

TOWN OF SPRINGWATER
LOCAL LAW NO. 1 FOR THE YEAR 2006
WIND ENERGY CONVERSION SYSTEMS

Be it enacted by the Town Board of the Town of Springwater, County of Livingston and State of New York, as follows:

Section 1. Definitions:

WECS - Any mechanism designed for the purpose of converting wind energy into electrical energy.

WECS, Commercial - A WECS that is the prime use on a parcel of land and supplies electrical power for off-site use.

WECS, Noncommercial - A WECS that is incidental and subordinate to another use on the same parcel and supplies electrical power solely for on-site use, except that when a parcel on which a noncommercial WECS is installed also receives electrical power supplied by a utility company, excess electrical power generated by the noncommercial WECS and not presently needed for on-site use may be used by the utility company in exchange for a reduction in the cost of electrical power supplied by that company to the parcel for on-site use, as long as no net revenue is produced by such excess electrical power.

Project Boundary - The property lines of any parcel of property upon which a WECS is to be constructed.

Section 2. Wind Energy Conversion Systems (Commercial and Noncommercial)

1. Purpose. For the purpose of protecting the general public of the Town of Springwater and properties adjacent to Wind Energy Conversion Systems (WECS) from indiscriminate placement, related health and safety problems, etc., the following rules and regulations shall apply.

2. Definitions - See Section 1.

3. Regulations - Noncommercial WECS and commercial WECS shall be allowed by special permit issued by the Town Board of the Town of Springwater pursuant to this local law and the following regulations:

A. (I). Application. An applicant for a permit for WECS shall submit at

least three (3) full copies of an application, prepared by a Professional Engineer licensed to practice in New York State. The Professional Engineer shall certify, in writing, that the application meets all engineering requirements of this local law. The site plan shall be drawn to a reasonable scale with all features based on a certified instrument survey by a surveyor licensed in the State of New York. The application shall contain the following information:

(i) A site plan drawn to a scale no greater than one (1) inch to fifty (50) feet, based on a certified instrument survey by a surveyor licensed in the State of New York, sufficient to show the following:

- (a) Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance. The area of the base of each tower and depths shall be indicated.
- (b) Utility lines, telephone lines and any other lines, both above and below ground, within a radius 2,000 feet. Information presented should contain details as to how the power will be delivered to the grid, including the route and the size of poles and towers to be used.
- (c) Property lot lines, land uses and the location and dimensions of all existing structures and uses on and off the site within 2,000 feet of each WECS location.
- (d) Dimensional representation of the various structural components of the wind tower construction, including the base and footing.
- (e) Design data indicating the basis of design, including manufacturer's dimensional drawings and installation and operation instructions.
- (f) Certification that the tower design is sufficient to withstand wind-load requirements for structures as established by the New York State Uniform Fire Prevention and Building Code.
- (g) Certification that the electrical system design is in compliance with accepted engineering practices and with the appropriate provisions of the National Electric Code.
- (h) Certification that the rotor over-speed control system is in compliance with accepted engineering practices.
- (ii) The applicant shall provide a shadow flicker and blade glint zone model for any proposed wind energy conversion unit. The model shall:
 - (a) Model and describe the zones where shadow flicker and blade glint will likely be present within the project boundary and a two-mile radius beyond the project boundary. Include the topography, existing residences, wind speeds and directions and existing vegetation and roadways. The model shall represent the most probable scenarios of wind constancy, sunshine constancy, and wind directions and speeds.
 - (b) Calculate the locations of shadow flicker and blade glint caused by the proposed project; the expected durations of the flicker and glint at these locations and the total number of possible hours per year of flicker and glint at all locations.
- (iii) The applicant shall deposit in an escrow account with the Town the sum of \$20,000.00 to be used at the discretion of the Town, for expenses in hiring consultants and experts the Town deems necessary. This deposit shall be submitted with the initial application and considered a part thereof. Any unused funds will be returned to the applicant. The applicant shall provide a written guarantee to the Town that it will provide additional funds as needed to pay the expenses of said consultants and experts not covered by the initial deposit.
- (iv) The applicant must submit a construction access plan prepared by a Professional Engineering, licensed to practice in New York State, approved in advance by the Town, which access plan shall include the following:

- (a) Identification of all roads, including seasonal roads, and rights of way within the Town to be used for site access during construction and a plan for marked detours where necessary so traffic to residences and businesses can continue unobstructed.
- (b) Estimate of the number of vehicle trips over each road by vehicle type and gross weight.
- (c) Indicate any areas where clearing of trees, road widening or realignment is necessary.
- (d) The Engineer shall provide an analysis of potential road damage and an estimate of the cost to maintain and repair or rebuild all affected roads.
- (e) A video of the current condition of all roads to be used for construction access.
- (v) The applicant shall deposit an amount to be agreed upon by applicant and the Town, with guidance from the Town's consultants and experts and the engineering report, in an escrow account to be used by the Town, in their discretion, for road repairs. Said account will be maintained for one (1) year after completion of the construction. Any unused funds will be returned to the applicant. The applicant is to provide a written guarantee to the Town that it will provide additional funds as needed to insure that all roads are in as good condition as prior to construction, in the event that such funds are exhausted and additional work is still required.
- (vi) The applicant must provide, prior to any development, an estimated timetable for each phase of construction.
- (vii) The Applicant must submit a Full Environmental Assessment Form ("EAF") and Visual EAF Addendum Form prepared in accordance with the State Environmental Quality Review Act. The Environmental Assessment Form must be reviewed by the Town or qualified individual as Lead Agency, with input from a licensed Environmental Engineering firm in accordance with all applicable and appropriate processes and procedures contained in the New York State Environmental Quality and Review Act (SEQRA).
- (viii) The applicant must submit digital elevation model-based project visibility map showing the impact of topography upon visibility of the WECS from other locations, to a distance radius of three (3) miles from the center of the WECS site. Scale used shall depict 3-mile radius as no smaller than 6 inches, and the base map shall be a published topographic map showing cultural features.
- (ix) The applicant must submit no fewer than four (4), and no more than the number of proposed individual wind turbines plus three, color photos, no smaller than 8" x 10", taken from locations within a three (3) mile radius from it and to be selected by the Town, and computer-enhanced to simulate the appearance of the as-built above ground facilities as they would appear from these locations.
- (x) An application for a noncommercial WECS is exempt from the requirements of subdivisions 3 (A) (I) (ii) through 3 (A) (I) (ix) of this section, but shall include a short form EAF.

(II). Public Hearing. Upon receipt of a complete application the town

shall publish a public notice of the application's receipt. The application shall be made available for public review for at least thirty (30) days, during normal business hours, after the date of publication of the notice. Prior to taking any official action with respect to the issuance of a permit under this local law, the Town Board shall conduct a public hearing which shall be held within sixty two (62) days of the receipt of the application. Written notice of the meeting, containing a full statement of the matter to be considered, shall be mailed to the applicant and the Livingston County Planning Board at least ten (10) days prior to the date of the hearing and such notice shall be published in the official paper of the Town at least fifteen (15) days prior to the date of the hearing. The Town Board shall render their decision on the application within sixty two (62) days of the hearing, unless such time is extended by mutual consent of the applicant and the Town Board. The decision of the Town Board shall be filed in the office of the Town Clerk within five (5) business days of the date the decision is rendered and a copy shall be mailed to the applicant.

- B. Access. Climbing apparatus for access to commercial WECS shall be internal to the tower base structure. A locking mechanism in the tower base door shall limit access to the tower base structure. Commercial WECS shall be surrounded by a fence with a minimum height of eight (8) feet. Access to non commercial WECS shall be limited by limiting tower climbing apparatus to no lower than twelve (12) feet from the ground.
- C. Setback. The minimum required setback for any WECS tower from property lines, overhead utility lines, dwellings, agricultural buildings, or other WECS shall be equal to 1.5 times the proposed structure height, including blades. These setback requirements may be waived where the applicant submits a signed waiver from the owner(s) of the neighboring property, overhead utility lines, or other structures in relation to which the applicant does not meet the setback requirements set forth above. Where an applicant proposes to located one or more WECS on a site consisting of multiple contiguous parcels owned or leased by the applicant, the term "property lines" shall mean the exterior boundaries of the contiguous parcels, which adjoin parcels not owned or leased by the applicant.
- D. Noise. WECS towers shall be properly maintained and operated at all times and shall be located with relation to property lines so that the noise produced during operation shall not exceed fifty (50) dbA, measured at the boundaries of all of the closest parcels that are owned by non-site owners.
- E. Electromagnetic Interference. WECS generators and alternators shall be properly filtered and/or shielded in order to avoid electromagnetic interference and shall comply with the rules and regulations of the Federal Communications Commission contained in 47 CFR Parts 15 and 18.
- F. Safety.
- (1) No WECS shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, and turbine components.
 - (2) The minimum distance between the ground and any part of the rotor blade system shall be thirty (30) feet.
 - (3) Procedures acceptable to the Town Board for emergency shutdown of power generation units shall be established and posted prominently and permanently on at least one

location on the road frontage of each individual unit.

