

notice to the Zoning Officer and on the cause shown.

f. **Appeal from Decision of Zoning Board of Appeals.** All decisions of the Zoning Board of Appeals are subject to court review in accordance with applicable laws of the State of New York. Decision of the Zoning Board of Appeals shall be filed with Town Clerk.

9.90 PUBLIC HEARINGS AND NOTICE

The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice thereof by the publication in the official paper of a notice of such hearing at least five (5) days prior to the date thereof and shall at least five (5) days before such hearing mail notices thereof to persons and owners of properties involved in accordance with the requirements of this ordinance and the Consolidated Laws of the State of New York.

9.91 When Appealing Action of the Zoning Officer

In case of an appeal error or misinterpretation in any order or other action by the Zoning Office, the following person shall be notified. The appellant and the person or persons, if any, who benefit from the order, requirement, regulation or determination.

9.92 When Appealing for Variance Special Use

In case of an appeal for a variance or in case an application for a special exception use, as provided for in this ordinance, the following persons shall be notified: All owners of property for which the variance or special exception use is sought.

9.93 Required Interval for Hearings on Applications and Appeals After Denial

Whenever the Board after hearing all the evidence presented upon an application or appeal, under the provisions of this ordinance, denies the same, the Zoning Board of Appeals shall refuse to hold further hearings on the said or substantially similar application or appeal by the same applicant, his successor, or assign except and unless the Zoning Board of Appeals shall find and determine from the information supplied by the request for a rehearing that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity, and general welfare, and that reconsideration is justified.

9.94 Fees

Fees to cover the costs of processing applications for building permits shall be payable to the Town of Augusta according to a schedule of fees as adopted by the Town Board.

ARTICLE 10

ZONING BOARD OF APPEALS

10.10 ORGANIZATION AND PROCEDURES

10.11 Establishment

The Zoning Board of Appeals, heretofore created pursuant to the provision of the Town Law, is hereby continued as not constituted. Each member of said Board of Appeals shall continue to hold office to the expiration of his present term. The Town Board shall appoint a successor as provided by law.

10.12 Appointment to Fill Vacancies

Appointment to fill vacancies shall be for unexpired term of the member or members whose term or terms become vacant.

10.13 General Grant of Power

The Board shall perform all the duties and have all the powers prescribed by the laws of the State of New York and as herein described.

10.14 Voting Necessary for Decision

A quorum of a majority of the members of the Board is required for the Board to act in official session. The concurring vote of a majority of the full membership of the board shall be necessary to

- 1) reverse any order, requirement, decision or determination of the Zoning Officer or to
- 2) decide in favor of the appellant any matter upon which it is required to pass under the terms of this ordinance or
- 3) to affect any variation of this ordinance. However, if the Board receives a petition protesting a requested action signed by five (5) registered voters of the Town, four fifths vote of the full membership of the Zoning Board will be required for a decision

10.20 Powers and Duties

The Board shall hear and decide appeals from and review any order, requirements decision and determination made by the Zoning Officer administering this ordinance. It shall also hear and decide all matter referred to it or upon which it is required to pass under the provisions of this ordinance.

10.21 Variances

The Board may vary or adapt the strict application of any of the requirements of this ordinance in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions, whereby strict application would result in practical difficulty of unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. No variance in the strict application of any provision of this ordinance shall be granted by the Board unless it finds:

- . That there are special circumstances or conditions, fully described, in the findings of the Board, applying to such land or buildings and not, applying generally to land or buildings in the neighborhood, and that said circumstances or conditions are such that strict application of the provisions of this ordinance would-deprive the applicant of the reasonable use of such land or buildings.
- . That, for reason fully set forth in the findings of the Board, the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that will accomplish this purpose.
- . That the granting of the variance, will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- . The hardship cannot be self-created.
- . Findings of fact for use variances. The Zoning Board of Appeals shall make the following findings of fact prior to granting a use variance for relief from the strict application of the Zoning Ordinance.
 - . The land in question cannot yield a reasonable return if used for a purpose allowed in that zone;
 - . The plight of the owner is due to unique circumstances and not to the general conditions of the neighborhood;
 - . The use to be authorized will not alter the essential character of the neighborhood;
- . Findings of fact for area variances. The Zoning Board of Appeal shall make the following finding of fact prior to granting an area variance for relief from the strict application of the Zoning Ordinance:
 1. Strict application of the ordinance would result in practical difficulties.
 - g. In reviewing an application for a variance, the standards in any applicable local law or ordinance or state statute shall take precedence over the provisions of subsections 10.22 (e) and (f) whenever a conflict occurs.
 - h. Any area variance granted for the placement of a structure or mobile home shall be abrogated, in the event that the structure or mobile home is removed for a period of more than one (1) year.

