

Local Law Filing

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~~County~~
~~City~~ of Eagle
Town
~~Village~~

Local Law No. 3 of the year 2005

A Local Law Entitled the Town of Eagle Wind Energy Conversion Facilities Siting Law.

Being enacted by the Town Board of the Town of Eagle, hereby rescinding Local Law No. 2 of 2005 and supplanting it with this local law.

Section 1 - Introduction and Purpose.

The Town of Eagle has determined that a comprehensive local law regulating the development of wind power installations is necessary to protect the interests of the Town and its residents. This local law establishes a permissive and discretionary framework for the establishment of Wind Energy Conversion Facilities in the Town of Eagle.

Section 2 - Definitions.

Wind Energy Conversion Facility or Wind Energy Conversion Facilities shall refer to the siting of two or more mechanical devices such as a wind charger, windmill or wind turbine designed and used to convert wind energy into a form of energy for commercial sale. The net metering of the output from a wind charger, windmill or wind turbine pursuant to a tariff filed with the New York State Public Service Commission shall not be considered a Wind Energy Conversion Facility and is not subject to regulation by this local law.

Section 3 - Site Plan Review.

Wind Energy Conversion Facilities may not be constructed, erected, located, altered, or used without first obtaining review, approval and a license pursuant to this Chapter. The site plan, as specified herein, for all Wind Energy Conversion Facilities must be reviewed by the Town Planning Board and its designated expert. Upon completion of the Town Planning Board Review of the Wind Energy Conversion Facilities site plan, the Town Planning Board shall render an advisory recommendation to the Town Board recommending approval, denial or conditional approval of the site plan. The Town Board may then approve, deny or impose conditions on the Wind Energy Conversion Facilities site plan.

An applicant proposing a Wind Energy Conversion Facility must submit the following site plan materials:

1. Survey of the property showing existing features such as contours, large trees, buildings, structures, streets, utility easements, rights-of-way, land use, land use district, ownership of surrounding property, and vehicular access;
2. Site plan showing the location of proposed structures;
3. Preliminary engineering plans, including the location of new drainage facilities and transmission lines;
4. A description of the routes used by construction and delivery vehicles and any road improvements that will be necessary in the Town to accommodate construction vehicles, equipment or other deliveries;
5. Anticipated construction schedule; and
6. Description of operations (including anticipated regular and unscheduled maintenance).
7. A description of measures to be taken to ensure adequate storm water management and soil erosion control.
8. A description of measures that will be taken to minimize impacts on farm land and soils.

Section 4 - State Environmental Quality Review Act.

The applicant shall fully comply with the New York State Environmental Quality Review Act.

Section 5 - Visual Assessment.

An applicant shall submit a visual analysis, including a mitigation analysis, prepared by a qualified ecological/aesthetic engineer in a format generally accepted in the ecological/aesthetic engineering profession. The visual assessment shall also include but not be limited to an analysis of the lighting or illumination of the turbines and an assessment of any shadowing or other visual effect of the turbines relating to the level of natural or artificial illumination. The applicant will be required to assess any viewpoint as determined and directed by the Town Board. This analysis can be submitted as part of the application or can be included in the Draft Environmental Impact Statement (DEIS)

Section 6 - Avian Analysis.

The applicant shall submit an avian study to assess the potential impact of proposed Wind Energy Conversion Facilities upon bird and bat species. The avian study shall at a minimum report on a literature survey for threatened and endangered species, and any information on critical flyways. The applicant must identify any plans for post-construction monitoring or studies. The analysis should also include an explanation of potential impacts and propose a mitigation plan, if necessary.

Section 7 - Noise.

Wind Energy Conversion Facilities shall be operated so that the noise produced during operation shall not exceed fifty (50) dBA, measured at residential structures on parcels owned by persons not having a lease or noise easement with the project developer or owner.

Section 8 - Height Limitation.

The maximum permissible height for any device which is part of a Wind Energy Conversion Facility shall be four hundred fifty (450) feet measured as follows. The overall height of any device which is part of a Wind Energy Conversion Facility shall be measured from the highest vertical point of the wind turbine when the turbine blade is in a vertical position perpendicular to its base.

Section 9 - Setbacks.

The tower or towers for a Wind Energy Conversion Facility must meet the following set back requirements (all set back distances shall be measured from the center line of the wind turbine). The overall height of any device which is part of a Wind Energy Conversion Facility shall be measured from the highest vertical point of the wind turbine when the turbine blade is in a vertical position perpendicular to its base. The setback specifications contained in this paragraph may be relaxed or altered by the Town Board, in its discretion, should an applicant demonstrate by its site plan that the purpose and policy to be served by setbacks can be satisfied by setbacks at variance with those contained in this section.

1) The Wind Energy Conversion Facility installation shall be set back a minimum of 1.2 times of the overall height of the structure from the edge of the right of way of any public road or from any non-Wind Energy Conversion Facility structure (said structure to only include such structures that reasonably require this set-back provision) or any above ground utilities or from the property line of any owner who is not a participant in the Wind Energy Conversion Facility project. Right of way for purposes of this setback requirement shall mean the edge of the right of way closest to the Wind Energy Conversion Facility structure.

2) A minimum of 1,000 feet from the nearest off-site non-Wind Energy Conversion Facility participant's residence, measured from the exterior wall of the residence.

Section 10. Electromagnetic Interference.

No individual tower shall be installed in any location where its operations is likely to interfere with existing transmission or reception related to wireless, telephone, radio, television or microwave communications.

Section 11 - Application Fee.

To initiate the review process contemplated by this Chapter, including site plan review, an applicant for a Wind Energy Conversion Facility shall remit an application fee to the Town in the amount of Three hundred dollars (\$300.00) per megawatt of generating capacity. Said sum shall not be refundable in whole or in part.

Section 12 - License.

Upon final Town Board approval of a Wind Energy Conversion Facility site plan, an applicant must apply for and obtain a license to operate a Wind Energy Conversion Facility. The license issued shall be for a minimum term of ten (10) years subject to an annual certification by licensee of compliance with the terms of the license. An annual licensing fee shall be assessed based upon the megawatt capacity of the Wind Energy Conversion Facility at a rate to be determined by resolution of the Town Board and fixed for a ten (10) year period. The license issued by the Town of Eagle pursuant to this section shall contain, among other things, provisions regarding the potential decommissioning of a Wind Energy Conversion Facility structure and further provide for the removal of wind power facility structures that cease to be used for their intended purpose for a period of twelve (12) consecutive months and provide security for such removal.

In considering whether to issue a license under this section, the Town Board for the Town of Eagle shall consider the approved site plan, the aesthetic impact of the particular Wind Energy Conversion Facility depicted in the site plan, the location of the Wind Energy Conversion Facility, the aesthetic, physical, economic, and sociopolitical impact of the impact of the Wind Energy Conversion Facility upon the Town of Eagle as well as the general health and welfare of the community. This law is not intended to establish or create a right to operate a Wind Energy Conversion Facility but rather permits the Town Board to issue such a license to operate should it determine to do so under the terms of this local law.

Section 13 – Indemnity and Save Harmless Agreement.

The applicant licensee shall agree to indemnify and save the Town, its officers, agents and employees harmless from any liability imposed upon the Town, its officers, agents, and/or employees arising from the negligence, active or passive, of the applicant.

Section 14 - Security.

Following the completion of construction, the applicant shall certify that reasonable and appropriate security will be in place to reasonably restrict unauthorized access to Wind Energy Conversion Facilities, subject to the reasonable requirements of the individual landowners on whose property the project is located.

Section 15 - Effective Date.

This local law shall become effective upon the filing with the New York State Department of State.