LOCAL LAW 1-2008

Wind Power Facility Law

FOR THE

Town of Worcester

Otsego County, New York

I. AUTHORITY. The Town Board of the Town of Worcester 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), (6), and (7).
C. New York Municipal Home Rule Law, §10(1)(i) and (ii) and §10(1)(a)(6), (11), (12) and (14).
E. New York Town Law, Article XVI, §261 (Zoning).

II. PURPOSE: The purpose of this law is to provide a regulatory framework for the initial construction and operation of Wind Power Facilities in the town, subject to reasonable restrictions, which will preserve the public health and safety.

FINDINGS: The Town of Worcester recognizes wind energy to be an abundant, renewable and nonpolluting energy resource that will reduce our dependence on nonrenewable energy resources and decrease the air and water pollution. And with reasonable restrictions and mitigating measures, the impact of commercial wind turbines to the local municipality will be addressed in order to preserve the public health and safety and to minimize, to the greatest extent possible, the visual, environmental and physical impacts to the surrounding community and its inhabitants.

III. 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.

"Applicant" - The entity, person or developer seeking a permit for the siting of a windpower facility.

"Financial assurance" – The reasonable assurance from a credit worthy party, examples of which include a security bond, sufficiently funded legal trust, cash escrow, irrevocable line of credit, or letter of credit.

"Landowner" – The owner of the land upon which wind power facility (ies) are located.

"Operator" – The entity responsible for the day-to-day operation and maintenance of the windpower facility, including any third party subcontractors.

"Owner"– The entity or entities with equity interest in the windpower facility, including their respective successors or designees.

"Planning Board" – The Planning Board of the Town of Worcester or authorized body as appointed by the Town Board.
Primary Structure” – Primary structures include residences and commercial buildings, for example.

“Professional Engineer” – A qualified individual who is licensed as a professional engineer in New York State.

“Setback” – The minimal allowable horizontal distance from a given point or line of reference, such as thoroughfare right-of-way, water line, or prospective line to the nearest vertical wall or other element of building of structure.

“Shadow Flicker” – The effect when the blades of an operating wind energy conversion unit pass between the sun and an observer, casting a readily observable, moving shadow on the observer and his/her immediate environment.

"Town Engineer Review" - An engineer hired by the Town of Worcester but paid for by the applicant.

"Town of Worcester” – The Township of Worcester located in Otsego County, New York as represented by the Town Board and Town Supervisor.

“Turbine” – A wind driven machine that converts wind energy into electrical power.

"View Impact” – The range of view from a point toward the horizon including natural and man-made components.

“Windpower facility” – Any wind-driven system that produces electrical power for commercial sale. Single turbines designed for on-site power consumption with a generating capacity of less than 100kW are exempt from these regulations.

“Windpower project” – The collection of windpower structures and related facilities including substations for which a single permit may be sought.

“Windpower tower” – The support structure to which the nacelle and rotor blade are attached.

“Windpower tower height” – The distance from the rotor blade at its highest point to the top surface of the tower foundation.

IV. APPLICABILITY AND APPLICATION MATERIAL

A. The objective of the application is to have all pertinent information collected and available for review by relevant parties. The Owner shall submit all application materials in triplicate to the Town Clerk of the Town of Worcester. The application for a permit requires documentation of relevant information pursuant to the regulations listed in Section V, below, as well as the following information:

1. The application will include a project summary providing (a) a general description of the project including its approximate generating capacity, potential equipment manufacturers, types and numbers of windpower facilities, maximum height of wind power towers, maximum diameter of rotor(s), general location of the project, long range plan of future development; and (b) a description of the Applicant, Owner and Operator, including their respective business structures;

2. The name(s), address (es) and telephone numbers of the Applicant, Owner and operators, all
landowners upon which the windpower facilities are planned or within project setback areas. Proof of written permission from all landowners will be required.

3. A site plan or plans, drawn to sufficient scale to clearly show the installation of the windpower facilities, including the location of each tower, accessory structures, guide lines and anchor bases, service drives, fencing and grating, soil protection/restoration locations and permanent meteorological towers. The plan or plans must include any Primary Structures within one mile of any tower, property lines including the identification of adjoining properties, setback lines, public access roads and turnout locations, substations, electrical cabling from the tower(s) to the substation(s), ancillary equipment, third party transmission lines and layout of all structures within the geographic boundaries of any applicable setback;

4. All required studies, reports, certifications and approvals demonstrating compliance with the regulations of Section V, below.

5. Any other information normally required by the Town of Worcester Planning Board, Otsego County or the State of New York.

6. A completed SEQR Long Form Part 1, and visual addendum.

B. The applicant will notify the Town Planning Board of any changes in the information provided in Section IV above that occur while permit approval is pending. Additions of new wind power facilities to an existing or permitted project require issuance of a new permit from the Planning Board.

