

TOWN OF ROXBURY

Local Law No. 3 of the year 2002

A Local Law entitled the Town of Roxbury Wind Energy-Deriving Towers Law,
As Amended.

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF ROXBURY,
DELAWARE COUNTY, NEW YORK AS FOLLOWS:

ARTICLE I ENACTMENT, AUTHORIZATION, TITLE, PURPOSE

Section 101 - Enactment and Authorization

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

Section 102 – Title

This Local Law shall be known as the Wind Energy-Deriving Towers Law, as amended. The Town of Roxbury is hereinafter referred to as the “Town”.

Section 103 - Intent and Purpose

The purpose of this Local Law is to regulate the development of large scale (50KW or greater) wind energy-deriving towers (wind turbines) in the Town of Roxbury. This law is to be consistent with the general purposes stated in the Comprehensive Plan of the Town, 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 Roxbury; furthermore, to address the visual, aesthetic and land use compatibility aspects of wind energy deriving towers.

ARTICLE II DEFINITIONS

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.

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.

Planning Board: For the purposes of this Local Law, shall mean the Town of Roxbury Planning Board

Public Hearing: A meeting announced and advertised in advance and open to the public, with the public given an opportunity to talk and participate.

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.

Siting Agency: Persons or persons who are applying to site a wind energy-deriving tower facility.

Tower Facility: Site where one or more wind energy-deriving tower(s) or wind turbines will be located, including all accessory facilities or equipment.

Wind Energy-Deriving Tower / Wind Turbine – 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 III AUTHORITY, PROCEDURE

Section 301 - Authority

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

Section 302 - Procedure

(A) Completed applications for siting wind energy-deriving towers shall be submitted to the Town Clerk at least ten (10) days prior to the regular meeting of the Town Planning Board. Applications may be made by the owner of the property or his/her duly authorized representative, who shall attend the meeting of the Planning Board to discuss the application. An application under this Local Law is not complete until a properly completed environmental assessment form under the State Environmental Quality Review Act (or successor provision) has been submitted to the Planning Board, and:

- (1) lead agency has been established pursuant to the Environmental Conservation Law;
- (2) a negative declaration, or conditional negative declaration has been filed pursuant to the Environmental Conservation Law; or
- (3) if it has been determined that the project may have a significant effect on the environment, a draft environmental impact statement has been accepted by the lead agency.

- (B) Within sixty-two (62) 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 newspaper of the Town at least ten (10) days prior to the date thereof. The applicant 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 applicant shall mail these notices at least ten (10) days in advance of the hearing and furnish the Planning Board with Post Office receipts as proof of notification.
- (C) Within sixty-two (62) days of the public hearing, 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 IV APPLICATION REQUIREMENTS

Section 401 - 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:

- (A) 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.
- (B) Name and address of the owner of the parcel where development is proposed, developer and seal of the engineer, architect, or surveyor preparing the plan.
- (C) 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.
- (D) 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.
- (E) A survey of the land to be leased, if applicable.
- (F) A map showing existing and proposed topography at five-foot contour intervals.
- (G) A landscape plan showing all existing natural land features, trees, forest cover and all proposed changes to these features including size and type of plant material and erosion control measures.

- (H) State Environmental Quality Review Act (SEQRA) Environmental Assessment Form (EAF).
- (I) Photography assessing the visibility from key viewpoints, existing tree lines, and proposed elevations. Pictures shall be digitally enhanced to simulate 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 5" X 7".
- (J) Documentation of the proposed intent and capacity of energy generation as well as a justification for the height of any wind energy deriving tower and justification for any clearing required.
- (K) Preliminary report prepared by the wind turbine siting agency describing:
 - (i) Surrounding topography in relation to the capabilities for generation of electricity by wind,
 - (ii) Required improvements for construction activities, including those within the public's right of way or land controlled by the Town of Roxbury,
 - (iii) Proposed mitigation measures for visual impacts of tower facility,
 - (iv) Proposed safety measures to mitigate wind energy-deriving tower failure.
- (L) 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 structural standards; and the wind energy-deriving tower's abilities in terms of producing energy.
- (M) Demonstration of a need for the proposed wind energy-deriving tower facility.
- (N) A description of the general geographic areas that would be acceptable for wind projects within the Town of Roxbury; 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.
- (O) Description of the applicant's long range plans which project market demand and long range facility expansion needs within the Town.
- (P) 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.

