

Introduced by Town Board on 7/28/09

LOCAL LAW FILING

**NEW YORK STATE
DEPARTMENT OF STATE**
41 State Street,
Albany NY 12231

Town of Rensselaerville

LOCAL LAW NO. 2 OF THE YEAR 2009

A Local Law entitled “Non-Commercial Wind Power Facilities Law of 2009 of the Town of Rensselaerville”

A local law that amends the Town of Rensselaerville Zoning Law by establishing regulations for the siting and installation of noncommercial wind power facilities in the Town of Rensselaerville.

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

Section 1. Title:

This law shall be known as the “Non-Commercial Wind Power Facilities Law of 2009 of the Town of Rensselaerville”.

Section 2. Purpose and Intent:

The purpose of this law is to establish reasonable regulations for noncommercial wind power facilities as defined herein so that such facilities may be allowed provided that specific requirements and standards are met so that adjacent properties, residences and businesses are not unduly affected. It is the intent of this law to appropriately balance the use of such alternative, clean energy power generation while protecting affected properties and the Town’s rural character.

Section 3. Authority:

This local law is enacted by the Town Board of the Town of Rensselaerville pursuant to its authority to adopt local laws under the New York State Constitution Article IX, Article 16 of the Town Law and section 10 of the Municipal Home Rule Law.

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Section 4. Definitions:

Article II of the Town of Rensselaerville Zoning Law (Local Law No. 1 of 1991) as amended from time to time) is hereby amended to include the following terms and definitions:

AMPLITUDE MODULATED LOW FREQUENCY SOUND: Sound with energy in the lower frequency range of 20 Hz to 200 Hz that varies in loudness and other characteristics in a rhythmic pattern.

IMPULSIVE SOUND: A sound of short duration which may repetitively either increase or decrease the level of background sounds.

L_{A90} or L_{C90} : Sound level measurements that are exceeded for 90% of each sample period.

NON-COMMERCIAL WIND POWER FACILITY: A single wind turbine designed solely for on-site power consumption and no sale of electrical power except that unused or excess power may be sold to an electrical utility company with a generating capacity of less than one hundred kilowatts (100kW).

TONAL SOUND: A sound for which the sound pressure is a simple or complex sinusoidal function of the time and is characterized by a single frequency.

WIND POWER PROJECT: The collection of wind power structures and related facilities including substations for which a single permit may be sought.

WIND POWER TOWER: The support structure to which the nacelle and rotor blade are attached.

WIND POWER TOWER HEIGHT: The distance from the tip of the rotor blade at its highest point to the top surface of the tower foundation.

Section 5. Special Permit Use:

Article IV, Section 1 of the Town of Rensselaerville Zoning law is hereby amended to add the use “Wind Power Facility, Non-Commercial” to the use table under the category of General Uses and inserting “SP” under each zoning district indicating that said use requires a special permit from the Planning Board.

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Section 6. Site Plan Review, Standards and Requirements:

Article VIII of the Town of Rensselaerville Zoning Law (Local Law No. 1 of 1991) as amended from time to time) is hereby amended to include a new section 16 to read as follows:

Section 16: Non-Commercial Wind Power Facilities

A non-commercial wind power facilities located in the Town is permitted in all zoning districts in the Town provided a special permit is obtained from the Planning Board as to the specific facility and location. More than one non-commercial wind power facility may be allowed on a single property provided each such facility meets all of the requirements set forth in this section and the total aggregate generating capacity of all such facilities on-site is less than 100 kW.

A. Applicability and Application Material

The objective of the application is to have all pertinent information collected and available for review by the Planning Board and any interested parties. The Applicant shall submit all application materials to the Town Clerk pursuant to Article IX and this section.