C. Permit Timetable

1. When a Windpower Siting Permit Application is approved, construction must begin within 12 months of the approval date, and the Owner has a total of 24 months to make a Windpower Facility operational. The permit may be extended for 1 year if a written request is received by the Worcester Town Clerk 30 days before the permit expires.

D. Resale of the Windpower Facility and/or Windpower Project

1. The new owner bears the burden of all Town regulations and requirements enabling the issuance of this permit. A review of compliance contingent on these regulations is required prior to transfer of ownership to a prospective owner, by the Town Planning Board.

V. REGULATIONS AND REQUIREMENTS:

A. Design and Construction:

1. Windpower 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.

2. A professional engineer licensed in New York State shall certify, as part of the building permit application, that the foundation and tower design of the windpower facilities are within accepted professional standards, given local soil and climate conditions.

3. During construction the Applicant shall secure the services of a certified electrical engineer to
inspect and oversee the entire project delivery system for safety and quality assurance and report his/her findings to the Town Planning Board.

4. All service roads should meet specifications of Town of Worcester Highway Superintendent, the Town Board, and allow access for Emergency Services Equipment.

B. Controls and Brakes:

1. All windpower facilities shall be equipped with a redundant braking system including aerodynamic over speed controls and mechanical brakes.

2. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over speed protection.

C. Electrical components:

1. All electrical components of windpower facilities shall conform to local, state and national codes, and relevant national and international standards (e.g. ANSI and International Electrical Commission).

2. All power transmission lines from any windpower facility to on-site substations shall be underground. Power lines from collection stations may be run above ground to the maximum extent practical based upon the town engineer review.

D. Color:

1. Towers and blades shall be painted white or gray or another non-reflective, unobtrusive color. No advertising or commercial logos or insignias will be visible on the structures.

E. Compliance with Federal Aviation Administration regulations:

1. The applicant for the windpower project must demonstrate compliance with all applicable FAA requirements. A full description of the warning light plan must be provided with the application. A copy of written notification to the FAA and any response from the FAA will be required.

F. Warnings:

1. A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.

2. Visible, reflective objects such as flags, reflectors or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of 15 feet from the ground.

G. Climb protection:

1. All windpower facilities must be protected by anti-climbing devices such as fences with locking portals at least 6 feet high or anti-climbing devices 12 feet vertically from the base of the tower.

H. Setbacks:

1. All towers shall be set back at least 1500 feet from any primary structure. The distance for the above setback shall be measured from the point of the primary structure foundation to the center of the
closest windpower facility tower foundation. The owner of the primary structure may waive the setback requirement, but in no case shall a tower used for commercial power generation be located closer to a primary structure than 2 times the windpower tower height.

2. The minimum height of the end of rotor blades above ground surface shall be 30 feet.
3. All towers shall be set back a distance of 1.5 times the windpower tower height from public roads.
4. All towers shall be set back at least 1000 feet from third party transmission lines and communication towers.
5. In no case shall towers be located closer than 1.5 times the windpower tower height from any adjacent property lines, except if the adjacent property contains a wind power tower from the same facility.
6. Underground cables related to wind power facilities shall run no closer than 300 feet to the nearest Primary Structure foundation, livestock barn or stable.
7. All towers shall be set back a distance of at least 1.5 times the windpower tower height from any other windpower tower.
8. Documentation based on accepted software designed for the purpose must be presented demonstrating how the residences would be affected by seasonal shadow flicker (the casting of moving shadows by rotor blades at certain predictable times of the day and year) or:
   a. Applicant submits a legally binding agreement to eliminate or mitigate shadow flicker during the identified time periods of the identified days, for each year of operation, when shadow flicker would fall on a Primary Structure.
9. Any waiver of any of the above setback requirements shall run with the land and be recorded as part of the chain of title in the deed of the subject property.

I. Visual Impacts:

1. The Planning Board shall assess the visual impact with regard to the number of primary structures impacted and the potential for future development. Projects with significant visual impact may be considered with input from affected landowners within a 2 mile radius.
2. A project visibility map, base on a digital elevation model, showing the impact of topography upon visibility of the project from other locations, to a radius of two miles from the center of the project. The scale used shall depict the three-mile radius as no smaller than 2.7 inches, and the base map used shall be a published topographic map showing man-made features, such as roads and buildings.
3. No fewer than four, and no more than the number of proposed individual wind turbines, plus three color photos, no smaller than 3 inches by 5 inches, taken from locations within a two-mile radius from the site and to be selected by the Planning Board, and computer-enhanced to simulate the appearance of the as-built site facilities as they would appear from these locations.
J. Use of public roads:

1. An applicant, owner or operator proposing to use any town road for the purpose of transporting any and all materials related to windpower facility development (construction, operation, and maintenance) shall:

   a. Identify such public roads and contact the superintendent of highways for the Town of Worcester and Otsego County to obtain permission regarding weight and size limits for use of Town or County roads prior to construction. The applicant must include documentation of this contact and permission.

   b. Conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage. The Town of Worcester or Otsego County highway superintendent must approve this survey for Town or County roads, respectively.

   c. Secure Financial Assurance in a reasonable amount agreed upon by the Town of Worcester for the purpose of modifying or repairing any damage to Town of Worcester roads caused by constructing, operating or maintaining windpower facilities.

