

TOWN OF STAMFORD
Local Law No. 1 of 2007

Be it hereby enacted by the Town Board of the Town of Stamford as follows:

Local Law No. 1 of 2007, entitled "Wind Energy Facilities" is hereby adopted to read in its entirety as follows:

Article 100. WIND ENERGY FACILITIES

Section 101. Title

This Local Law may be cited as the "Wind Energy Facility Law of the Town of Stamford, New York."

Section 102. Purpose

The Town Board of the Town of Stamford adopts this Local Law to promote the effective and efficient use of the Town's wind energy resource through Wind Energy Conversion Systems (WECS), and to regulate the placement of such systems so that the public health, safety, and welfare shall not be jeopardized.

Section 103. Authority

The Town Board of the Town of Stamford enacts this Local Law under the authority granted by:

- A. Article IX of the New York State Constitution, §2(c) (6) and (10).
- B. New York Statute of Local Governments, § 10 (1) and (7).
- C. New York Municipal Home Rule Law, § 10 (1) (i) and (ii) and §10 (1) (a) (6), (11), (12), and (14).
- D. New York Town Law §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7)(Use of streets and highways), (7-a)(Location of Driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines).
- E. New York Town Law §64(17-a) (protection of aesthetic interests), (23) (General powers).

Section 104. Applicability

The requirements of this Local Law shall apply to all Commercial Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Local Law.

Section 105. Permits

- A. No Commercial Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Stamford except in compliance with this Local Law.
- B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Stamford except with a Wind Energy Facility Permit approved pursuant to this Local Law.
- C. This Local Law shall apply to all areas of the Town of Stamford except within the Villages of Stamford and Hobart.
- D. Non-refundable application fee for Wind Energy Permit shall be \$100. (one hundred dollars) per megawatt or rated maximum capacity.
- E. Exemptions. No permit or other approval shall be required under this Local Law for mechanical, non-electrical WECS utilized solely for on site agricultural operations and residential purposes of any residence on the same parcel or an adjoining parcel in which the owner or operator of the agricultural operation resides.
- F. Transfer. No transfer of any Wind Energy Facility or Wind Energy Permit, nor sale of the entity owning such facility including the sale of more than a total of 30% of the stock of such entity (not counting sales of shares on a public exchange), shall occur without prior approval of the Town, which approval may be granted upon written acceptance of the transferee of the obligations of the transferor under this Local Law.
- G. Notwithstanding the requirements of this Section, replacement in-kind or modification of a Wind Energy Facility may occur without Town Board approval when (1) there shall be no increase in Total Height; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the WECS. Any replacement

in-kind made pursuant to this paragraph shall be accomplished within one year of the date any portion of a wind energy facility being replaced becomes non-functional. The owner/operator of such facility shall notify the Town Clerk if a facility becomes non-functional and remains non-functional for greater than thirty days. Such notification shall be made by the fortieth day such facility is non-functional. The owner/operator shall notify the clerk of the location on the premises of such non-functional facility and the date of such facility's becoming non-functional. For the purposes of this paragraph, the term "non-functional" shall mean the failure of a wind energy conversion system or piece of such system infrastructure, electrical lines and substations, access roads and accessory structure to undertake its anticipated task or perform its anticipated function at least 50% of the time in any continuous 30 day period.

Section 106. Waivers

A. The Town Board may grant a waiver from the strict application of the provisions of this Local Law if, in the opinion of the Town Board, the waiver is in the best interests of the town. The Town Board may consider as reasonable factors in evaluating the request, when applicable, the impact of the waiver on the neighborhood, including the potential detriment to nearby properties, the benefit to the applicant, feasible alternatives, and the scope of the request.

B. Application for such waiver requires written consent by all affected property owners.

C The Town Board shall hold a public hearing on the application for the waiver. The public hearing may be combined with other public hearings on Wind Energy Facilities so long as the waiver request is detailed in the public notice.

D. The Town Board may attach such conditions as it deems appropriate to waiver approvals to minimize the impact of the waiver.