1. The application shall include a project summary providing a description of the project including its generating capacity, potential or actual equipment manufacturers of the proposed wind power facility, maximum height of the facility, maximum diameter of rotor(s), and specific location of the wind power facility on the parcel and relation to neighboring properties.
2. The name(s), address(es) and telephone numbers of the applicant and all owners of land upon which the wind power facilities are planned.
3. A site plan or plans, drawn to specified scales for the installation of the wind power facility, including the location of the tower, guy lines and anchor bases, service drives, fencing and other appurtenances.
4. Information and data regarding the potential noise generation of the proposed facility.
5. Any other information normally required by the Planning Board pursuant to Article IX.
6. A completed SEQR Short Form Environmental Assessment Form (EAF) Part 1 with Visual Addendum or Long Form EAF Part 1 with Visual Addendum. The Planning Board may require the Long Form EAF if in its discretion it believes the additional information is necessary or appropriate given the specifics of the application and proposed location.
7. The applicant shall notify the Planning Board of any changes in the information provided that occur while the site plan approval is pending.

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B. Regulations, Standards and Requirements:

1. Design and Construction:

a. Wind power facilities shall conform to applicable industry standards including those of the American National Standards Institute (“ANSI”). Applicants shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories or an equivalent third party.

b. A professional engineer shall certify, as part of the building permit application, that the foundation and tower design of the wind power facilities are within accepted professional standards, given local soil and climate conditions.

c. During construction the Applicant may be required by the Planning Board to have a certified electrical engineer inspect and oversee the entire project delivery system for safety and quality assurance and report findings to the Code Enforcement Officer.

d. Controls and Brakes: All wind power facilities shall be equipped with a redundant braking system including aerodynamic over-speed controls and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over-speed protection.

e. Electrical components: All electrical components of wind power facilities shall conform to local, state and national codes, and relevant national and international standards (e.g. ANSI and International Electrical Commission). All power transmission lines from any wind power facility to on-site substations shall be underground.

f. Color: Towers and blades shall be painted a non-reflective, unobtrusive color that should be selected to blend in with the surrounding environment. No advertising or commercial logos or insignias shall be visible on the structures.

g. Climb protection: All wind power facilities must be protected by anti-climbing devices such as fences with locking portals at least 6 feet high or anti-climbing devices twelve (12) feet vertically from the base of the tower.

2. Height and Setback Requirements:

a. The maximum wind power tower height shall be one hundred and twenty-five (125) feet.

b. The minimum height of the end of rotor blades above ground surface shall be thirty (30) feet.

c. All towers shall be set back a minimum distance of 120% of the wind power tower height from any habitable structure, property lines, and the right of way line of public roads.

3. Noise Levels:

- a. The maximum noise level generated by wind power facilities shall be no more than forty (40) dBA (L_{A90}) as measured at the outside wall of any habitable structure and all property lines.
- b. If there are prominent impulsive, amplitude modulated low frequency, or tonal components to the sound generated by the wind power facility there will be an additional 5 dB penalty, therefore the measurement would then be 35 dBA (L_{A90}) maximum. If there should be a difference between the dBA (L_{A90}) and dBC (L_{C90}) measurements of 20 dB or greater, the 5 dB penalty will also be applied so that the noise level shall be no more than thirty-five (35) dBA (L_{A90}) as measured at the outside wall of any habitable structure and all property lines.
- c. The wind power facility shall be placed at an appropriate location on the parcel with sufficient setback distances from habitable structures and property lines so that noise levels measured at such points are below the maximum levels set forth in paragraphs a and b above.
- d. The Applicant shall submit to the Planning Board as part of the application materials, the manufacturer's data and sound measurements in dBA and dBC for the specific type of facility proposed together with the methods used to determine these measurements.
- e. For any proposed wind power facility over 25kW, the Planning Board, at its discretion, may retain a certified acoustic consultant of its choice in order to evaluate and advise the Planning Board on the potential noise impacts and mitigation measures for the proposed facility. The costs incurred for said consultant shall be reimbursed by the Applicant as part of the application fee.