K. Emergency Agencies and Hazardous Material:

1. The Operator of a Windpower Facility will provide local fire departments and emergency service agencies with documentation of appropriate actions in case of emergency circumstances at the projects. Such documentation shall include the locations of all emergency shutdown controls, location of any potentially hazardous materials, and site maps showing access routes.

2. The Operator will provide emergency plan updates to the Town of Worcester should any changes in operation of facility occur.

3. All solid and liquid wastes related to the construction, operation and maintenance of a windpower facility shall be removed from the site and disposed of in accordance with applicable laws. Handling, transport and storage of wastes shall likewise be done in accordance with applicable laws.

L. Interference with communications systems:

1. The Applicant shall provide evidence in the form of test results or engineering studies that the windpower facilities proposed will not interfere with microwave, cellular or television/radio transmission/reception to or from existing primary structures and fixed broadcast, retransmission or reception antennas. Written proof that all potentially effected communication systems have been notified will be required. If after construction the Owner or Operator receives a written complaint related to such interference, the Owner or Operator shall take reasonable steps, including provision of alternative communications, to respond to the complaint. The applicant will provide to the Town Planning Board and Town Clerk any written complaints. Complaints will be investigated by an independent third party, hired by the Town and paid for by the operator.

M. Noise Levels:

1. The Applicant shall provide documentation that the maximum noise level generated by wind power facilities shall be no more than 50 dbA as measured at the closest primary structure. The Owner or Operator will provide results of annual noise testing demonstrating compliance with the maximum noise
level. Failure to comply with noise level requirements will result in revocation of the special permit for the facility.

N. Wildlife Impacts:

1. 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.

2. The Applicant shall provide the results of a survey covering one full year by a qualified independent professional such as an ornithologist or biologist to determine if the Project will have a substantial adverse impact on birds and/or bats. Such surveys, including radar and acoustic monitoring should be done in accordance with the latest guidelines from NYSDEC.

3. To minimize collisions with wildlife the lighting system for the site shall be designed in accordance with latest NYDEC guidelines.

O. Liability Insurance: The Owner or Operator of wind power facilities shall maintain a current general liability policy covering bodily injury and property damage with limits agreed upon by the Town of Worcester, as suggested by a consultant hired by the Town and paid for by the applicant.

P. Decommissioning plans: Prior to the granting of a special permit for project development, the Owner or Operator shall formulate a decommissioning plan cooperatively with the Town Planning Board.

The Decommissioning Plan shall include:

1. Provisions describing the triggering events for decommissioning of wind power facilities;

2. Provisions for the removal of structures, debris and cabling, including those below the soil surface;

3. Provisions for the restoration of the soil and vegetation;

4. A timetable approved by the Town Planning Board for site restoration;

5. An estimate of the decommissioning costs certified by a Professional Engineer, to be hired by the Town and paid for by the applicant.

6. Financial Assurance, secured by the Owner or Operator, for the purpose of adequately performing decommissioning, in an amount equal to the Professional Engineer’s certified estimate of decommissioning costs;

7. Identification of and procedures for Town Planning Board access to Financial Assurances;

8. A provision that the terms of the Decommissioning Plan shall be binding upon the Owner or Operator or any of their successors, assigns, or heirs;

9. A provision that the Town of Worcester shall have access to the site, pursuant to reasonable notice, to effect or complete decommissioning;
10. Removal of machinery, equipment, tower, and all other materials related to the project is to be completed within one year of decommissioning.

Q. Annual Operating Report: The Owner or Operator shall submit an annual operating report to the Town of Worcester and Town Planning Board by January 30 that summarizes yearly operations including total electrical power generation in the previous 12 months, changes in technical aspects of operations on the site, status of all individual Windpower Facilities including information on noise levels, and changes in business arrangements of the Owner or Operator.

1. In addition the report shall include:
   a. Proof of an annual Insurance Liability Policy
   b. Proof of Financial Assurance

VI. PENALTIES

A. Any violations of any of the provisions of this local law shall be an offense subject to a mandatory fine of Two Hundred-Fifty Dollars ($250.00) for each offense. Every such violation shall be deemed a separate offense for each week such violation, disobedience, omission, neglect or refusal shall continue.

B. In addition to the above provided penalties, the Town Board may also initiate an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any article of this local law.

EFFECTIVE DATE:

This Local Law shall become effective immediately upon the filing with the Secretary of State.