10.22

Interpretation

The Board shall, upon appeal from a decision by an administrative official, decide any

question involving the application of any provision of this ordinance, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

10.23 Referral to Local and County Planning Board

The Board shall refer to the Planning Board such matters as required by this ordinance and any other pertinent matters for review and recommendation and defer any decision thereon for a period of not more than thirty (30) days pending a report from the Planning Board shall be deemed to have approved the application for appeal. In cases where referral is required to the County Planning Board under provisions of Article 12-B, Section 239-L and M of the General Municipal Law such referral shall be made.

10.30 PROCEDURE

The Board shall act in strict accordance with the procedure specified by law and by this ordinance. All appeals and applications made to the Board shall be in writing, on forms prescribed by the Board and in accordance with Article 9. Every appeal or application shall refer to the specific provision of the ordinance involved, and shall exactly set forth the interpretation that is claimed, the use for which the special permit is sought, or the details of the variance should be granted, as the case may be.

At least thirty (30) days before the date of the hearing required by law on an application or appeal to the Board, the secretary of said Board shall transmit to the Planning Board a copy of said application of appeal together with a copy of the notice of the aforesaid and shall request that the Planning Board make a determination in accordance with Section 9.60.

Every decision of the Board shall be by resolution, each of which shall contain a full record of the findings of Board in the particular case.

ARTICLE 11

AMENDMENTS

11.10 TOWN BOARD MAY AMEND

The Town Board may, from time to time, on its own motion, or on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this ordinance after review by the town's attorney, public notice and hearings as provided by the Consolidated Laws of New York State.

11.20 REVIEW BY PLANNING BOARD

Every such proposed amendment or change whether initiated by the Town Board or by petition, shall be referred to the Town's Planning Board for report thereon before the public hearing hereinafter provided for. If the Town's Planning Board shall fail to submit such report within forty-five (45) days after receiving such proposed amendment, it shall be deemed that the Planning Board has approved the proposed amendment or change.

11.30 REFERRAL TO COUNTY PLANNING BOARD

In cases where referral is required to the County Planning Board under provisions of Article 12-B, Section 239-L and M of the General Municipal Law, such referral shall be made.

11.40 PUBLIC NOTICE AND HEARING

11.41 PUBLIC NOTICE

By publishing a notice at least ten (10) days in advance of such hearing in the official town newspaper such notice shall state the general nature of the proposed amendment in such reasonable detail as will give adequate notice of its contents, shall name the place or places where copies of the proposed amendment may

and
be examined.

11.42 OPPORTUNITY TO BE HEARD

At the public hearing, full opportunities to be heard shall be given to any citizen and all interested parties.

11.43 ADOPTION AFTER PROTEST

The favorable vote of three-fourths of the Town Board shall be required before the passage of an amendment that is protested by the owners of twenty (20) percent or more of the area of:

- a. The land included in such proposed change.
- b. The land immediately adjacent extending five hundred (500) feet there from or directly opposite thereto, extending five hundred (500) feet from the street/road frontage of such opposite land.

11.44 CHANGES, AMENDMENTS OR SUPPLEMENTS

All changes, amendments or supplements to this ordinance and to the Zoning Map, which forms a part thereof, shall be adopted in accordance with the provisions of the Consolidated laws of New York State.

ARTICLE 12

INTERPRETATION

12.10 INTERPRETATION, CONFLICT WITH OTHER LAWS

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, morals, safety, or the general welfare. It is not intended to interfere or abrogate or annul other rules, regulations of ordinances, the most restrictive; or that imposing the higher standards, shall govern.

12.20 VALIDITY

Should any section, subsection, sentence, clause, phrase or provision of this ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

12.30 EFFECTIVE DATE

This ordinance shall take effect ten (10) days from the publication, as provided by the Town Law.

