

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.

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

Planning Board – The Planning Board of the Town of Augusta as appointed by the Town Board.

Professional Engineer - A qualified individual who is licensed as a Professional Engineer in the State of New York.

Residential Windpower Facility – Private generating facility <100 kW for homes, farms and remote locations.

Swept Area – The largest area of the Wind Turbine which extracts energy from the wind stream. In a conventional system there is a direct relationship between the rotor diameter and the swept area.

Site – The plot of land where the Windpower facilities are to be placed. The site could be publicly or privately owned.

Viewscape – 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.

I. APPLICABILITY AND APPLICATION MATERIAL

A. Windpower Facilities located in the Town of Augusta, Oneida County, New York require an application, and Special Use Permit from the Town Planning Board. The objective of the application is to have all pertinent information collected and available for review to involved parties. The Applicant shall submit all application materials in triplicate to the Town Clerk of the Town of Augusta. The application 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 number of Windpower facilities, maximum height of Windpower 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 structure.
2. The name (s), address(es) and telephone number of the Applicant, Owner and operators and all landowners upon which the Windpower Facilities are planned:
3. A plan drawn for the installation of the Windpower Facilities, including the location of each tower, guy lines and anchor bases, service drives, fencing and grading; soil protection, restoration, locations and meteorological towers. The plan or plans must include any structures within one mile of any tower, property lines including the identification of adjoining properties, setback lines, public 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 Augusta Planning Board, Oneida County or the State of New York.
6. A completed SEQR Long Form Part 1.
7. Wildlife impacts and Avian testing as required by the NYSDEC.

B. The applicant will notify the Town of Augusta of any changes in the information provided in Section II above that occur while the approval is pending. Additions of new Windpower Facilities to an existing or approved project require an application and review from the Planning Board.

C. Review Timetable. When a Windpower Application is approved a Special Use Permit will be issued and construction must begin within 18 months of the approval date, and the Owner has a total of 24 months to make a Wind power Facility operational. Permits would expire at the end of specified time frame. Permit could be extended by the Town Board if conditions warrant.

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

1. On transfer of ownership the new owner bears the burden of all Town regulations and requirements.

II. REGULATIONS AND REQUIREMENTS:

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) Applicant shall certify, as part of the application process that the foundation and tower design of the Windpower Facilities are within accepted professional standards, local soil and climate conditions and shall submit findings to the Planning Board for their review.
- 3) All service and access roads shall meet the specifications of the New York State Code.
- 4) Windpower units should have systems designed to detect ice buildup or sense equipment malfunctions resulting from ice buildup.
- 5) Approval of project is conditioned upon purchasing a decommissioning bond covering removal cost of facility when it becomes obsolete.
- 6) All Metrological Towers shall be removed after data collection and the site restored to pre-existing unless a waiver has been granted by the Planning Board and tower is installed on a Permanent foundation.
- 7) Access or service roads should be located along ridge top to reduce draining problems, if feasible, NYS Department of Agriculture should be consulted prior to road construction.
- 8) When installed on agricultural fields, Windpower units should be constructed as close edge of field as practical, access and service roads should be constructed in the same manner.
- 9) The owner of each Windpower Facility, at its expense shall have it inspected at least every 5 years by an inspector selected by the Town Board, and will submit a copy of the inspection report to the Town Board. If the report recommends repairs or maintenance, the owner shall provide the Town of Augusta a written schedule of repairs and maintenance.
- 10) If any facility remains inoperative for a continuous period of (1) year the owner shall remove the unit and restore the site at their expense, unless a waiver has been granted by the Town Board to allow the unit to remain. If the owner fails to remove the affected unit the Town Board, after a sixty (60) days notice, may contract for such removal and pay for such removal.

Controls and Brakes

1. Windpower Facilities shall be equipped with a redundant braking system including Mechanical brakes and shall be operated in a fail-safe mode. Stall regulation shall not be considered sufficient braking system for over speed protection aerodynamic over speed controls and mechanical brakes.

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 collection lines from any Windpower Facility to on-site substation shall be underground.

Color:

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

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.

Warning Signs:

1. A reasonable visible warning sign displaying 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.

Climb Protection:

1. All Windpower Facilities must be protected by anti-climbing devices.

Setbacks:

1. All towers shall be set back a distance equal to 1.5 times the proposed tower height including the blades from any structure. The distance for the above setback shall be measured from the point of the structure foundation to the center of the closest Windpower Facility tower foundation
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 tower height including blades from public roads.
4. All towers shall be set back 1.5 times the tower height including blades from third party transmission lines, communication towers and adjacent property lines, unless granted a waiver from adjacent property owners.
5. Underground cables shall run no closer than 150 feet to the nearest structure foundation, livestock barn or stable and is a minimum depth of four (4) feet and identified with appropriate markers.
6. All towers shall be set back a distance of at least 1.5 times the Windpower tower height from any other Windpower tower.
7. No Windpower units shall be located within 2.0 times the height from 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 requirement 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 structure, or: c. Applicant receives a waiver from affected property owners.
8. Any waiver of any of the above setback requirements from adjoining property owners shall run with the land and be recorded as part of the chain of title in the deed of the subject property.

