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Town of Wayland, Steuben County, New York

Local Law No. 6 of the year 2017

“Amended Local Law Regulating Wind Energy-Deriving Towers

Be it enacted by the Town Board of the Town of Wayland as follows:

Article I. Enactment, Authorization, Title, Purpose

The Town Board of the Town of Wayland does hereby ordain and enact the Town of Wayland Wind Energy-Deriving Towers Law pursuant to the authority and provisions of Section 10 of New York State Municipal Home Rule Law.

Article II. Intent and Purpose.

The purpose of this law is to regulate the development of large-scale wind energy-deriving towers (wind turbines) in the Town of Wayland. This law is to accommodate the necessary infrastructure for the provision of commercial wind-powered electricity generation facilities so that they may be developed in a manner hereby deemed to be compatible with the general health, welfare and safety of the residents of the Town of Wayland; furthermore, to address the visual, aesthetic, and land use compatibility aspect of wind energy deriving towers.

The Planning Board may deny installations in circumstances where wind towers are becoming so numerous in a neighborhood that their aggregate noise, visual or other impacts are offensive to prevailing values.

Article III. Definitions.

1. Accessory Facilities or Equipment: Any structure other than a wind turbine, related to the use and purpose of deriving energy from such towers, located at the tower facility.
2. Nacelle: The portion of the wind turbine that connects the rotor to the support tower, and houses the generator, gearbox, drive train, and braking system.
3. Planning Board: For the purposes of this section, shall mean the Town of Wayland Planning Board.
4. Public Hearing: A meeting announced and advertised in advance and opens to the public with the public given an opportunity to talk and participate.
5. Right of Way: A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer, and other similar uses.
6. Siting Agency: Person or persons who are applying to site a wind energy-deriving tower facility.
7. Tower Facility: Site where one or more wind energy-deriving tower(s) or wind turbines will be located, including all accessory facilities and/or equipment.
8. Wind Energy-Deriving Tower /Turbines: any tower, pole, or other structure, whether attached to a building, guyed, or freestanding, designed to be used for the support of a rotor that consists of blades and hub, as well as a nacelle and generator for producing electricity.

Article IV. Authority.

The Town Planning Board is hereby authorized to approve, approve with conditions, or disapprove wind energy-deriving tower siting applications in accordance within this law. The Planning Board is hereby authorized to hire an engineer or consultant to assist in the review of an application at the applicant's expense.

Article V. Procedure.

1. Completed applications for siting wind energy-deriving towers shall be submitted to the Town Code Enforcement Officer at least ten (10) days prior to the regular meeting of the Town Planning Board. The owner of the property or his/her duly authorized representative may attend the meeting of the Planning Board to discuss the application.
2. Within sixty-two days after the Town Planning Board meeting where the complete application is submitted, a public hearing shall be held. Notice of such public hearing shall be published in the official paper of the Town at least ten (10) days prior to the date thereof. The Town Planning Board shall give notice in writing by certified mail to all property owners of the land immediately adjacent to the proposed parcel where site is proposed. The Planning Board Secretary shall mail these notices at least ten (10) days in advance of the public hearing. The secretary will maintain record of Post Office receipts as proof of notification.
3. Prior to consideration for final approval, the Planning Board shall ensure an environmental review, in compliance with New York State Conservation Law. If a positive declaration of environmental significance is made by the established Lead Agency, the applicant must provide to the Town a Draft Environmental Impact Statement (DEIS) addressing potential impacts and describing proposed mitigation.

4. With-in sixty-two (62) days of the public hearing or acceptance of Final Environmental Impact Statement (FEIS), the Town Planning Board may approve, conditionally approve, or disapprove the application. The time in which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board. The decision of the Planning Board on the application shall be filed in the Office of the Town Clerk within five (5) business days after such decision is rendered and a copy thereof mailed to the applicant.

Article VI. Application Requirements.

A plan for the proposed development of a wind energy-deriving tower facility shall be submitted with the application and such plan shall show and include:

1. Name of the project, boundary lines of parcel that project will be located on, a location map showing proposed site's location, date, north arrow, and scale of the plan.

2. Name and address of (1) the owner of the parcel where development is proposed, (2) the developer, and (3) the New York State licensed engineer, New York State licensed architect, or New York State licensed surveyor preparing the plan.

3. Name and address of all owners of record of abutting parcels and those within five hundred (500) feet of the property lines of parcel where development is proposed.

4. A map showing all existing lot lines, easements, and right of ways, and a sketch plan showing proposed road access including provisions for paving, if any, proposed transmission lines and accessory facilities, and location of all existing and proposed utility systems to the facility. All underground utility lines on the site.