ARTICLE 13

PERFORMANCE STANDARDS

All uses shall comply with all rules and standards promulgated by the State of New York. Such rules and standards are Water Quality Standards, Air Quality Standards, the N. Y. S. Sanitary Code and any other such regulation that may be adopted. In addition, all uses shall comply with the following:

1. Sound. The volume of sound inherently and recurrently generated shall be controlled so as not to become a nuisance to adjacent uses.
2. Vibration. An operation that creates intense earth-shaking vibration, e.g., heavy drop forges, heavy hydraulic surges, shall not be discernible beyond the property lines of the industry.
3. Radioactivity. No operation shall be permitted which causes radioactivity in violation of Title 10, Chapter 1, Part 20, code of Federal Regulation, "Standards for Protection Against Radiation." Date June 16, 1957, or any subsequent revision or amendment
4. Odor. No emission of odorous gas or other odorous matter in such quantity as to be detrimental or to endanger the public health, safety, comfort or welfare, or cause injury or damage to property or business, shall be permitted.
5. Toxic or Noxious Matter. No discharge beyond lot lines of any toxic or noxious matter in such quantity as to be detrimental or to endanger the public health, safety, comfort or welfare, or cause injury or damage to property or business, shall be permitted.
6. Glare. No direct or reflected glare shall be detectable from any A and R-District boundaries.
7. Heat. No direct or reflected heat shall be detectable from any A and R-District boundaries.
8. Dust and Fly Ash. No solid or liquid particles shall be emitted in such quantities as to be readily detectable at any point along lot lines or as to produce a public nuisance or hazard beyond lot lines.
9. Smoke. No smoke shall be emitted in such quantity as to become a nuisance.
10. Hazardous Waste.
 - Facilities for the treatment, storage, or disposal of hazardous waste are not permitted within the Town of Augusta unless such facilities are in compliance with applicable State Law and Department of Environmental Conservation Rules and Regulations.

- The transportation of hazardous waste over Town roads is prohibited unless such transportation is in compliance with applicable State Law and Department of Environmental Conservation Rules and Regulations.
- Septic Tank Wastes. Septic tank wastes shall not be discharged on open ground In the Town of Augusta but must be transported to sewage treatment plants. This section shall not preclude the spreading of septic tank waste on farmland under a valid New York State Department of Environmental Conservation perm
- 11. The Solid Waste Management Law. The Town of Augusta adopted. As Local Law No. 3 of 1983 and any amendments thereto must be complied with.

12. Removal of Dangerous Buildings or Structures. All costs and expense incurred by the Town of Augusta in connection with the demolition and removal of any such building or structure shall be assessed against the land on which such building or structure is located, and a bill for such expenses shall be presented to the owner of the property, or if the owner cannot be ascertained, then such bill shall be posted in a conspicuous place on the premises. Such assessment shall be, and constitute a lien upon such land. If the owner shall fail to pay for such expenses within 10 days after the bill is presented or posted, a legal action may be brought to collect such assessment or to foreclose such lien: As an alternative to the maintenance of any such action the Zoning Enforcement Officer of the Town of Augusta may file a certificate of the actual expenses incurred as aforesaid, together with a statement identifying the property in connection with which the expenses were incurred, and the owner thereof, with the assessor, who shall in the preparation of the next assessment roll assess such amount upon such property, shall constitute a lien and shall be collected and enforced in the same manner, by the same proceedings, at the same time, and under the same penalties as is provided by law for the collection and enforcement of real property taxes in the Town of Augusta, Oneida County, New York

13. Regulating the Storage and Land Spreading of Septic and Sewage Waste. Due to the increasing cost of land filling, septic waste and sewage sludge, land spreading of such wastes is being proposed on a more widespread basis; and as the Town is increasingly characterized by residential properties adjoining agricultural lands, and agricultural lands being converted to residential use; and whereas the application of materials which have not additionally been considered farm products to agricultural lands creates issues which may hamper land transfers and future development within the town; and whereas there are limited public water supplies within the Town of Augusta and most properties within the town are serviced by private wells or springs; and whereas contamination or potential contamination of ground water supply within the Town poses a threat to the health, safety and general welfare of the residents of the Town and whereas septic waste and sewage sludge, as well as byproducts derived from such wastes, may contain varying levels of pathogens, nitrates, heavy metals, and other harmful substances which, when applied to the soil in sufficient quantities, may endanger water supplies and insufficient concentrations constitute a health hazard; whereas other regulations designed to protect the ground water supplies in the Town from contamination from the land spreading and storage of septic wastes and sewage sludge may not provide for adequate monitoring to prevent contamination of soils and ground within the town. It is determined that the most effective manner to protect the public health, safety and general welfare of the residents of the Town is to prohibit the land spreading and open storage of such wastes.

