

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET, ALBANY, NY 12231

(Use this form to file a local law with the Secretary of State.)

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.

~~County~~

~~City~~

Town

~~Village~~

of Stark, County of Herkimer

Local Law No. 1 of the year 2006.

A local law Amendment to the Land Use Regulations of the Town of Stark
(Insert Title)

Regarding Wind Energy Facilities.

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

~~County~~

~~City~~

Town

~~Village~~

of Stark as follows:

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

(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. 1 of 2006 of the (County)(City)(Town)(Village) of Stark was duly passed by the Town Board on February 7, 2006, 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. 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 and was deemed duly adopted on 20, 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.

Article 1. Title: This local law shall be known as the Town of Stark Wind Energy Facilities Law as it amended the Town's Land Use Regulations contained in Local Law 1 of the year 2004. The Town of Stark is hereafter referred to as the "Town".

Article 2. Statement of Authority: The Town Board of the Town of Stark, pursuant to the authority granted it under Section 10 of Municipal Home Rule Law of the State of New York, hereby enacts the Town of Stark Wind Energy Facilities Law as hereinafter provided.

Article 3. Statement of Purpose and Findings: The Town Board of the Town of Stark hereby finds that in order to facilitate the development of wind energy facilities within the Town, Land Use Regulations need to be amended to regulate their development and set forth the regulations relative to wind power facilities. This regulation should be consistent with the general intent of all other Land Use Regulations. Furthermore, this regulation should address the visual, aesthetic and land use compatibility aspects of wind energy facilities.

Article 4. Definitions:

ACCESSORY FACILITIES : Any structure other than a wind turbine, related to the use and purpose of generating electricity from wind turbines located at a wind energy facility.

WIND ENERGY FACILITIES AND EQUIPMENT: Wind energy facilities which generate original power on site to be transferred to a transmission system for distribution to customers. The definitions of wind energy facilities shall not include individual wind energy facilities erected and used primarily for private use. Wind energy facilities shall include wind turbines and accessory facilities or equipment.

WIND TURBINES AND EQUIPMENT: Shall mean a component of the wind energy facility system which converts wind energy into electricity through the use of a wind turbine generator, and includes the turbine, blade, tower, base, and pad transformer.

Article 5. Authority and procedure:

Section 1. Authority:

The Town Board of the Town of Stark is hereby authorized to approve, approve with conditions, or disapprove wind energy facility applications in accordance with this Amendment to the Town of Stark's Land Use Regulations. The Town Board shall refer all such applications to the Town Planning Board for its advisory opinion.

Section 2. Procedure:

(A) Completed applications for siting a wind energy facility must be submitted to the Town Clerk at least ten (10) days prior to the regular meeting of the Town Board.

(B) Any application for siting a wind energy facility must be in writing and must be duly signed by the wind energy facility applicant and must provide, at a minimum, the following:

(1) Name of the project.

(2) The identity of the parcels to be affected, including the tax map numbers, acreage, names and addresses of the owners of the affected parcel(s) and names and addresses of all owners of record of the abutting parcels where development is proposed.

(3) A map showing the boundaries of the lots in the affected areas.

(4) A map showing all existing lot lines, easements and right of ways and a sketch plan showing all proposed road access including provisions for paving, if any, proposed transmission line and accessory facilities, and location of all existing and proposed utility systems to the facility.

(5) The consent of all participating property owners of the affected parcels within the area to be developed.

(6) Sufficient acreage to comply with the setbacks and other conditions set forth in the Land Use Regulations.

(7) The distance to the nearest residential structures.

(8) A Full Environmental Assessment Form prepared in accordance with the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law.

(9) Applicant is required to submit photography assessing the visibility of the project from key viewpoints and proposes elevations.

(C) The Town Board shall hold a public hearing on any such application prior to permitting or denying such application. The notice shall be published in the official newspaper of the Town at least ten (10) days prior to the hearing. In addition, written notices shall be sent to all municipal entities within 500 feet of the proposed project site.

(D) The hearing shall be held within sixty-two (62) days of receiving a completed application. The Town Board shall make a determination within sixty-two (62) days of when the public hearing is closed.

Section 3: Standards:

(A) Setback of wind turbines from any residential structure existing at the time the application is filed is a minimum of 1200 feet. All measurements are from the center point of the wind turbine.

(B) Setback of wind turbines from road center line is 1.25 times height of the structure or 500 feet, whichever is greater.

(C) Setbacks of wind turbines from side and rear lots is 400 feet.

