESTABLISHING A MORATORIUM ON COMMERCIAL WIND
ENERGY PROJECTS**

WHEREAS property within Labette County may be leased for the purposes of development with commercial wind energy projects, such projects being electricity generation facilities comprised of multiple wind turbines generating electrical power for sale and off-site use.

From my research, I realize now why this happened, as it is common for developers to threaten lawsuits. That news travels through the grapevine, so county commissioners are told that even passing a moratorium will trigger a lawsuit, and fear of ligation brings about a moratorium like Labette County adopted. The bad part about this is that moratoriums are one of the few options an un-zoned county has.

This happened from my view because the commissioners were inadequately equipped, even through legal counsel as how to effectively guide the county in energy development, and because of the lack of WIND GENERATION PROPERTY LAWS from the State of Kansas to guide them. So they look to what other counties are doing, or what they believe they must do legally – especially protecting themselves to NOT TO GET IN A LEGAL BATTLE WITH WIND DEVELOPERS or local landowner who have leased for turbines over their landowner and personal property rights.

I understand not wanting to get into a legal battle, as legal challenges are expensive, and speaking out, is hard as one becomes afraid to do so, afraid of being sued so even every word I write in sharing this with you in the back of my mind is will wind energy come after me in a legal battle, will have to stand opposed to – RWE a German-owned company that makes an income that is impossible for the common residents of Labette County to afford to stand opposed too.

In closing: what is equally hard about this situation is the citizens ourselves are inadequately equipped because of the complex details of industrial wind energy developments and their operation. So I implore you to come up with regulations and guidelines that are both equitable and fair, statewide, and consider our safety and health above all!

I hope that you will remember to let home rule, rule where it can, by allowing counties to make the regulations stronger if they wanted to and still be able to prohibit or ban projects, based on the needs and concerns in their county. Continue allowing the freedoms of the county the rights in certain areas, especially the rights, for nonparticipating landowners.

Where home rule does not know how to rule in regard to safety then guide them in fair and equitable legislation.

Because home rule may be inequitable to the citizens due to the influence of wind energy as we have witnessed in Labette county therefore establishing state mandated setback distances, establish no leasing for turbine restricted areas, as is not wise leaving decision of this magnitude to county commissioners and leaders of small cities, where everyone knows everybody but very little about wind energy to adopt and place safe regulations to protect the citizens.

Absolutely it would be unfair not only for Labette County and other counties but also to our state if no one aggressively defends or looks into these matters.

Debra Witwer Cramer
Mound Valley, Ks 67354