

TOWN OF BARRE

LOCAL LAW NO. __ FOR 2018

A LOCAL LAW TO AMEND ARTICLE XI OF THE TOWN OF BARRE ZONING LAW

Section 350-98

Add the following definitions:

NON-PARTICIPATING PROPERTY - real property where the owner does not have a contract with the developing wind power company.

PARTICIPATING PROPERTY - real property where the owner has a contract with the wind power company.

SENSITIVE RECEPTOR – non-participating residences, hospitals, care centers, schools, libraries, places of worship, cemeteries, public campsites and summer camps, public parks, and New York State lands.

Section 350-103 Standards

(A)(4)

Revise as follows: “No individual wind energy generating unit shall be installed in any location where it may pose a hazard to air navigation, area airports, or private airstrips.”

(A)(6)

Add: “This provision does not apply to transmission infrastructure or wind measurement towers, unless otherwise feasible or required.”

(A)(8)(c)

Revise as follows: “A distance not less than 1.5 times the tip height of the wind energy generating unit, as measured from non-participating property lines.”

Add: “A distance of 1,500 feet from nonparticipating sensitive receptors.”

(B)(1)

Amend as follows:

“The level of noise produced by or from the operation of the wind energy conversion system shall, unless otherwise determined by the New York State Board on Electric Generation Siting and the Environment (“Siting Board”):

- a) Not exceed a maximum noise limit of 45 (dBA) Leq (8-hour) at any permanent or seasonal non-participant residence existing as of the issuance date of required permits and 55 dBA Leq (8-hour) for any participant residence.

- b) Not produce any audible prominent tones, as defined under ANSI S12.9 Part 4-2005 Annex C at any non-participant residences. Should a prominent tone occur, the broadband overall (dBA) noise level at the evaluated position shall be increased by 5 dBA for evaluation of compliance.
- c) Not produce human perceptible vibrations inside any non-participant residence existing as of the issuance date of this Certificate that exceed the limits for residential use recommended in ANSI Standard S2.71-1983 (August 6, 2012) "Guide of evaluation of human exposure to vibration in Buildings."
- d) Comply with a limit of 40 dBA Leq (1-hour) at the outside of any non-participating residence from the collector substation equipment, and subject to the tonal penalties noted in subsection (c) above.
- e) These standards shall apply unless a more restrictive standard is adopted by the Board on Electric Generation Siting and the Environment (the Siting Board).

Emergency situations are exempt from these limits.

(F)

Revise as follows:

"Blade sweep and tip height. The minimum height of the lowest part of the blade sweep area shall be 30 feet above the highest existing major structure or tree within a one-hundred-fifty-foot radius of the base of the wind energy conversion unit. The total tip height for each wind energy conversion unit cannot exceed 600 feet as measured from the base of the unit to the tip of the unit's longest blade."

(H)

Amend to add "to the extent possible."

(J)

Amend as follows:

"Shadow flicker. The wind energy conversion system shall be designed such that shadow flicker from an individual wind energy conversion unit will not fall on ~~any specific area of a roadway or a portion of a residential structure in excess of 25 hours per year.~~ sensitive receptors and non-participating businesses in excess of 30 hours per year. If an individual residence is being impacted by multiple wind energy conversion units, the cumulative effect of said impact shall not exceed ~~25~~ 30 hours per year. If shadow flicker exceeds these conditions, the source wind energy conversion unit shall be shut down until the offending condition is remedied, or the Applicant shall be required to take those other measures specified in the Facility's Article 10 Certificate conditions."

(M)

Amend to add: "except where certain activities (such as cement pours or component deliveries) or other conditions (such as high wind speeds during the day) may, from time to time, require deviation from these hours, but which activities would be limited to turbine sites and the immediately surrounding area during any such period of deviation. Limitations of activities for

which deviation from construction hours will be permitted, and procedures for providing notice thereof, should be set forth as permit or certificate conditions.”

Section 350-104

Amend (B)(1) as follows:

“Allow noise or shadow flicker levels to exceed the maximum limits otherwise allowed; or”

Section 350-105 Decommissioning

Repeal and Replace (A) through (C), and (H) through (I) with the following:

(A) Financial Assurance. The Applicant must provide financial assurance for decommissioning costs in accordance with this Section:

- 1) Prior to the erection of any wind turbines, the Applicant will post and maintain financial assurance in the amount of the net decommissioning costs, on a per-turbine basis, to be determined by a qualified independent engineer. The net decommissioning cost shall be the total cost of decommissioning less the salvage value of the equipment and/or re-sale values multiplied by the total number of turbines.
- 2) The net decommissioning cost must be re-evaluated after one year of operation of the project and every fifth year thereafter.
- 3) Financial assurance may be in the form of bond, escrow account, or other form approved by the Town Board or, in the case of facilities over 25 megawatts in size, by the New York State Board on Electric Generation Siting and the Environment.
- 4) Any costs incurred by the Town related to decommissioning of the Facility which exceed the amount of such financial assurance or are not covered by such financial assurance shall be the complete and sole responsibility of the Applicant. If the Applicant is insolvent and such costs cannot be practicably collected from said applicant, then such costs shall become a lien upon the property upon which the costs were incurred and said lien shall thereafter be assessed on the next succeeding year’s tax bill for such parcel and collected in accordance with normal tax foreclosure proceedings if such tax bill remains unpaid thereafter.
- 5) Upon completion of required removal activities, any remaining portions of the posted financial assurance shall be returned to the Applicant forthwith.

