

June 27, 2016

Ellenburg Town Board  
2 Dupuis Rd.  
Ellenburg Center, NY 12934

**RE: Bull Run Wind Energy Center, Applicable Local Laws**

Dear Ellenburg Town Board,

We hope this letter finds you well. We are pleased to let you know that shortly we will officially submit the Public Scoping Statement for our Bull Run Wind project to the NYS Department of Public Service.

In completing the Public Scoping Statement we need to confirm that we have addressed all of Ellenburg's local laws that apply to the construction and operation of our project. The two specific zoning laws in Ellenburg we are aware of are attached and listed below:

- Town of Ellenburg Zoning Law, dated February 12, 2014
- Wind Energy Facilities Local Law No. 4 of 2005

Please provide us written confirmation that there are no other applicable Town laws and that the laws attached are the latest and most current version. If more current versions of these laws exist, please provide us with copies of the current version.

Thank you in advance for your assistance with this. Please do not hesitate to reach out to me if you have any questions about this letter or the project in general.

Sincerely,



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# Town of Ellenburg Zoning Law

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# ARTICLE 1 - GENERAL PROVISIONS

## **Section 100 - Title**

The title of this law is the "Town of Ellenburg Zoning Law," and shall include this text and the official zoning map.

## **Section 105 - Purposes**

The purposes of this law are to provide for orderly growth and change within the Town of Ellenburg, and to provide for the health, safety and general welfare of existing and future residents. Further, it is the intent of this law to implement the land use planning goals established in the Town of Ellenburg Comprehensive Land Use Plan of 1990.

## **Section 110 - Regulated Activities**

- A. A zoning permit shall be required for any of the following actions.
1. Construction of a new building or structure one hundred, forty-four (144) square feet or larger in ground coverage.
  2. Enlargement of an existing building or structure.
  3. Change in the use of a building or of land
  4. The placement of permanent signs larger than sixteen (16) square feet in area.
  5. Construction of or modification of an existing communication installation, transmission tower, accessory facility or structure freestanding tower and/or pole. The modification of existing structure to serve as a transmission tower, telecommunication tower, accessory facility.
- B. The following activities do not require a zoning permit but must meet the building setbacks and other requirements of this law.
1. Buildings or structures with less than one-hundred hundred, forty-four (144) of ground coverage. (See Section 320, 'Part C for required setbacks.)
  2. Agricultural structures and uses located on a farm. (See Section 320, Part D for required building setbacks. Residential structures located on farm properties are not considered agricultural structures and shall require a zoning permit.
  3. Roadside stands. (See Section 425 for requirements.)
  4. The placement of signs. (See Section 445 for sign regulations.)
- C. The following activities are not regulated by this law and do not require a zoning permit.
1. Interior structural alterations, or routine maintenance and improvement which does not expand the exterior dimensions of a structure.
  2. The erection of chimneys, posts, swimming pools and other similar structures.
  3. Temporary yard sales, porch sales, garage sales and sales of a similar nature which are held less than 30 days per year
  4. Temporary Signs. (See definition of temporary signs).

## **ARTICLE 2 - ESTABLISHMENT OF ZONES**

### **Section 200 - Types of Zones**

For the purpose of this law, the Town of Ellenburg is hereby divided into the following zones:

HR	Hamlet Residential
HC	Hamlet Commercial
RU	Rural Use
RA	Rural Arterial
LR	Lake Area Residential
LC	Lake Area Commercial
CON	Lake Area Conservation

### **Section 210 - Zoning Map**

Said districts are bounded as shown on the Town of Ellenburg Zoning Map, which with all explanatory matter, is hereby made part of this law.

### **Section 220 - Interpretation of Zone Boundaries on Zoning Map**

Questions concerning the precise location of zone boundary lines shall be resolved by the Board of Appeals under their powers of interpretation.

### **Section 225 - Lots in Two or More Districts**

If a lot lies in two or more zoning districts, each portion of the lot shall be governed by the regulations of the district in which it lies. Upon special authorization of the Zoning Board of Appeals, and after public hearing, the provisions of the less restricted portion of the lot may be extended up to 100 feet into the more restricted portion. An extension of more than 100 feet shall require a variance or map amendment.