Section 107. Enforcement and Penalties

A. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Local Law.

B. Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this Local Law or in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than six months, or such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each seven day period such violation shall continue. The penalty for a second offense shall be a fine of up to \$750.00 or imprisonment for not greater than six months, or both. The penalty for a third and subsequent violation shall be a fine of up to \$1,000., or imprisonment for up to 6 months, or both. The Town may institute a civil proceeding to collect civil or criminal penalties in the amount set forth for each violation and each seven day period said violation continues shall be deemed a separate violation.

C. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

Section 108. Severability

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Section 109. Appeals

Any person or persons, jointly or severally aggrieved by the decision of the Town in regard to the administration of this Local Law may apply to the Supreme Court for review under Article 78 of the New York State Civil Practice Laws and Rules.

Section 110. Effective Date

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

Article 200. DEFINITIONS

As used in this Local Law, the following terms shall have the meanings indicated:

COMMERCIAL WIND ENERGY CONVERSION SYSTEM

("Commercial WECS") - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of more than 100 kW and which is intended to produce power for distribution on the utility grid.

EAF - Environmental Assessment Form used in the implementation of the State Environmental Quality Review Act as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

ENVIRONMENTAL IMPACT STATEMENT (EIS) - An EIS is a written "draft" or "final" document prepared in accordance with §617.9 of State Environmental Quality Review Act. An EIS provides a means for agencies, project sponsors, and the public to systematically consider significant adverse environmental impacts, alternatives, and mitigation strategies. An EIS facilitates the weighing of social, economic, and environmental factors in the planning and decision-making process. A draft EIS (DEIS) is the initial statement prepared by either the project sponsor or the lead agency and circulated for review and comment by all involved and interested agencies before a final EIS (FEIS) is prepared.

NEW YORK INDEPENDENT SYSTEM OPERATOR (NYISO) - NYISO is a not-for-profit organization formed in 1998 as part of the restructuring of New York State's electric power industry. Its mission is to ensure the reliable, safe and efficient operation of the State's major transmission system and to administer an open, competitive and nondiscriminatory wholesale market for electricity in New York State.

RESIDENCE - Any dwelling suitable for habitation existing in the Town of Stamford on the date an application is received. A dwelling shall be construed as any house, mobile home, modular home or manufactured housing, single wide or double wide trailer, occupied as full time or seasonal home. OR Any other structure that meets as a minimum the HUD section #8 Housing Quality Standards and meets the requirements of the New York State Building and Fire Safety Codes. A dwelling may be part of a multidwelling or multipurpose building, but shall not include buildings such as hotels or motels, hospitals, day care centers, dormitories, sanitariums, nursing homes, municipal buildings, schools or other buildings used for educational purposes, or correctional institutions.

SEQRA - The New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

SITE - The parcel(s) of land where a Wind Energy Facility is to be placed. The Site can be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a Wind Energy Facility or has entered an agreement for said Facility or a setback agreement shall not be considered off-site.

SOUND PRESSURE LEVEL - According to the NYSDEC Program Policy on Assessing and Mitigating Noise Impacts, a measure of sound pressure in the atmosphere which can be determined according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedure. Also, the perceived loudness of a sound as expressed in decibels (db) or A-weighted decibel scale dB (A). For example, an L10 - 30 dBA indicates that in any hour of the day 30 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes.

TOTAL HEIGHT - The height of the tower and the furthest vertical extension of the WECS.

TRANSMISSION OWNER - Those companies which own the electric distribution networks. Examples include New York State Electric & Gas, Niagara-Mohawk, and Con Edison.

WIND ENERGY CONVERSION SYSTEM ("WECS") - A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill").

WIND ENERGY FACILITY - Any Wind Energy Conversion System, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

WIND ENERGY PERMIT- A permit pursuant to this Local Law granting the holder the right to construct, maintain and operate a Wind Energy Facility.

