

**SEQR AND PUBLIC HEARING LOCAL LAW NO. 2 OF 2009 -
A LOCAL LAW GOVERNING WIND ENERGY FACILITIES
IN THE TOWN OF NORTH HARMONY
TUESDAY 4.21.09 7:00 PM**

SALLY P. CARLSON, SUPERVISOR	PRESENT
RALPH WHITNEY, COUNCILMAN	ABSENT
ART THOMAS, COUNCILMAN	PRESENT
FRANK STOW, COUNCILMAN	PRESENT
DICK SENA, COUNCILMAN	PRESENT

OTHERS PRESENT: Members of the Planning Board: Pat Rice, Walter Geist, Steve Senske, Julie Lescynski, Dick Johnson, John Warner, Mac McNeill; Don McCord, Planning Consultant; Brad Lawson, Zoning CEO; Dave Stapleton, Attorney; Nancy Thomas, Town Clerk; James Levesque, Zoning Board of Appeals; Robert Sundell, Ruth Lundin, Linda O'Brien; Phil Strand, David Bruce, David Moller, Bernie Auer, Bob Tordello, Scott Sampson, Gill Randell, Jann Randell

Mrs. Carlson brought the hearing to order at 7:10 PM.

Mrs. Carlson said the Planning Board (PB) has been working on the Law for some time. She stated that Dave Stapleton, Attorney for the town would be conducting the SEQR portion of the hearing.

Mr. Stapleton said the SEQR hearing would be followed by the Public Hearing portion of the law. He said the PB is present to provide answers to questions. He stated that he would create through the SEQR hearing a thorough review of the local law in its draft form. He said that the County Planning Dept. has sent a letter providing a review and recommendation of the local law and has suggested some minor editing and changes which might be appropriated for the final law draft. He said if changes were made they would be handled at the next town board meeting. He stated that if there is something that indicates there will be a substantial environmental issue, the town board as lead agent can continue the SEQR process at a later date. Mr. Stapleton said in his estimation this is a zoning change rather than a specific project. He said he would review the local law and summarize it to the best of his ability and then follow with the long form SEQR process.

REVIEW OF LOCAL LAW NO. 2 OF 2009 – A LOCAL LAW GOVERNING WIND ENERGY FACILITIES IN THE TOWN OF NORTH HARMONY

Mr. Stapleton provided a thorough review of all sections of the proposed local law.

DISCUSSION:

1. Mr. Stapleton asked for a definition of “non-electrical Wind Energy Conversion System (WECS) utilized solely for agricultural operations” (pg. 5 – *Sec. 690.04 Permits and Rezoning Required, Sub-sec. (E.)*)

Mr. Rice gave an example of a new type of water pump being used on farms.

2. Mr. Sena and Mr. Warner questioned the need for 100 kW on Small WECS and suggested that 25 kW is sufficient to run a small home. They stated that a 100 kW would be taller with larger blades and said 25 kW would service a good sized farm operation.

3. Mr. Stapleton asked about the purpose of the creation of a wind overlay district in the AG District (pg. 6 – *Sec. 690.06 Creation of Wind Overlay District(s)*).

PUBLIC HEARING

4/21/09 (pg. 2)

Mr. Rice said the overlay district would not be by right and **Mr. Sena** said it would be by permit because of the large amounts of land available in the AG District.

Mr. Johnson said an overlay district would not be appropriate for an R-2 District and the overlay district would be for utility scale WECS projects.

Mr. Sena said there are basically two sets of laws, one to cover the utility scale WECS and the other for residential scale WECS. He said that some of the language in the law overlaps and could be applicable to one or the other.

Mr. McCord said this is addressed in the last sentence of Sections 1-9, pg. 1-2 of the law.

Mr. Stapleton clarified that there are sections of the law covering utility scale and residential scale WECS and the overlay district for utility scale WECS requires a joint application for the creation of this district. He said by passing the law the town is not automatically creating a utility district but a law that says someone can apply to create that overlay district which would require an application for a Special Use Permit in conjunction with a specific project. He said this type of application would require the renewal of the entire SEQR process for that project.

4. Mr. Stapleton asked for clarification of **pg. 15 – Sec. 690.13 Noise and Setback Easements; Sub-Sec. (B.)**

Mr. McCord said there haven't been any utility scale WECS applications in this area that have reached fruition, so they have to base this section on examples from other areas of the State for all potential case scenarios. He said when you write this law you are trying to put together something that protects the safety, health and welfare of the public without being overly restrictive and that is why there is a provision for a waiver.

5. Mr. Stapleton asked for a definition of wind measurement tower (**pg. 17 – Sec. 690.20 Applications for Wind Measurement Towers**).

Mr. Rice said this is a tower that measures the amount of wind to determine whether or not it is feasible to locate a tower at a site.

Mr. Warner said the wind measurement towers are usually a single guy wire type system that can be typically as tall as the towers themselves would be.

Mr. McCord said these towers are often left up for a 12-24 month time period.