5. A survey of land to be leased, if the Planning Board deems it necessary.

6. A map showing existing and proposed topography at five-foot contour levels maximum.

7. A landscape plan showing all existing all natural land features, trees, forest cover, and all proposed changes to these features including size and type of plant material and erosion control measures.

8. The Planning Board may require soil test data if such data is necessary to judge the adequacy of design.

9. All underground utility lines on the site.

10. State Environmental Quality Review Act (SEQRA) Environmental Assessment Form (EAF).

11. Photography assessing the visibility from key viewpoints, existing tree lines, and proposed elevations. Pictures shall be digitally enhanced to stimulate the appearance of the as built above ground site facilities as they would appear from distances within a three (3) mile radius of such wind turbines. Pictures from specific locations may be required by the Planning Board and all pictures shall be no smaller than 8" x 10".

12. Documentation of the proposed intent and capacity of energy generation as well as justification for the height of any wind energy deriving tower and justification for any clearing required.

13. Preliminary report prepared by the wind turbine siting agency describing:

- Narrative documenting compliance with all standards found in Article VII of this law,
- Surrounding topography in relation to the capabilities for generation of electricity by wind,
- Required improvements for construction activities, including those within the public's right of way of land controlled by the Town of Wayland,
- Visual Impact assessment and proposed mitigation measures,
- Proposed safety measures to mitigate wind energy-deriving tower failure,
- Noise Analysis and proposed mitigation of any potential threshold exceedance,
- Documentation of Ice & Blade throw potential and mitigation,
- Emergency and Fire Protection Plan developed for each tower.

14. Elevation map showing the wind energy-deriving tower's height and design including a cross-section of the structure and components of the nacelle; the wind energy-deriving tower's compliance with applicable structure standards; and the wind energy-deriving tower's abilities in terms of producing energy.

15. Demonstration of a need for the proposed wind energy-deriving tower facility.

16. A description of the general geographic areas that would be acceptable for wind projects within the Town of Wayland; furthermore, demonstration that the proposed site is the most appropriate site within the immediate area for the location of the wind energy-deriving tower facility.

17. Description of the applicant's long range plans which project market demand and long range facility expansion needs within the Town.

18. Digital elevation model-based project visibility map showing the impact of visibility of the project from other locations, to a distance radius of three (3) miles from the center of the project. The base map used shall be a published topographic map showing natural and structural or built features.

19. Report showing soil logs, soil profile analysis, and storm water run-off calculations for the area being disturbed.

20. Plans to prevent pollution of surface or groundwater, erosion of soil both during and after construction, excessive run-off, and flooding of other properties, as applicable. There should be pre-construction and post construction drainage calculations for the site done by a certified engineer. From this the engineer must show how there will be no increase in runoff from the site.

21. Evidence of insurance coverage (binder or equivalent) insuring the installation, the owner, and the public against risk of property damage or personal injury in an amount to be set by the Planning Board.

Article VII. Standards.

The Town Planning Board shall permit the development of wind energy-deriving towers and related structures with approval. Wind energy-deriving towers and facilities shall be subject to the following requirements.

1. Location: Applicants for wind energy-deriving towers shall locate, erect and site towers in accordance with the following requirements:

- No individual tower facility shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce disturbance in the links operation unless the Applicant otherwise proposes to mitigate a disturbance in the communication links operation.
- No individual tower facility shall be installed in any location where its proximity with existing fixed broadcast, or reception antenna (including residential reception antenna) for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception.
- No individual tower facility shall be installed in any location where there is a recognized migratory flight path for birds or at a location where birds commonly congregate, unless applicant can demonstrate the operation of the wind energy-deriving tower will not have a significant impact on either migrating or resident birds.
- All wind turbine towers shall be set back from adjacent property lines and any pre-existing structures/above ground utility lines by a distance at least equal to its fall zone as certified by a New York State Licensed Professional Engineer plus an additional fifty percent (50%) of its fall zone. Additional setbacks may be required by the Planning Board in order to provide for the public safety, health, and welfare. The Planning Board may waive setback requirements from adjacent properties if such adjacent properties will be participating in the wind project and owner of said property(ies) provides written documentation requesting relief from setback requirements.

2. Fences or other anti-climbing devices shall control the proposed installation. A sign indicating electrical hazards shall be placed on the tower warning of electrical hazard and demand "no trespassing".