Article 300. COMMERCIAL WIND ENERGY FACILITIES

Section 301. Application Requirements

A. A complete application for a Wind Energy Permit for commercial WECS shall include the following:

1. A completed Application form for Wind Energy Facilities, obtained from the Code Enforcement Officer/Building Inspector/Town Clerk.
2. A copy of an executed Interconnection Agreement with NYISO and the applicable Transmission Owner. If such Interconnection Agreement is not available at the time of application, no building permit may be issued until such Agreement is executed.
3. A site plan prepared by a licensed surveyor or engineer drawn to a scale to be established by the Town Board consistent with the size of the site and in sufficient detail to clearly describe the following.
 - a) Property lines and physical dimensions of the Site;
 - b) Location, approximate dimensions and types of existing structures and uses on the Site, public roads, and adjoining properties within one thousand (1000) feet of the boundaries of the proposed WECS Site.
 - c) Location and elevation of each proposed WECS.
 - d) Location of all above and below ground utility lines on the Site as well as transformers, the interconnection point with transmission lines, and other ancillary facilities or structures.
 - e) Location and size of structures above 35 feet within a radius of one and one-half tower height of the proposed WECS. For purposes of this

requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.

f) To further demonstrate compliance with the setback requirements of this Local Law, buffers shall be drawn around each proposed tower location in accordance with the requirements set forth in Section 306 (A).

g) Location of the nearest residential structure(s) on the Site and located off the Site, and the distance from the proposed WECS.

h) All proposed facilities, including access roads, electrical substations, storage or maintenance units, and fencing.

4. For each proposed WECS, include make, model, picture, maximum rated capacity, and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants. Vertical drawing of the WECS showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and total height.

5. Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.

6. Erosion and sediment control plan prepared to NYSDEC Phase II or NYCDEP stormwater requirements, as appropriate.

7. A construction schedule describing commencement and completion dates, including a traffic analysis with a description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.

8. The applicant shall submit an operations and maintenance plan for the proposed facility which shall include:

- a) a regular periodic maintenance schedule;
- b) any special maintenance requirements;

c) procedures and notification requirements for restarts during icing events

9. Decommissioning Plan. The applicant shall submit a decommissioning plan, which shall include:

a) the anticipated life of the WECS;

b) the estimated decommissioning costs in current dollars;

c) how said estimate was determined;

d) the method of ensuring that funds shall be available for decommissioning and restoration;

e) the method, such as by annual re-estimate by a licensed engineer selected by the Stamford Town Board, that the decommissioning cost shall be kept current. Such re-estimates shall be submitted to the Town Board annually or the permit may be subject to review and/or revocation by the Town Board.

f) the manner in which the WECS shall be decommissioned and the site restored, which shall include removal of all structures and debris to a depth of 3 feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner.

10. List of property owners, with their mailing address, within one thousand (1000) feet of the outer boundaries of the proposed Site.

11. Complaint Resolution: By submitting an application, the applicant shall acknowledge his or her agreement to arbitrate any dispute made by adjoining property owners or property owners within a one mile radius of the property which any WECS is located on. Such arbitration shall be provided by the American Arbitration Association or such other arbitrator as the parties may agree. The costs of such arbitration shall be borne by order of the arbitrator or panel of arbitrators. This section is not intended to limit a complainants rights under law.

12. Completed Part 1 of the Full EAF, or, if the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town Board may issue a positive declaration of environmental significance.

13. If a positive declaration is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact

Statement (DEIS) prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted with the application:

a) **Shadow Flicker:** The applicant shall conduct a study on potential shadow flicker. The study shall include a graphic to identify locations where shadow flicker may be caused by the WECS and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.

b) **Visual Impact:** Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, digital elevation models, and the like, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed Site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence. The NYSDEC Program Policy Assessing and Mitigation Visual Impacts must be referenced by the applicant when completing the visual impact study.

c) A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed site, as well as the Delaware County Department of Emergency Services.

d) **Noise Analysis:** a noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document existing noise levels at site property lines and at the nearest residence not on the site (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall include low frequency noise. The applicant shall also submit a design for post-development noise monitoring, which shall be subject to the approval of the Town Board.

e) Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring WECS Sites.

f) An assessment of potential electromagnetic interference with

microwave, radio, television, personal communication systems and other wireless communication.

g) An assessment of the impact of the proposed development on the local flora and fauna, including migratory and resident avian species.

h) An assessment of the impact of the proposed development on area federal and state-listed historic resources.