- (4) Appropriate warning signs shall be posted. The type and placement of signs shall be determined on an individual basis as safety needs dictate.
- (5) No WECS shall be illuminated, unless necessary to meet the minimum FAA requirements for lighting.

G. Transmission Lines. All power transmission lines from the WECS to on-site substations shall be underground and in accordance with electrical codes.

H. Height.

- (1) Noncommercial WECS shall not exceed a total height of sixty (60) feet unless the parcel on which the WECS is to be located is ten (10) acres or larger, in which case the maximum total height may be one hundred (100) feet.
- (2) Commercial WECS shall not exceed a total height of four hundred (400) feet.
- (3) Height for Noncommercial and Commercial WECS shall be measured from the highest point of the arc of the blades to the ground level at the base.

I. Liability Insurance. Prior to the issuance of a Special Permit, the applicant shall provide the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company that liability insurance has been obtained to cover damage or injury which might result from the failure of the tower and/or the WECS or any part thereof and transmission facility. The Town Board, in consultation with the Town's insurer, may set the level of insurance required at whatever level it deems adequate. The Town, in its sole discretion, may require the applicant to name the Town as an additional insured under the applicant's liability insurance.

J. Abatement.

- (1) If any WECS remains non-functional or inoperative for a continuous period of one (1) year, the permittee shall remove the WECS at their expense. Removal of the system shall include removal of the entire structure, including foundations, transmission equipment, and fencing, from the property.
- (2) Bond/Security - The permit shall require a permittee to execute and file with the Town Clerk a bond or other form of security acceptable to the Town Board and Town Attorney as to the form, content and manner of execution, in an amount sufficient to ensure the faithful performance of the removal of the tower and the restoration of the site and roadways subsequent to its removal. The permittee shall pay all costs associated with obtaining estimates of the cost of the removal of the tower and restoration of the site and roadways. The amount of the bond or security shall be no less than 125% of the cost of the removal of the tower and restoration of the site and roadways. Current estimates of the cost of the removal of the tower and restoration of the site and roadways shall be obtained at five (5) year intervals and the amount of the bond and security shall be thereafter adjusted to comply with this section. The permittee shall pay the costs associated with obtaining all subsequent cost estimates.
- (3) If removal of towers and appurtenant facilities is required and the applicant, permit holder, or

successors fails to remove the towers and appurtenant facilities from the property within 30 days from the date of notification by the Town Board, the board may contract for such removal and pay for removal from the bond.

4. The owner of each WECS shall have it inspected at least once every year for structural and operational integrity by a New York State licensed professional engineer, and shall submit a copy of the inspection report to the Code Enforcement Officer of the Town. If such report recommends that repairs or maintenance are to be conducted, the owner shall provide to the Town Board a written schedule for the repairs or maintenance.
5. A WECS shall not begin its initial operation until inspections required by the Town of Springwater have been made and all necessary approvals have been given. After initial operations have begun, the Code Enforcement Officer or his designated representative shall have the right at any reasonable time to enter the premises on which a WECS has been placed to inspect any or all parts of said installation.
6. After conducting an inspection, the Code Enforcement Officer may order the owner of a WECS to render said WECS inoperative for reasons related to assuring safety of operations, abating noise or eliminating electromagnetic interference. The owner of the WECS shall render the WECS inoperative within twenty four (24) hours of receiving such order and shall not return the WECS to service until all of the reasons which caused the Code Enforcement Officer to issue the order to the owner to make said WECS inoperative have been corrected to the satisfaction of the Code Enforcement Officer.
7. Prior to allowing a WECS to resume operations, the Code Enforcement Officer may require the owner of the WECS to have an inspection made and a report issued by a professional engineer licensed in the State of New York, certifying that the WECS and/or tower is safe.
8. Failure to comply with these regulations will subject the WECS permittee/owner to a penalty of up to \$1,000.00 per day. In addition to the above, the Town Board may elect to seek injunctive relief in the Supreme Court of the State of New York. In the event that the Town Board so elects and prevails, the WECS permittee shall be subject to a civil penalty, payable to the Town of Springwater, equal to the Town of Springwater's expenses of such enforcement action, including statutory costs and attorney's fees.
9. The WECS permittee shall file emergency shutdown procedures with the Code Enforcement Officer.

Section 3. Appeals

Any person aggrieved by a decision of the Town Board under this local law may apply to the Supreme Court of the State of New York for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceeding must be filed within thirty (30) days after the filing of the Town Board's decision in the office of the Town Clerk.

Section 4. Effective Date

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