4. Visual Impacts:

- a. Viewscape Impacts: The location of wind power facilities within a parcel and relative to adjacent properties should minimally impact the viewscape of habitable structures located on adjacent properties. The Planning Board may require a balloon test, site visits, photo renderings of the facility from specified vantage points, or other information in order to assess the visual impacts of the proposed facility.
- b. Shadow Flicker: The Planning Board shall also take into account the effect of shadow flicker, if any, since the high speeds of the rotor blades could have the potential to trigger photo-sensitive epileptic symptoms in some individuals.
- c. Lighting: No lighting shall be allowed on the wind power tower at a height greater than 12 feet above grade. All lighting of wind power facilities shall conform to the applicable requirements for lighting as set forth in the Zoning Law.

5. Interference with communications systems:

The wind power facility shall not interfere with microwave, cellular, or television/radio transmission/reception to or from existing primary structures and fixed broadcast, retransmission, or reception antennas on adjacent or nearby properties. If after construction the Owner receives a written complaint related to such interference, the Owner shall take reasonable steps, including provision of alternative communications, to respond to, and resolve, the complaint. The Owner shall provide the Planning Board with a report on the complaint; steps taken to respond to the complaint; steps taken to resolve the complaint and current status. Such report shall be submitted to the Planning Board within thirty (30) days of the date that the complaint was received by the Owner. The Planning Board shall have the authority to temporarily suspend operation of the turbine and/or revoke the special permit if a meritorious complaint is not satisfactorily resolved until such time that the complaint is satisfactorily resolved. The Owner shall be provided with an adequate opportunity to be heard before the Planning Board renders a final decision on the matter.

6. Wildlife Impacts:

The Applicant shall demonstrate the Project proposed will not infringe upon any designated wetlands and that appropriate measures will be taken to minimize soil erosion and watershed impacts. Appropriate State/Federal wetland permits need to be filed and approved and submitted with the application.

7. State and National Historic Register Properties and Districts:

Any wind power facility proposed within a historic district registered on the State or National Register or within 500 feet of a property or structure registered on said Registers, shall be subject to review by the State Office of Parks, Recreation and Historic Preservation. Impacts to any registered historic district, property, or structure shall be considered by the Planning Board.

C. Hearing Notification, Permit Timetable, Resale, Removal

1. Hearing Notification: A hearing on any application for a non-commercial wind power facility shall be held pursuant to the procedures set forth in Article IX of the Zoning Law, except with notice of the hearing be required to be sent to all abutting landowners, and those whose property lines are within five hundred feet of the proposed wind turbine location. Where the rated nameplate capacity of a proposed noncommercial wind turbine is 25kW or greater, then notification shall be required for all landowners whose property lines are within one thousand feet of the proposed turbine location.

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2. Permit Timetable. When a wind power site plan application is approved, construction must begin within twelve (12) months of the approval date, and the Owner has a total of 18 months to make a wind power Facility operational.

3. Resale of the Wind Power Facility. There shall be no resale of the wind power facility in its approved location except as part of the conveyance of the parcel on which it is located.

4. Removal: As a condition of the site plan approval, the Owner shall agree to the removal of the facility structures and cabling, if the wind power facility is no longer in use for a period of greater than one (1) year.

D. Decision Criteria and Guidance

1. The Planning Board shall issue a special use permit only if the proposed wind power facility and location meets all of the applicable requirements, restrictions, and standards set forth above in this section. Failure to meet any such requirement, restriction, or standard, or to adequately mitigate potential impacts, shall be sufficient for denial of the special permit. The Planning Board may, at its discretion, impose such conditions as are reasonably related to mitigate or avoid potential impacts.

2. The Planning Board may refer to the Recommendations Report on Non-Commercial Wind Power, dated July, 2009, as prepared by the Rensselaerville Wind Study Committee, and as may be amended from time to time, as guidance in reviewing special permit applications for noncommercial wind power facilities.

Section 7. Severability of Provisions:

Should any section or provision of this local law be declared null, void, voidable, or invalid, such finding shall not affect the validity of the remaining portions of this local law.

Section 8. Effective Date:

This local law shall take effect immediately upon filing with the Secretary of State of the State of New York.

END OF LAW