14. A statement, signed under penalties of perjury that the information contained in the application is true and accurate.

Section 302. Application Review Process

A. Applicants may request a pre-application meeting with the Town Board or with any consultants retained by the Town Board for application review. Meetings with the Town Board shall be conducted in accordance with the Open Meetings Law.

B. Fifteen (15) copies of the complete application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. In addition, a copy of such application may be filed with the Stamford Village Library or other public buildings specified by the Stamford Town Board and as directed by the Town Clerk. An affidavit of deposit shall be given to the Town Clerk of such filing.

C. The Town Clerk in consultation with Town staff or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Town Board waives any application requirement, no application shall be considered until deemed complete.

D. If the application is deemed incomplete, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. If the application appears complete, the Town Clerk shall notify the applicant of the same and transmit the application to the Town Supervisor and members of the Town Board. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECS proposed is increased.

E. Upon submission of a complete application, including the grant of any application waiver by the Town Board, the Town Clerk shall transmit the application to the Town Board.

F. SEQRA review. Applications for WECS are deemed Type I projects under SEQRA. The Town shall, whenever it shall seek lead agency status for the review of such applications, consider coordinating its review with any other permitting authorities.

G. The Town Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within one thousand (1000) feet of the boundaries of the proposed WECS, and published in the Town's official newspaper, no less than ten nor more than twenty days before any hearing, but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses. The affidavit of service shall be submitted to the Town Clerk prior to the Public Hearing's commencement.

H. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers.

I. Notice of the project shall also be given, if applicable, to the Delaware County Planning Board, as required by General Municipal Law §239-1 and 239-m.

J. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review. The applicant shall, in any event, be responsible for the payment of all planning, engineering, architectural, or legal fees for any professional reviewers hired by the Town Board for the purpose of the review of the applicant's application. Further, the Town, through the Town Board, may require the posting of such bond or irrevocable letter of credit as the board determines may be appropriate and in a form satisfactory to the Town Attorney to ensure that any construction or work undertaken as shown in the application can be completed, or the property otherwise, if the applicant chooses not to complete the project, can

be restored to its condition preceding the filing of the application. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a Statement of Findings. The statement may also serve as the Town's decision on the applications.

K. Upon receipt of the recommendation of the County Planning Board (if applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Board may approve, approve with conditions, or deny the WECS application, in accordance with the standards in this Local Law.

Section 303. Physical Standards for Commercial Wind Energy Facilities

A. The following standards shall apply to commercial WECS, unless specifically waived by the Town Board as part of a Wind Energy Permit.

1. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
2. No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Code. Applications may be jointly submitted for WECS and telecommunications facilities.
3. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
4. Lighting of tower. No tower shall be lit except to comply with Federal Aviation Administration (FAA) requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Wind Energy Facility development plan.
5. All applicants shall use measures to reduce the visual impact of WECS to the extent possible. WECS shall require the use of tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. WECS within a multiple WECS project shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Project, to provide reasonable uniformity in overall size, geometry, and rotational

speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.

6. The use of guy wires is disfavored. An applicant who shows that they are using guy wires in their application shall demonstrate clearly and convincingly why the same is necessary. A WECS using guy wires for tower support shall incorporate appropriate measures to protect the guy wires from damage which could cause power failure.

7. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, satellites or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Permit for the specific WECS or WECS causing the interference.

8. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations. Failure to accomplish this is grounds for Town removal using a demolition bond or revocation of permit until remedied.