CHANGES DISCUSSED:

- 1. Pg. 4 – Sec. 690.03 Definitions; SMALL WIND ENERGY CONVERSION SYSTEM (“Small WECS”). Change 100 kW to 25 kW.**
- 2. Pg. 18 – Sec. 690.23 Permitted Areas for Small WECS; Sub-Sec. (1.) Include “with the exception of properties located between Route 394 and the lake”.**
- 3. Pg. 19 – Sec. 690.25 Small WECS Development Standards; Sub-Sec. (2.) Discuss allowing more than one small WECS if property is of sufficient size or acreage.**
- 4. Pg. 19 – Sec. 690.25 Small WECS Development Standards; Sub-Sec. (5.) Change 100 kW to 25 kW.**
- 5. Pg. 20 – Sec. 690.25 Small WECS Development Standards; Sub-Sec. (7.) Further discussion needed on (a.) “Shall not project above the top of ridgelines.”**

PUBLIC HEARING

4/21/09 (Pg. 3)

6. **Pg. 20 – Sec. 690.25 Small WECS Development Standards; Sub-Sec. (11.)** *Further discussion on allowing a small logo on tail vane.*
7. **Pg. 20 – Sec. 690.25 Small WECS Development Standards; Sub-Sec. (12.)** *Further discussion needed on (c.) “A locked, protective fence at least six feet in height that encloses the tower.”*
8. **Pg. 21 – Sec. 690.25 Small WECS Development Standards; Sub-Sec. (15.)** *Discuss elimination of this sub-section with regard to the 250’ radius requirement (i.e. necessity of cutting down all trees within a 250’ radius does not positively impact environment).*

Mr. McCord clarified Sub-Sec. (15.) stating that it does not require the removal of everything in a 250’ radius. He said it does require that the tower be 30’ above everything within a 250’ radius. He said these are the standards recommended by NYSERTA.

Mr. Stapleton asked if there were any questions or comments about the proposed law.

Mr. Rice said the Planning Board would like to thank Don McCord for his help in developing the law and stated that the board had spent many months reviewing and revising the law to best fit the needs of the town.

SEQR HEARING LOCAL LAW NO. 2 OF 2009

Mr. Stapleton provided an itemized review of the Long Form SEQR for the adoption of Local Law No. 2 of 2009, and stated that the review is somewhat generic because there is no specific plan or application at this time. He reminded those present that this document has been available for review in the Town Clerk’s office since 3/19/09.

Part 1 – Project Information

14. Ridgelines and views (i.e. lake views)
15. Prendergast Creek was added as a stream within the project area.
20. No – (based on Law standards)

Part 2 – Project Impacts and Their Magnitude

Ruth Lundin said there was no mention of utility scale or individual towers to the southwest of Rt. 394. She asked if this was because there is no AG property west of 394.

Mr. Stapleton said it was excluded from the lakeside of Rt. 394.

Ms. Lundin asked about the wind overlay district rezoning application and if there were any requirements to protect wildlife.

Mr. Stapleton referred to page 3, Sec. 690.02 Findings (6.) stating that WECS may present a risk to bird and bat populations if not properly sited. **Mr. Rice** referenced Sec. 690.09 Standards for Utility-Scale WECS (A.)(10.), which states that WECS shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.

Ms. Lundin said the U.S. Fish and Wildlife service on 3/13/09; issued a pre-conditional draft on wind turbine advisory and that might be a document to use when it is finalized.

PUBLIC HEARING
4/21/09

Gill Randell said he would like to recommend that the draft law stipulate that certain studies be done in the process of doing a draft environmental statement for an overlaying district with reference being made to appropriate wildlife studies identifying consultation with U.S. Fish and Wildlife Service, NYS DEC and local wildlife agencies.

Mr. Senske noted that the NYS Attorney Generals office also has a project of this nature in the works. He said the PB had reviewed studies regarding mortality rates per million.

Part 3 – Evaluation of the Importance of Impacts

Mr. Sena said with the information provided he was comfortable with a negative declaration on impacts.

Mr. Stow said the idea of replacing fossil fuel with an energy that will not destroy the environment is a very positive move.

Mr. Thomas said that at this point he can see nothing of a confrontational nature about the law.

Mrs. Carlson said that generally speaking the law itself and the SEQR process are positive. She said that once a specific project is identified there will be more concern. She thanked Mr. McCord and the PB for their time spent in creating this law.

MOTION #63 OF 2009:

MR. SENA MOTIONED FOR A NEGATIVE DECLARATION ON ENVIRONMENTAL IMPACTS OF LOCAL LAW NO. 2 OF 2009 - A LOCAL LAW GOVERNING WIND ENERGY FACILITIES IN THE TOWN OF NORTH HARMONY. MR. THOMAS SECONDED AND THE MOTION WAS CARRIED UNANIMOUSLY.

The Public Hearing and SEQR was adjourned at 8:30 PM.

Nancy M. Thomas
Town Clerk