# ARTICLE 3 - ZONING DISTRICT REGULATIONS

## Section 310 - Permitted Use Chart

x = Permitted use within the zone

c = Conditional use, permitted after Conditional Use Approval

blank = Not permitted

**\*\*\*\* Any use not provided for in the chart is deemed a conditional use. \*\*\*\***

<b>A RESIDENTIAL USES</b>	<b>HR</b>	<b>HC</b>	<b>RU</b>	<b>RA</b>	<b>LR</b>	<b>LX</b>	<b>CON</b>
Single family dwelling	X	X	X	X	X	X	X
Two family dwelling	X	X	X	X	X	X	
Multi-family dwelling	C	C	C	C			
Mobile home /single-wide			X	X			
Mobile home /double-wide	X	X	X	X	X	X	
Mobile home park			C	C			
Seasonal dwelling or camp	X	X	X	X	X	X	X
Cluster development	C	C	C	C	C	C	C
Accessory structure (garage shed)	X	X	X	X	X	X	X
<b>B GENERAL USES</b>	<b>HR</b>	<b>HC</b>	<b>RU</b>	<b>RA</b>	<b>LR</b>	<b>LC</b>	<b>CON</b>
Church	X	X	X	X	X	X	
Membership club (VFW etc )		C		C			
Public facility	C	C	C	C	C	C	
Essential Service	C	C	C	C	C	C	C
Non-profit recreational facility	C	C	C	C	C	C	C
<b>C COMMERCIAL USES</b>	<b>HR</b>	<b>HC</b>	<b>RU</b>	<b>RA</b>	<b>LR</b>	<b>LC</b>	<b>CON</b>
Home occupation	C	C	C	C	C	C	C
Roadside stand	X	X	X	X	X	X	
Retail store:							
Neighborhood convenience store							
without gasoline sales	C	C	C		C		
with gasoline sales	C	C	C		C		

<b>COMMERCIAL USES (continued)</b>	<b>HR</b>	<b>HC</b>	<b>RU</b>	<b>RA</b>	<b>LR</b>	<b>LC</b>	<b>CON</b>
Antique craft or gift shop	C	C	C		C		
Used merchandise or furniture	C	C	C		C		
Gun shop, fishing tackle	C	C	C		C		
Small business (under 5000 sf)	C	C	C				
Large business (Over 5000 sf)			C				
Shopping center			C				
Motor vehicle sales and repair			C				
Gasoline and auto service station		C	C	C			
Motor vehicle repair, auto body shop		C	C	C		C	
Appliance repair shop		C	C	C		C	
Lawn garden or farm equipment		C	C	C			
Mobile home sales				C			
Feed store, farm supplies		C	C	C			
Lumber yard			C	C			
Nursery, florist greenhouse		C	C	C		C	
Outdoor recreation	X	X	X	X	X	X	X
Campground, travel trailer park.....			C	C			
Indoor recreation (bowling skating)		C	C	C		C	
Hotel, hotel, cabins B&B		C	C	C		C	
Marina, boat storage, storage facility & related gasoline sales				C		C	
Restaurant		C	C	C		C	
Food or ice cream stand		C	C	C		C	
Laundromat		C	C	C		C	
Personal service business (beauty shop, barber, tailor, similar businesses)		C	C	C		C	
Professional or business office	C	C	C	C		C	
Bank		C	C	C		C	
Clinic (medical clinic, for example)		C	C	C		C	
Private school		C	C	C		C	
Child care center	C	C	C	C	C	C	
Funeral home		C	C	C		C	
Tavern, bar, nightclub		C	C	C		C	
Veterinarian, animal hospital		C	C	C	C	C	
Kennels		C	C				
Trucking				C			
Well drilling, construction, or excavating business			C	C			

<b>COMMERCIAL USES (continued)</b>	<b>HR</b>	<b>HC</b>	<b>RU</b>	<b>RA</b>	<b>LR</b>	<b>LC</b>	<b>CON</b>
Recycling business			C	C			
Slaughterhouse				C			
Junk yard			C				
Solid waste disposal	**** Not Permitted in any Zone ****						
Hazardous waste disposal	**** Not Permitted in any Zone ****						
Non-hazardous waste or non-hazardous waste by-products disposal	**** Not Permitted in any Zone ****						
Septage	**** Not Permitted in any Zone ****						
Hydraulic fracturing	**** Not Permitted in any Zone ****						
Disposal of construction debris:	**** Not Permitted in any Zone ****						
(a) generated or transported from a location not within the geographic boundaries of the Town of Ellenburg							
(b) generated within the Town of Ellenburg							
Motor vehicle race track	**** Not Permitted in any Zone ****						
Amusement Park	**** Not Permitted in any Zone ****						
Unlisted commercial use				C			
Adult use and entertainment establishments		C	C				
<b>D. INDUSTRIAL USES</b>	<b>HR</b>	<b>HC</b>	<b>RU</b>	<b>RA</b>	<b>LR</b>	<b>LC</b>	<b>CON</b>
Sawmill			C	C			
Warehousing and distribution				C			
Manufacturing, processing				C			
Laboratory research testing		C	C	C			
Wind Farms			C				
Light Industrial Use			C	C			
Fuel Oil distribution			C	C			
Fertilizer Manufacture, Distribution			C	C			
Sand or gravel extraction			C	C			
Machine Shop			C	C			
Other industrial use			C	C			
<b>E AGRICULTURAL USE</b>	<b>HR</b>	<b>HC</b>	<b>RU</b>	<b>RA</b>	<b>LR</b>	<b>LC</b>	<b>CON</b>
Agricultural structures and uses	C	C	X	X	C	C	C