9. WECS shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas shall be given priority wherever possible. To the extent practicable, development on agricultural lands shall follow the Guidelines for Agricultural Mitigation for Windpower Projects published by the State Department of Agriculture and Markets.

10. WECS shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.

11. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.
12. Stormwater run-off and erosion control shall be managed in a manner consistent with all applicable state, NYDEP and Federal laws and regulations.
13. Construction of the WECS shall be limited to the hours established by the Town Board.
14. WECS construction, including excavating, blasting, road construction or any other activity that would be employed to construct a WECS, shall not disturb water supply supplies or water delivery systems to any off site residence or facility unless the offsite owner consents in writing to an alternate water supply source or delivery system to be paid for by the WECS applicant. Said alternate water source or system must meet NYSDOH water supply standards.

Section 304. Required Site Safety Measures

- A. All wind turbines shall have a manual and automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.
- B. Unless the property owner submits a written request or the Town Board requires the same no fencing shall be required around a wind tower. The color, type and location of fencing, when required, shall be determined on the basis of individual applications as safety needs dictate, subject to approval of the Stamford Town Board.
- C. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information. The Town Board may require additional signs based on safety needs. The number and size of such signs shall be approved by the Town Code Enforcement Officer consistent with

Local Law, or if there be no applicable Local Law, then by order of the Town Board, the number and size of such signs shall reasonably provide for the warning to passers by of the risk of shock or high voltage.

D. No climbing pegs or tower ladders shall be located closer than fifteen (15) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.

E. The minimum distance between the ground and any part of the rotor or blade system shall be thirty (30) feet.

F. WECS shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

Section 305. Traffic Routes and Road Maintenance

A. Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include:

- 1) access by emergency vehicles
- 2) minimizing traffic impacts from construction and delivery vehicles
- 3) minimizing WECS-related traffic during times of school bus activity
- 4) minimizing wear and tear on local roads
- 5) minimizing impacts on local business operations

Wind Energy Permit conditions shall limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.

B. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Town Board, sufficient to compensate the Town for any damage to local roads. The Applicant must consult with the Town Highway Superintendent and Delaware County Department of Public Works to obtain a written recommendation for

bonding form and amount, which form and amount shall be subject to the approval of the Town Board.

C. The applicant shall provide photographic evidence of the condition of public roads in the Town of Stamford, along any proposed route, prior to the start of construction or start of preparations for construction.

Section 306. Setbacks

A. Each WECS shall be set back as measured on a plane:

1. One thousand (1000) feet from the nearest Site boundary line or public road.

2. Two thousand five hundred (2500) feet from the nearest off-site residence, measured from the exterior of such residence. Notwithstanding any other provision of this Local Law regarding waivers or setback easements, no WECS shall be within one thousand (1000) feet of an off-site residence, whether or not said residence is located in the Town of Stamford.

3. Two thousand five hundred (2500) feet from the nearest off-site hotel or motel, hospital, day care center, dormitory, sanitarium, nursing home, municipal building, school or other building used for educational purposes, or correctional institution, measured from that building.

4. One thousand (1000) feet from any non-WECS structure other than a residence, or any above-ground utilities, unless waived by the utility companies.

B. The statistical sound pressure level generated by a WECS shall not exceed L10 - 50 dBA measured at the nearest residence located off the Site. Sites can include more than one piece of property and the requirement shall apply to the combined properties. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5 dBA. Independent verification by an acoustical engineer certified with the Institute of Noise Control Engineering shall be provided before and after construction demonstrating compliance with this requirement. The costs of such verification shall be borne by the applicant and paid into an escrow account in advance of any construction work by the applicant or its agent.

C. In the event audible noise due to Wind Energy Facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards

for audible noise set forth in subparagraph (B) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.

D. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level plus five (5) dBA. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than six (6) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public buildings. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project Site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

Section 307. Noise and Setback Easements

A. In the event a Wind Energy Facility does not meet a setback requirement or exceeds noise or other criteria established in this Local Law as it existed at the time the Wind Energy Permit is granted, a waiver may be granted from such requirement by the Town Board in the following circumstances:

1. Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this Local Law, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed or (2) setbacks less than required; and

2. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, shall be recorded in the

County Clerk's Office and the Town Hall describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this Local Law, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.