Viewscape impacts:

The arrangement of Windpower Facilities within a project and relative to adjacent projects should minimally impact the viewscape within the project viewshed. Clustering of Windpower Facilities within a project should be done so as to limit the angular view shed. Computerized photographic simulations, demonstrating any visual impacts from at least two strategic vantage points should be submitted. Submitted simulations should also identify any color treatments or visual screening that are incorporated to enhance the visual appearance.

Use of Public Roads:

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, maintenance) shall:

Identify such public roads and contact the superintendent of highways for the Town of Augusta and Oneida County to obtain permission regarding weight and size limits for use of Town or County roads prior to construction.

1. The applicant must include documentation of this contact and permission.
2. Conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage. The Town of Augusta or Oneida County highway superintendent must approve this survey for Town or County roads, respectively.
3. Post a Surety Bond in an amount agreed upon by the Town of Augusta for the purpose of modifying or repairing any damage to Town of Augusta roads caused by constructing, operating or maintaining Windpower Facilities

Emergency Agencies and Hazardous Material:

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

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

Interference with Communications Systems:

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 structures.

If after construction and operation it is found to cause interference, the Owner or Operator shall immediately mitigate the interference.

Noise Levels:

The Applicant shall provide a noise analysis by an acoustical expert that the maximum noise level generated by Windpower Facilities shall be no more than 50 dbA as measured at the property lines of the nearest residence.

Liability Insurance: The Owner or Operator of Windpower Facilities shall maintain a current general liability policy covering bodily injury and property damage with limits agreed upon by the Town of Augusta protecting the Town and property owners. A copy of the policy shall be submitted to the Town of Augusta.

Decommissioning Plans-Prior to the granting of a permit for project development, the Owner/Operator shall formulate a decommissioning plan cooperatively with the Town of Augusta.

The Decommissioning Plan shall include:

- A. Provisions describing the triggering events for decommissioning of Windpower Facilities;
- B. Provisions for the removal of structures, debris and cabling, including those below the soil surface;
- C. Provisions for the restoration of the soil and vegetation;
- D. A timetable approved by the Town of Augusta for the restorations.
- E. A Professional Engineers estimate of the current decommissioning costs and the method and schedule for updating the future cost of decommissioning and restoration.
- F. Financial Assurance, secured by the Owner or Operator, for the purpose of adequately performing decommissioning, in an amount equal to the Independent Professional Engineers estimate of decommissioning costs. Applicant will be required to purchase a paid-up Bond prior to construction and will insure the Town and property owners.
- G. Identification of and procedures for Town of Augusta access to Financial Assurances;
- H. A provision that the terms of the Decommissioning Plan shall be binding upon the Owner or Operator or any of their successors;
A provision that the Town of Augusta shall have access to the site, pursuant to reasonable notice, to effect or complete decommissioning;
- I. Removal of machinery, equipment, tower and all other materials related to the project is to be completed within one year of decommissioning, or timeframe agreed upon with the Town of Augusta.

Residential Wind Generating Systems: Less than 100KW used for residential, agriculture and non-commercial applications.

1. Height of Wind Turbine measured from top of support pad to top of rotor blade is to be determined by lot size, location in respect to adjacent structures and total output of system.
2. Setback from structures, power distribution lines and roads are a distance equal to 1.5 times the height of the tower.
3. A minimum distance of 15 feet from property lines and structures to supporting guy wires.
4. Tower must be made inaccessible for a distance of 12 feet measured from top of support pad.
5. Minimum lot size, 1 acre.
6. System should be located in an area that does not cause interference with Microwave, radio and TV transmission signals.
7. Residential Wind Turbines must be equipped with over speed braking controls and equipped with devices to control ice throw.
8. Construction requires a Special Use Permit and unit must conform to local, state and national code for construction including copies of manufactures specifications and a short EAF.

Public Hearing: The Planning Board shall hold a public hearing prior to approving or rejecting an application. The notice shall be published in the official newspaper 10 days prior to the hearing. In addition, written notices shall be sent to all adjacent property owners and Clerks of adjacent Municipalities within 500 feet of the project. Notification must also be sent to the Oneida County Planning Department as required by General Municipal Law 239m. The hearing will be held within 62 days of receiving the application. The Planning Board shall make its determination within 62 days from the close of the public hearing.

Waiver: The Planning Board and Town Board reserve the right to waive requirements when deemed necessary. **Revisions and Amendments:** The Planning Board may, after Town Board approval and public hearing, adopt further rules and regulations as necessary. The Town Board on its own motion and after a public hearing may modify or amend these rules and regulations.