- (Q) Report showing soil logs, soil profile analysis, and storm water run-off calculations for the area being disturbed.
- (R) Plans to prevent the pollution of surface or groundwater, erosion of soil both during and after construction, excessive runoff, 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.

ARTICLE V STANDARDS

Section 501 - The development of wind energy-deriving towers and related structures shall be permitted with approval by the Town Planning Board. Wind energy-deriving towers and facilities shall be subject to the following requirements.

(A) Specific Provisions

1) Location.

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

- a. 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 electromagnetic interference in the links operation.
- b. 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.
- c. 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 that the operation of the wind energy-deriving tower will not have a significant impact on either migrating or resident birds.
- d. All wind turbine towers shall be set back from adjacent property lines and any pre-existing structures 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 also be participating in the wind project.

- e. The level of noise produced during wind tower operation shall not exceed 45 (dBA) measured at a distance of 1000 feet from the base of the wind energy-deriving tower or from the nearest residential structure.

2) Emergency Shutdown / Safety.

- a. Applicant shall post an emergency telephone number so that the appropriate people may be contacted should any wind energy-deriving tower need immediate attention.
- b. 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.

3) Lighting.

Wind energy-deriving towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA).

4) Utility Service.

All power transmission lines from the wind generation electricity generation facilities to on-site substations shall be underground.

5) Height.

- a) The minimum distance between the ground and any part of the rotor blade should be thirty (30) feet.
- b) The height of any wind energy-deriving tower shall be limited to the minimum required to provide needed energy by demonstrated demand.

6) 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.

7) Accessory Structures / Facilities.

Transmission facilities and or buildings shall be located behind ridges or vegetation to screen from visibility.

8) Security Provisions.

No climbing device of any kind shall be attached to the wind turbine closer than fifteen (15) feet from the ground and shall be added to the outside.

9) Decommissioning.

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 building inspector within thirty (30) days of the discontinuance of use of the wind energy-deriving towers. This letter shall be filed with the building inspector prior to the issuance of a building permit. The 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 twenty (120) days of such notification. Failure to notify and/or remove the obsolete or unused tower in accordance with these regulations shall be a violation of this Local Law and the cost of removing the wind energy deriving towers and accessory structures shall be placed as a lien on the property owners tax bill.

10) Post – Installation.

(A) A post-installation field report identifying the facilities generation of electricity, and impacts upon the environment shall be submitted to the Town.

(B) The Planning Board may approve the application, deny the application, or grant the application with written stated conditions.

(B) Planning Board Decision

- 1) Action on the application shall be by written decision. Any condition imposed by the Planning Board that waives any provision of this Local Law must provide for alternate compliance that is equally protective or consistent with the objectives of this Local Law. The Planning Board may consider as reasonable factors in evaluating any waiver of the terms of this Local Law, the impact of the waiver on the surrounding area, including the potential detriment to adjoining land, the benefit to the applicant, feasible alternatives, the scope of the waiver, and whether the waiver is consistent with the objectives of this Local Law.
- 2) An applicant may appeal a denial by the Planning Board to the Town Board by filing written notice of appeal with the Town Clerk within thirty

(30) days of the filing of the Planning Board's decision with the Town Clerk. In reviewing a denial, the Town Board should limit its review to the record before the Planning Board and the written comments submitted pursuant to the comment period. Within fifteen (15) days of the filing of a notice of appeal, the Secretary of the Planning Board shall file with the Town Board a copy of the record before the Planning Board. The Town Board shall publish in the official Town newspaper notice of a thirty (30) day written comment period. Within thirty (30) days of the close of the comment period, the Town Board shall issue a written determination whether to deny, grant or grant with conditions the appeal. Any costs incurred by the Town Board (including professional fees incurred in processing the appeal) are the responsibility of the applicant.

ARTICLE VI SUPERCEDING OF PRIOR LAWS

Section 601 – This Local Law No. 3 supercedes Local Law No. 1 for the year 2002 to correct procedural defects, if any.

ARTICLE VII EFFECTIVE DATE

Section 701 – Effective Date

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