(B) Decommissioning. At the end of its useful life, or where otherwise necessary, an individual turbine may need to be decommissioned, or the entire project will be decommissioned. Decommissioning includes dismantling and removing wind turbines and project components on

property owned or leased by the Applicant. The Applicant must perform decommissioning activities in accordance with this Section:

- 1) The Applicant, and its successors or assigns or heirs, are responsible for decommissioning and all costs associated with decommissioning the project and associated facilities.
- 2) All above-ground components being decommissioned, including but not limited to, turbines, blades, nacelles, towers, transformers, above-ground collection cables and poles, permanent meteorological towers, and the collection substation, must be removed.
- 3) Foundations and collection lines buried less than above a depth of 36 inches in non-agricultural lands and 48 inches in agricultural lands must be removed.
- 4) Foundations and buried project components below a depth of 36 inches in non-agricultural lands and 48 inches in active agricultural lands may remain in place.
- 5) Decommissioning activities must be completed within one year of decommissioning initiation unless otherwise approved by the Town Board.

(C) Restoration. The Applicant must restore the project site in accordance with this Section:

- 1) The Applicant, and its successors or assigns or heirs, are responsible for restoration and all costs associated with restoring the project site.
- 2) Ground disturbance must be minimized to the extent practical and the site restored to its original ground contours if possible.
- 3) Disturbed on-site soils and vegetation will be reasonably restored and reestablished using native seed mix or, in any agricultural areas, in coordination with the landowner to allow desired crops to be replanted.
- 4) Roads must be adequately restored to their original condition or better following decommissioning activities.
- 5) Access roads, fencing and residual minor improvements may remain with written consent from the landowner.

§350 – 105 (D) through (G)

Amend and Renumber as follows:

(D) Should the wind energy conversion system or any portion thereof not operate for a total continuous period of ~~60 days within any ninety day period six months~~, the Town shall notify the applicant that such offending wind energy conversion system or portion thereof shall be removed

or made operational as provided in ~~Subsection _____~~ of subsections (B), (E), (G) and (H) of this section.

(E) The applicant shall remove any discontinued, decommissioned, obsolete or unused wind energy conversion system or portions thereof and restore the site to preconstruction conditions, ~~in accordance with subsection (C) above,~~ or make the wind energy conversion system or portion thereof fully operational, within ~~90 days of~~ six months of delivery or receipt of the notification set forth in Subsection D of this section, unless such time limit is extended by the Town Board for good cause shown, but the total period shall not exceed ~~180 days~~ one year. Nonfunction or lack of operation may be proven, among other means, by reports to the Public Service Commission, NYSERDA, or by lack of income generation. The applicant or its successor shall make available (subject to a nondisclosure agreement, if requested) to the Town Board all reports to and from the purchaser of energy from individual wind energy conversion systems, if requested, necessary to prove the system is functioning, which reports may be redacted as necessary to protect proprietary information.

(F) Prior to the expiration of this time, the applicant may apply to the Town Board for a further extension in time for which such wind energy conversion system or portion thereof needs to be removed or made operational, up to an additional time of six months. Such extension shall only be granted if the applicant demonstrates good cause that such extension is necessary as a result of uncontrollable events such as weather delays, repair delays or other similar conditions requiring the need for such extension.

(G) Failure to notify within a reasonable period and/or remove any ~~discontinued, decommissioned, obsolete~~ or unused wind energy conversion system or portion thereof in accordance with this article shall be in violation of this article and subject the applicant to the penalties set forth herein. In addition, the cost of removing the offending wind energy conversion system or portion thereof shall be drawn against the financial surety posted by the applicant for demolition or decommissioning of the project as set forth in this section.

Section 350-106 Other operating considerations; permit revocation

(A) Add the following: "This provision will not apply if the underlying landowner requests that a different vegetation type or landscaping measure be taken after installation of the project, such as planting of different agricultural crops or return of barren land to agricultural production."

Add:

(F)

"The provisions set forth in paragraphs D and E of this section shall not apply if the Applicant can demonstrate that the non-operation of turbine(s) is due to conditions outside of the Applicant's control, such as required compliance with state or federal agencies or regulations, other permit conditions, or where a transmission utility so requires."