<b>C. RESIDENTIAL ACCESSORY STRUCTURES</b>	<b>HR</b>	<b>HC</b>	<b>RU</b>	<b>RA</b>	<b>LR</b>	<b>LC</b>	<b>CON</b>
Minimum building setback (ft) Front	30		50	40	40	40	
Sides	10	10	20	20	10	10	
Rear	10	10	10	10	10	10	
Minimum front building setback (ft ) From highway right-of-way							
From state or county highway	40	40	50	50	50	50	
From other highway	30	30	40	40	40	40	
Minimum building setback (ft ) Sides	30	30	50	50	40	40	
Rear	30	30	40	40	30	30	
<b>D. AGRICULTURAL STRUCTURES</b>	<b>HR</b>	<b>HC</b>	<b>RU</b>	<b>RA</b>	<b>LR</b>	<b>LC</b>	<b>CON</b>
Minimum front building setback (ft ) From highway right-of-way							
From state or county highway	40	40	50	50	50	50	
From other highway	30	30	40	40	40	40	
Minimum building setback (ft ) Sides	30	30	50	50	40	40	
Rear	30	30	40	40	30	30	
<b>E. COMMERCIAL USE, PUBLIC BUILDINGS AND GROUNDS</b>	<b>HR</b>	<b>HC</b>	<b>RU</b>	<b>RA</b>	<b>LR</b>	<b>LC</b>	<b>CON</b>
Minimum lot size (sq ft )	40,000	40,000	60,000	60,000		40,000	
Minimum lot width (ft )	175	175	250	250		175	
Minimum building setback (ft ) From state or county highway	40	40	50	50		50	
From other highway	30	30	50	50		50	
Minimum building setback (ft ) Sides	30	30	50	50		40	
Rear	30	30	40	40		30	
Maximum coverage by-buildings	30%	30%	30%	30%		30%	
Maximum height of structures (ft )	35	35	35	35		35	
Minimum green space buffer (ft )	20	20	40	40		30	
<b>F. INDUSTRIAL TRUCKING AND WAREHOUSE USES</b>	<b>HR</b>	<b>HC</b>	<b>RU</b>	<b>RA</b>	<b>LR</b>	<b>LC</b>	<b>CON</b>
Minimum lot size (acres)	2 acres	2 acres	2 acres	2 acres			
Minimum lot width (ft ) Abutting a state or county highway	200	200	300	300			
Other Highway	200	200	300	300			
Minimum building setback front (ft ) From state or county highway	40	40	75	75			
From other highway	40	40	75	75			

<b>INDUSTRIAL TRUCKING AND WAREHOUSE USES (continued)</b>	<b>HR</b>	<b>HC</b>	<b>RU</b>	<b>RA</b>	<b>LR</b>	<b>LC</b>	<b>CON</b>
Minimum building setback (ft )							
Each side	40	40	60	60			
Rear	30	30	50	50			
Maximum coverage by buildings	30%	30%	30%	30%			
Maximum height of structures (ft )	35	35	35	35			
Minimum green space buffer (ft )	30	30	50	50			
<b>G. FRONTAGE ON CHATEAUGAY LAKE AND NARROWS AND LAKE ROXANNE</b>	<b>HR</b>	<b>HC</b>	<b>RU</b>	<b>RA</b>	<b>LR</b>	<b>LC</b>	<b>CON</b>
Minimum shoreline frontage for each lot (feet)					100	100	
Minimum building setback from shoreline (feet)					50	50	

**Section 330 – Green Space Buffer**

The green space buffer required for non-residential uses shall apply to all side and rear lot lines. The green space buffer must be kept as a vegetated area. No driveways, parking lots, or storage at materials or vehicles are permitted, nor shall the buffer be used as a work area.