13.a. WASTE DEFINITIONS.

DISPOSE OR DISPOSAL. The discharge, deposit, injection, dumping, spilling, or placing of any sludge or septage into or on any land or water.

SEPTAGE. The contents of a septic tank, cesspool, or other individual or group treatment or storage facility, which receives domestic sewage, waste.

SLUDGE. Any solid, semi-solid, or liquid waste generated or deposited from municipal or private sewage treatment plants, or from byproducts of food processing, including but not limited to any and all byproducts or derivatives from septage or sludge as heretofore defined, whether or not chemicals or other compounds have heretofore defined, whether or not chemicals or other compounds have been added to the septage or sludge to create the byproducts.

13.b. PROHIBITION.

No person or corporation shall dispose of any septage or sludge as defined by this local law within the Town Of Augusta except by landfilling at a properly regulated site for which all federal, state, and local permits have been obtained. No person or corporation shall store any septage or sludge within the Town of Augusta except in a fully enclosed container, receptacle, or facility which will prevent the spilling and leaking of the septage prohibition shall not prevent the

installation, maintenance and operation of a sepsystem or sewage treatment plant in accord with all other local, state, and federal rules and regulations.

13.c. PENALTIES

Any person or persons violating any of the provisions of this local law shall be punished, upon conviction, by a fine of not more than Twenty-five Hundred (\$2,500.00) Dollars or confinement to a maximum term of imprisonment for a period not to exceed fifteen (15) days, or by both such fine and imprisonment. Each day's continued violation shall constitute a separate and additional violation hereunder.

13.d. CONSTRUCTION

Nothing in this local law shall be deemed to impair or diminish any cause of action or remedy which the town may have under NY other local law, statute, ordinance or regulation or under the common law; provided, however, that in the case of a conflict, those terms or rules of law shall control which are most restrictive. In addition, thereto, the Town of Augusta may enforce this local law by court injunction.

13.e. LIABILITY

Any person adjudged in a criminal or civil proceeding to have violated this local law shall be liable to the Town of Augusta for all expenses incurred by the Town in connection with the proceedings, including, but not limited to, reasonable attorney's fees and court costs, laboratory testing or fees for expert witnesses needed for prosecution, any remedial action necessary to bring effected property or lands into compliance to prevent further environmental hazards including "clean up" if necessary.

13.f. SEVERABILITY

If any clause, sentence, paragraph by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part thereof directly involved in the controversy, dispute or proceedings in such judgement is rendered. The provisions of this local law shall be construed in such a manner so as not to violate the provisions of the Interstate Commerce Clause of the Constitution of the United States. In the event that the prohibition established hereunder shall be deemed to violate the Interstate Commerce Clause, this local law shall be interpreted to apply only to interstate regulation of septic and sludge disposal.

13.g. WHEN EFFECTIVE. This local law shall become effective upon the date it is filed in the Office of New York State Secretary of State.

ARTICLE 14

WINDPOWER FACILITY

1. DEFINITIONS:

Windpower Facility – Any wind-driven system that produces electrical power for commercial sale or for use in a commercial enterprise.

Town – The Town of Augusta in Oneida County, New York represented by the Town Board and Town Supervisor.

Applicant – The entity or person seeking a permit for the construction of a Windpower Facility.

Financial Assurance – The reasonable assurance from a credit worthy party, examples of which includes a surety bond, trust instrument, cash escrow or irrevocable line of credit.

Ice Melt Hazard – Pieces or sheets of ice thrown from the rotating blades during climate change.

Meteorological Tower – Used for wind data collection.

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

Over Speed Control - A mechanism used to limit the speed of blade rotation to below the design limit of the system.

Owner – The Developer with interest in the Windpower Facility, including their respective successors or designees.