3. All applicable utility regulations shall be satisfied as to interconnection and operation of interconnected systems.

4. The level of noise produced during wind tower operation shall not exceed forty-five (45) (dBA) Leq (8-hour) measured at the nearest non-participating, permanent residential structure, and fifty (50) (dBA) Leq (8-hour) measured at a participating residence or from any nonparticipating property boundary. Should a permanent, non-participating residence be constructed prior to the Tower Facility commencing operations, the level of noise shall not exceed forty-five (45) (dBA) Leq (8-hour) at the non-participating permanent residence. If the ambient noise level exceeds 45 dba, then the permissible noise level shall be no more than the ambient noise level plus 6 dba. If a participating property owner requests a waiver from these noise limitations, written documentation from said property owner must be provided for consideration by the Planning Board.

5. Emergency Shutdown/Safety:
 - Applicant shall post emergency telephone number(s) so that the appropriate people may be contacted should any wind energy-deriving tower need immediate attention.
 - No wind turbine shall be permitted to lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and turbine components or nacelle.
6. Lighting: Wind energy-deriving towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA).
7. Utility Service: All power transmission lines from the wind energy-deriving tower facilities to an on-site substation shall be underground to the maximum extent practicable.
8. Height:
 - The height of any wind energy-deriving tower shall not exceed 500 feet.
 - The minimum distance between the ground and any part of the rotor blade should be a minimum of thirty (30) feet.
9. Access Road: Existing roadways shall be used for access to the site whenever possible. In the case of constructing roadways, they shall be constructed in a way so that they are not conspicuous to the surrounding environment.
10. Accessory Structures / Facilities: Transmission facilities and/or buildings shall be located behind ridges or vegetation to screen from visibility.
11. Security Provisions: No climbing device of any kind shall be attached to the wind turbine closer than twenty (20) feet from the ground. Climbing devices shall be added to the outside of each tower. Anti-climbing mechanisms shall be installed on any climbing devices for the first 10 feet.

Article VIII: Maintenance.

1. A New York State licensed professional engineer shall inspect all wind energy-deriving tower facilities at least every fifth year for structural integrity at no expense to the Town. Additional inspections shall be made after periods of severe wind or seismic activity. A copy of the inspection report shall be submitted to the Town of Wayland Code Enforcement Officer.

Article IX. Decommissioning.

1. Conditions shall be placed requiring removal of wind energy-deriving towers when use has ceased for a period of one (1) year.

2. The applicant shall submit to the Planning Board a letter of intent committing the tower owner, and his/her successors in interest, to notify the Code Enforcement Officer in writing within thirty (30) days following the discontinuance of the use of the energy-deriving towers. This letter will be filed with the Code Enforcement officer prior to the issuance of the building permit. The tower owner shall remove the obsolete or unused wind turbines and accessory structures from any site and restore the site to pre-construction conditions within one hundred and twenty (120) days of such notification. Failure to notify and/or remove said the obsolete or unused tower in accordance with these regulations shall be in violation of this law, and the cost of removing the wind energy-deriving towers and accessory structures may be assessed against the tower owner.

Article X. Fees.

Applicable fees will be collected per established fee schedules set by the Wayland Town Board.

Article XI. Final Application Approval.

1. The Planning Board may approve the application, deny the application, or grant the application with written stated conditions.
2. Action on the application shall be by written decision based upon substantial evidence submitted to the Planning Board.
3. Prior to obtaining Site Plan Approval, the applicant must provide a financial security bond for the removal of the wind energy-deriving tower and appurtenances, in favor of the Town of Wayland, in an amount approved by the Town of Wayland Planning Board. The amount shall be determined by an independent New York State Licensed engineer.

Article XII. Jurisdiction.

This law shall be interpreted according to the law of the State of New York, and for the purpose of any litigation arising hereunder, any person or entity subject to this law agrees that the courts of the State of New York, and no other state, shall have jurisdiction and that any legal action hereunder will be venued in Steuben County, New York.

Article XIII. Exemptions

Notwithstanding any of the foregoing, the Planning Board may exempt from the strict application of this law any wind energy-deriving tower intended and used solely for the personal use of the owner of the property on which it is located.

Article XIV. Local Law No. 1 of 2017 is repealed and replaced by this Local Law

This Local Law shall take effect immediately upon filing with the New York State Secretary of State.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 6 of 2017, of the Town of Wayland, was duly passed by the Town Board on December 28, 2017, in accordance with the applicable provisions of law.

~~2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ (Name of Legislative body) on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) and was deemed duly adopted on _____ 20____, in accordance with the applicable provisions of law.

~~3. (Final adoption by referendum.)~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ (Name of Legislative body) on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) on _____ 20____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

~~4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)~~

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ (Name of Legislative body) on _____ 20____, and was (approved)(not approved) (repassed after disapproval) by the _____ (Elective Chief Executive Officer*) on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____, State of New York, having been submitted to the electors at the General Election of November _____, 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

Clerk of the county legislative body, City, Town or Village Clerk or officer
designated by local legislative body

(Seal)

Date: December 28, 2017