The Zoning Board of Appeals shall have the authority to reduce the size of the required green space buffer at the time of conditional use approval, provided that:

- A. A public hearing is held prior to such action.
- B. No adverse impacts upon existing or future adjacent land uses are anticipated.

**ARTICLE 4 - SUPPLEMENTAL REGULATIONS**

**Section 405 - Principal Buildings per Lot**

When there is more than one dwelling on a lot in any district, the space between each dwelling shall be no less than double the required side building setback for that district, and the minimum total area of the lot shall be the sum of the required lot sizes for each dwelling which exists on the lot.

Exception: Cluster developments approved pursuant to Section 585 of this law.

### **Section 410 - Corner Lots**

On corner lots, the sides facing both streets shall be considered front yards. On the other sides, one shall be considered a rear yard and the other a side yard at the owner's option.

### **Section 415 - Minimum Road Frontage**

- A. In order to insure adequate access, each one family residential lot and each two family residential lot shall have a minimum frontage of fifteen (15) feet abutting on a public street or highway, or abutting on a private street designed and constructed to Town standards.
- B. Each multi-family residential lot and each non-residential lot shall have a minimum frontage of fifty (50) feet abutting on a public street or highway, or abutting on a private street designed and constructed to Town standards.

### **Section 420 - Mobile Homes not in Mobile Home Park**

- A. No mobile home shall be placed in the Town of Ellenburg after the effective date of this Zoning Law that does not conform to federal construction and safety standards and the New York State Fire and Building Code.
- B. Mobile homes not located in a mobile home park shall be placed on a permanent foundation extending below the frost line, or upon a reinforced concrete slab at least four (4) inches thick which extends the full length and width of the mobile home which is placed upon it. This requirement shall also apply to a mobile home on a farm property permitted by Section 405, Part B.2. of this law.
  - Exception. Such a foundation or slab shall not be required for a mobile home allowed by a one-year renewable permit of this law. The purpose of such exception shall be to provide temporary living quarters while a residential structure is being constructed.
- C. The mobile home shall be provided with anchors or tie-downs capable of securing the stability of the mobile home. Anchors/tie-downs shall be placed at least at each corner of the foundation or concrete slab.
- D. Each mobile home shall be provided with skirting to screen the space between the mobile home and the ground. Such skirting shall be of a durable material and shall be installed within 90 days of occupancy.
- E. Any existing mobile home may be replaced with a mobile home of larger size without obtaining a variance as prescribed by this law, provided that:
  - 1. A permanent concrete slab, as required by Part B above is placed beneath the full length and width of the larger mobile home.
  - 2. The pre-existing mobile home is to be removed from the property.

- F. Any mobile home used for purposes other than a single family residence or for the conduct of a home occupation shall require the issuance of a conditional permit.

### **Section 425 - Roadside Stands**

Roadside stands shall be set back a least ten (10) feet from the front lot line and shall provide off-road parking space for at least three (3) vehicles. In no event shall a roadside stand constitute a traffic hazard.

### **Section 430 - Off-Road Parking/Loading**

An off-road parking space shall not be less than 9 by 20 feet exclusive of driveways and access ways. One-family dwellings need not exclude driveway area. No non-residential parking space shall be located within ten (10) feet of a side lot line.

Additional off-road parking shall be provided as required below if:

- A. The use changes.
- B. The use expands its gross floor area by twenty-five (25) percent or more in a three year period.
- C. The use is destroyed and seeks to be reestablished
- D. In calculating the number of required parking spaces, fractional portions shall be rounded to the nearest whole space.
- E. Business uses shall provide off-road loading space on the site sufficient for the loading and unloading of any trucks which are anticipated to use the site in the future. Loading areas may not be established within front, side or rear yard setbacks.
- F. Minimum Requirements:
  - 1. Single family dwelling: 2 spaces
  - 2. Two family dwelling: 4 spaces
  - 3. Multi-family dwelling: 1.5 spaces per dwelling
  - 4. Places of public assembly (restaurant, church, school, bingo hall, similar uses): 1 space per each 3 seats
  - 5. Hotel, motel, tourist home, boarding house: 1 space per employee, plus 1 space per guest room
  - 6. Home occupation: 1 space per employee, and 1 space per patron on the premises at any one time
  - 7. Other uses: As determined by the Zoning Board of Appeals

The following guideline shall be used in their determination: 1 space per employee plus 1 space per each 250 square feet of gross floor area.

