

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED

NOV 03 2005

~~County~~

~~City~~

Town

~~Village~~

of LEBANON

Local Law No. 1 of the year 2005

MISCELLANEOUS
& STATE RECORDS

A local law Regulating Windpower Facilities For The Town of Lebanon,
(Insert Title)
Madison County, New York

Be it enacted by the Town Board of the
(Name of Legislative Body)

~~County~~

~~City~~

Town

~~Village~~

of Lebanon as follows:

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

A Local Law Regulating
Windpower Facilities
for the
Town of Lebanon
Madison County, New York

I. DEFINITIONS:

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

“Town of Lebanon” – The Township of Lebanon located in Madison County, New York as represented by the Town Board and Town Supervisor.

“Applicant” - The entity or person 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 surety bond, trust instrument, cash escrow or irrevocable line of credit.

“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.

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

“Planning Board” - The Planning Board of the Town of Lebanon as appointed by the Town Board.

“Professional Engineer” – A qualified individual who is licensed as a professional engineer in any state in the United States.

“Primary Structure” – The structure that one or more persons occupy for the majority of time for personal or business reasons. Primary structures include residences and commercial buildings, for example.

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

“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.

II. APPLICABILITY AND APPLICATION MATERIAL

A. Windpower facilities located in the Town of Lebanon, Madison County, New York require a special permit from the Town Planning Board. 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 Lebanon. The application for a permit requires documentation of relevant information pursuant to the regulations listed in Section III, 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; 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 and all landowners upon which the windpower facilities are planned;

3. A site plan or plans, drawn to specified scales for the installation of the windpower facilities, including the location of each tower, guy 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 III, below.

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

6. A completed SEQR Long Form Part 1.

B. The applicant will notify the Town of Lebanon of any changes in the information provided in Section II above that occur while the special permit approval is pending. Additions of new windpower facilities to an existing or permitted project require issuance of a new special 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 18 months to make a Windpower Facility operational.

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.

III. 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 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 of Lebanon.

4. All service roads should meet specifications of Town of Lebanon highway superintendent and Town Board.

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.

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 FAA 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.

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 1,000 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 1,000 feet from public roads. In circumstances where a Windpower Project is proposed to be on both sides of a public road, the Town of Lebanon may waive this setback requirement. In no case shall towers be located closer than 2 times the windpower tower height from public roads.

4. All towers shall be set back at least 1,000 feet from third party transmission lines and communication towers.

5. All towers shall be set back a distance of at least 1,000 feet from any adjacent property lines. The affected adjacent property owner may waive this setback requirement. In no case shall towers be located closer than 2 times the windpower tower height from any adjacent property lines.

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. No wind turbines shall be located within eight (8) rotor hub heights (of the model of turbine used) of an existing residence, unless either:

a. Documentation based on accepted software designed for the purpose is presented demonstrating that the residences would not be affected by seasonal shadow flicker (the casting of moving shadows by rotor blades at certain predictable times of the day and year) or:

b. Applicant submits a legally binding agreement requiring the shutting down of turbines casting the 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. Viewscape impacts:

1. The arrangement of windpower facilities within a project and relative to adjacent projects should minimally impact the viewscape of primary structures within the project viewshed. Clustering of windpower facilities within a project should be done so as to limit the angular viewshed to 20 degrees as viewed one mile from the closest facility. Projects which exceed this will be considered to have significant viewscape impact.

2. The Planning Board shall assess the viewscape impact with regard to the number of primary structures impacted and the potential for future development. Projects with significant viewscape impact may be denied permits on that basis alone.

3. All towers shall be set back a distance of 1,000 feet from public roads. In circumstances where a Windpower Project is proposed to be on both sides of a public road, the Town of Lebanon may waive this setback requirement. In no case shall towers be located closer than 2 times the windpower tower height from public roads.

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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. 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.

M. Noise Levels:

1. The Applicant shall provide documentation that the minimum 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 minimum noise level. Failure to meet minimum noise level 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 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 or USF&WS.

3. To minimize collisions with wildlife the lighting system for the site shall be designed in accordance with latest USF&WS 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 Lebanon.

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 of Lebanon.

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 of Lebanon for site restoration;

5. An estimate of the decommissioning costs certified by a Professional Engineer;

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 of Lebanon 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 Lebanon 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 Lebanon 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

IV. EFFECTIVE DATE:

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

(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. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, in accordance with the applicable provisions of law.
(Name of Legislative Body)~~

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. _____ 1 _____ of 20____⁰⁵ of the (County)(City)(Town)(Village) of _____ Lebanon _____ was duly passed by the _____ Town Board _____ on April 11, 20____⁰⁵, and was (approved)(not approved)(repassed after disapproval) by the _____ Town Supervisor _____ and was deemed duly adopted on April 11, 20____⁰⁵, in accordance with the applicable provisions of law.
(Name of Legislative Body) (Elective Chief Executive Officer*)

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 _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ 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.
(Name of Legislative Body) (Elective Chief Executive Officer*)~~

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 _____ on _____ 20____, and was (approved)(not approved)(repassed after disapproval) by the _____ 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.
(Name of Legislative Body) (Elective Chief Executive Officer*)~~

* 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 2____, above.

Ashli Scott

Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body
Ashli Scott, Town Clerk

(Seal)

Date: 10/31/05

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF Madison

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Steven R. Jones

Signature

Steven R. Jones, Esq.

Title

Attorney for the

~~County~~

Lebanon

~~City~~ of _____

Town

~~Village~~

Date: 10/31/05