3. Waivers granted under this section differ from waiver requests under Section 106 of this Local Law in that a Section 106 waiver is also required in addition to a waiver granted under this section. However, a section 106 waiver may not pre-empt or diminish any part of the required waiver consent by the property owner required by this section.

Section 308. Issuance of Wind Energy Permits

A. Upon completion of the review process, the Town Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.

B. If approved, the Town Board shall direct the Town Clerk to issue a Wind Energy Permit upon satisfaction of all conditions for said Permit, and direct the building inspector/code enforcement officer to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other pre-construction conditions of this Local Law.

C. Building Permits: The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be set by the Town Board based per permit request for administrative costs, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certification or conduct inspections as agreed by the parties. Each wind tower shall require a separate building permit.

D. The decision of the Town Board shall be filed within five (5) days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.

E. If any approved Wind Energy Facility is not substantially completed within five (5) years of issuance of the Wind Energy Permit, the Wind Energy Permit shall expire.

Section 309. Abatement

A. If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant agrees that, without any further action by the Town Board, the applicant shall remove said system at its own expense following the requirements of the Decommissioning Plan. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.

B. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, New York Independent System Operator, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Town Board all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.

C. Decommissioning Fund. The applicant or successors of a wind turbine facility will continuously maintain a fund payable to the Town of Stamford, in form approved by the Stamford Town Board for the removal on nonfunctional wind towers and appurtenant facilities, in an amount to be determined by the Town of Stamford for the life of the facility. The fund will consist of cash collateral or an irrevocable letter of credit from a National Bank with at least one full service branch in New York State or a State of New York licensed financial institution. The institution shall have at least \$5 Billion in assets and a Tier One Risk based Capital, as defined by the Comptroller of the Currency of the United States, of at least 7.5%. All

decommissioning funding requirements shall be fully funded prior to issuance of a building permit.

Section 310. Limitations on Approvals; Easements on Town Property

A. Nothing in this Local Law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Local Law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

B. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state or local law.

Section 311. Permit Revocation

A. Testing fund. A Wind Energy Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as biannually, or more frequently upon request of the Town Board in response to complaints by neighbors. The consultant shall be hired by the Town Board. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Wind Energy Permit and this Local Law and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice

from the Town Board. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

C. Notwithstanding any other abatement provision under this Local Law and consistent with §310 and §311(B), if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town Board may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) revoke the Wind Energy Permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

Article 400. MISCELLANEOUS

Section 401 Agreements

Nothing in this Local Law shall be read as limiting the ability of the Town to enter into agreements with any applicant to compensate the Town for expenses or impacts on the community.

Section 402 Height Limits

No Wind Energy Tower erected in the Town of Stamford shall exceed four hundred ten (410) feet in height including the radius of the blade.

Section 403 Restrictions on number of towers

The number of Commercial Wind Towers erected in the Town of Stamford shall not exceed twenty (20) towers in total.

Section 404 Fees

A. Permit Fee for Commercial WECS Permit: \$100. per megawatt of rated maximum capacity.

B. Retention of Expert Assistance and Reimbursement by Applicant

1. The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including but not limited to site inspections, the construction and modification of the sites, once permitted, and any requests for recertification.
2. An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of the application.
 - a) The initial deposit shall be \$8,500.00 and shall be placed with the Town preceding the pre-application meeting.
 - b) The Town shall maintain a separate escrow account for all such funds. The Towns consultants/experts shall invoice the Town for their services in reviewing the application, including the modification of the site, once permitted.
 - c) If, at any time during the process, this account has a balance less than \$2,500.00, the applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application.
 - d) In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant.
3. The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope and complexity of the project, the completeness of the application, and other information as may be needed to complete the necessary review.