The Zoning Board of Appeals shall have the authority to lower or raise the requirements stated in part F above at the time of conditional use approval. Requirements may be lowered if the developer can demonstrate the need for fewer parking spaces.

### **Section 435 - Home Occupations**

- A. No more than two non-members of the immediate family occupying a dwelling shall be employed as part of the home occupation.
- B. In no way shall the appearance of the structure be altered or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use or colors, materials, construction, lighting, or the emission of sounds or vibrations. No use shall create noise, dust, smell, smoke, glare, electrical interference, fire hazard or any other hazard or nuisance in excess of that created by a residence.
- C. One commercial vehicle may be used in conjunction with the home occupation and be parked on the property.

### **Section 440 - Stream Protection**

- A. All structures shall be set back at least fifty (50) feet from the mean high water mark of any stream or river designated by the New York State Department of Environmental Conservation as "C" or higher quality, but not including the Chateaugay Lake "narrows" area.
- B. No vegetative cutting shall take place within twenty-five (25) feet of the mean high water mark of such streams and rivers, except for: (a) the provision of a clear area for each lot which shall not exceed 20 linear feet along the stream or river, and (b) the removal of rotten or damaged trees or vegetation, or vegetation which presents a safety or health hazard.

### **Section 445 - Signs**

- A. The following are subject by review of zoning board of appeals.
  - 1. Electronic (moving, flashing, blinking, animated) signs.
  - 2. Signs over 20 feet in height.
  - 3. Off-premise advertising signs, meaning any signs primarily intended to advertise an activity not conducted on the premises or a product not available for sale on the premises. Signs primarily intended to inform travelers as to the location and type of business conducted at a particular location are considered directional

- signs, and are permitted subject to size limitation.
4. Off-premise directional signs exceeding sixteen (16) square feet in surface area.
  5. Home occupation signs exceeding twelve (12) square feet in surface area. (A farm is not considered to be a home occupation.)
  6. More than one sign for each home occupation.
  7. Any sign exceeding fifty (50) square feet in surface area.
- B. Placement of free standing signs: No sign shall obscure a line of sight for traffic, or otherwise constitute a traffic hazard. All signs shall be placed at least five (5) feet from the front lot line and at least twenty (20) feet from any side lot line.
- C. Temporary Signs: For sale/rent, political, announcing specific event; must be removed 30 days of its placement.

### **Section 450- Lake Access**

This section shall apply to all shorelines of Chateauguay Lake, the Chateauguay Lake narrows, and Lake Roxanne. The following minimum shoreline frontages shall be required for deeded or contractual access to the lakeshore: one hundred (100) feet per lot or twenty five (25) feet per dwelling unit, whichever is greater.

## **ARTICLE 5 - STANDARDS FOR CONDITIONAL USES**

### **Section 500 - Approval of Conditional Uses**

All conditional uses shall require Conditional Use Approval in accordance with Article 8 before a Zoning Permit may be issued. No conditional use shall be approved by the Zoning Board of Appeals unless the following general and specific standards are met.

### **Section 510 - General Standards for All Conditional Use**

- A. Compatibility. The character, appearance, location, size, height, intensity, nature and site layout of the proposed use, buildings, structures, and/or outdoor signs shall be in harmony with the character and appearance of the surrounding neighborhood, and shall not cause a significant adverse impact upon nearby properties by reason of traffic, noise, fumes, odors, vibration, lighting, litter, traffic, surface water or groundwater contamination, air pollution, drainage, visual impact, nighttime lighting or similar condition.
- B. Vehicular Access. Proposed vehicular access points shall be adequate but not excessive in number, and shall be adequate in width, grade, alignment and visibility; not located too near street corners or places of public assembly; and meet similar safety considerations. All

proposed buildings, structures, equipment or materials shall be readily accessible for fire and police protection.

- C. Sight Distance at Entry and Exit. To the extent practicable, intersections with and entries onto any public road shall be designed so that minimum safe sight distances and other standards set forth in "Policy and Standards for Entrances to State Highways." State of New York Department of Transportation publication number M.A.P. 7.12-34, shall be maintained. As set forth in the above cited publication, the minimum unobstructed line of sight in each direction at the entrance to a public road shall be as follows:

Design Speed of Highway	Left Turn	Right Turn
30 mph	396 feet	286 feet
40 mph	583 feet	484 feet
50 mph	814 feet	770 feet

Said distances shall be measured from the point of entry onto the public road. (Said distances represent the state braking distance for traffic along the public roads.