- (D) The 400 foot setback requirement for side and rear lot lines can be waived by the Town Board as part of its review process if (I) abutting parcel(s) owners are participating in the wind project, or (II) in the case of non-participating property owner, said applicant has secured written consent from said property owner.
- (E) Access: The Vertical distance from ground level to tip of wind turbine blade when blade is at its lowest point must be at least twenty-five (25) feet.
- (F) Clearance: A wind tower, including any climbing aids, must be secured against unauthorized access by means of a locked barrier. No climbing device of any kind shall be attached to the wind turbine closer than fifteen (15) feet from the ground.
- (G) Landscape and Screening: Appropriate landscape and screening is required to keep the site in a neat and orderly fashion. Appropriate screening is required to screen accessory structures from adjacent residences.
- (H) No advertisements are allowed in any form other than the manufacturer's logo of a reasonable size (generally common size of 2 square feet). Also, an emergency number shall be displayed on the sign.
- (I) Sound: Audible sound due to wind turbine operation shall not exceed fifty (50) dBA on a one hour average, when measured from adjacent dwelling units. In the event that the projected sound levels from a wind energy facility exceed the criteria listed above, a waiver to said levels may be granted by the Town Board provided that the following has been accomplished:
- (I) The applicant implements sound mitigation measures that reduce sound levels below 50 dBA when measured from adjacent dwellings, or;
 - (II) The applicant obtains a permanent Sound Impact Easement to be recorded in the Herkimer County Clerk's Office which describes the benefitted and burdened properties and which advises all subsequent owners of the burdened property that sound levels in excess of those permitted by this local law may exist on or at the burdened property as a result of the wind energy facility.
- (J) Road: All roads affected by construction and maintenance of structures must be restored to their original condition at the cost of development company and in agreement with the Town Board.
- (K) Transmission lines (wires): All collection systems wires and transmission lines must be buried in accordance with regulations for burial of wires as set forth by the New York State Department of Agriculture and Markets. Transmission lines following public roads or carrying power to the substation may be overhead or underground.
- (L) Safety: No wind energy facility shall be permitted that lack an automatic breaking, governing, or feathering system to prevent uncontrolled rotation, over speeding and excessive pressure on the tower structure, rotor blades and turbine components.

Section 4: Operational considerations:

(A) If, after a ten (10) year period of operation, a wind energy facility becomes inoperative or non-functional for a continuous period of one (1) year, the owner of the wind energy facility shall remove the wind energy facility, including all wind turbines and any accessory uses, at the owner of record's expense.

(B) The issuance of any approvals under this Wind Energy Facilities local law amending Land Use Regulations shall require the applicant to establish an interest bearing trust account in an amount sufficient to ensure the faithful performance of the removal of the wind energy facility, accessory facility or equipment and turbines, and the restoration of the land and surroundings of the affected properties. Applicant shall provide a bona fide estimate to the Town Board, for the Town Board's review and approval, in order to establish the cost of de-commissioning the wind energy facility. In the first year of operation, the applicant or an agent for any subsequent owner, shall commence funding the interest bearing account, in annual installments, sufficient funds, consistent with the Town Board's approved estimate, to de-commission the wind energy facilities after the twentieth (20th) year of initial operation in the event, once again, said windmill facility is non-functional or inoperative for a continuous period of one (1) year and said annual payments to run, continuously from the first year of operation also as stated. In the event that the applicant uses only a portion of the fund or uses other means than the fund to effect de-commissioning the applicant or an agent for any subsequent owner shall be entitled to such unused fund amounts, with interest provided by the account, upon completion and inspection of such de-commission by the Town or any expert retained by the Town. A Voluntary Payment Agreement shall be entered into between the Developer and the Town Board of the Town of Stark further providing for said trust account.

(C) De-commissioning involves the removal of all evidence of a wind energy facility after it has reached the end of its design life. Depending on permit requirements and the terms of the land lease agreements, the wind facility project owner is required to restore the land to the original site conditions. De-commissioning includes removal of all turbines and towers, concrete foundations to a reasonable depth below grade, underground cabling, power poles, met towers, substation equipment and operations and maintenance buildings. Site restoration includes any regrading or replanting areas where foundations, roads and locations where accessory buildings were located. A common de-commissioning standard is removal of all below-ground project elements to a depth of forty (40) inches. Which is considered to be adequate for any agricultural use or most future construction. Disconnected cables buried forty (40) inches or deeper can sometimes remain in place if their presence does not adversely impact land use and do not pose a safety hazard.

Article 6: Variances:

The Town Board may waive any of the requirements of this regulation. Requests for a variance waiver of any requirement of this Regulation must be made directly to the Town Board.

Article 7: Operational Considerations:

If any part of this local law shall be found to be void, voidable or unenforceable for any reason whatsoever, it shall not affect the validity or enforceability of any remaining sections or provisions of this local law.

Article 8: Effective Date:

This local law amending Land Use Regulations shall take effect immediately upon filing with the Secretary of State.