- D. Circulation and Parking. Adequate provision for safe and accessible off-road parking and loading space shall be made.
- E. Landscaping and Screening. All parking and loading areas shall be reasonably screened at all seasons *at* the year from the view of adjacent residential lots and streets. The general landscaping of the site shall be in character with that generally prevailing in the neighborhood. Such landscaping shall include the preservation of existing trees over eight (8) inches in diameter to the maximum extent possible.
- F. Drainage and Erosion Control. Adequate provision shall be made for drainage of the site. And to insure that storm water runoff does not create an adverse impact upon nearby lands or waterways. Appropriate erosion control measures shall be taken to prevent the pollution of waterways by silt and sediment.
- G. Utilities and Municipal Services. Adequate provision shall be made for water supply and sewerage disposal, electrical service, and solid waste disposal. The proposed use shall not create a burden on municipal or county services.
- H. Environmental Assessment Analysis. An applicant shall be required to submit an environmental assessment analysis and a visual addendum in compliance with the State Environmental Quality Review Act. Based on the results of the analysis, including the visual addendum, the town may require submission of a more detailed visual analysis.

### **Section 520 – Multi-Family Dwelling**

A useable open yard or recreation space of at least one thousand (1000) square feet per dwelling unit shall be provided. The Zoning Board of Appeals may require that recreation facilities be provided.

### **Section 530 – Retail Gasoline Outlet**

- A. Gasoline and/or fuel pumps and underground fuel storage tanks shall not be located closer than seventy-five (75) feet from any side or rear lot line.
- B. Adequate space shall be provided for safe pull-off, parking, waiting lines and service, so as to prevent any interference with the roadway or shoulder. Gasoline pumps shall be located at least thirty (30) feet from the road right-of-way.
- C. Such operation shall be screened from adjoining residential properties by a fence, hedge or other planting so as not to be visible from adjoining properties.

### **Section 540 – Motor Vehicle Repair Shop**

- A. There shall be a green space buffer of at least 50 feet along the sides and rear of the lot. The buffer must be kept vegetated and shall not be used for servicing, storage or parking of vehicles.
- B. No building or structure shall be located within seventy-five (75) feet of a neighboring residential property line.
- C. All junk wastes as a result of servicing motor vehicles, such as discarded parts, shall be stored in an enclosed structure or fenced area so as not to be visible from adjacent lots. Such fenced area shall be enclosed by a solid fence at least eight (8) feet high.
- D. Such operation shall be screened from adjoining residential properties by a fence, hedge or other planting or structure so as not to be visible from adjoining properties.

### **Section 550 – Industrial, Trucking or Warehousing**

Trucking, warehousing and industrial uses which generate substantial amounts of truck traffic shall not be located on roads which are unsuitable for truck traffic by virtue of their width, construction or alignment, or on roads where truck traffic would pose an unacceptable safety hazard for children, pedestrians or bicyclists. Minimum road pavement width for truck traffic is considered to be twenty (20) feet of driving surface.

- A. There shall be a minimum seventy-five (75) feet green space buffer area between any industrial, trucking or warehousing business and any neighboring residential property line.

- B. Such operation shall be substantially screened from neighboring residential properties, and as required by the Zoning Board of Appeals, from other property lines and roads.

### **Section 560 – Excavation**

- A. Excavations shall not endanger the stability of adjacent land or structures nor constitute a detriment to public welfare, convenience or safety by reason of excessive dust, noise, traffic or other condition.
- B. Commercial excavation activities shall be set back one hundred (100) feet from any property line or public road. Excavations shall not be located on roads which are unsuitable for truck traffic by virtue of their width construction or alignment or on roads where truck traffic would pose an unacceptable safety hazard for children, pedestrians or bicyclists. Adequate road width for truck traffic is considered to be twenty (20) feet of driving surface.

### **Section 565 – Kennels**

No indoor kennel facility shall be located closer than two hundred (200) feet from a pre-existing residential structure. No outdoor area to be used by animals housed in the kennel shall be located closer than five hundred (500) feet from a pre-existing residential structure.

### **Section 570 - Campgrounds. Travel Trailer Parks**

- A. Minimum lot size: 10 acres.
- B. Site: All campgrounds or travel trailer parks shall be located so as to be accessible by a public highway at least sixteen (16) feet in pavement width.
- C. Each camp/travel trailer site shall be serviced from interior roadways sufficient to provide access for emergency vehicles.
- D. The campground/travel trailer park shall be divided into campsites.
- E. The minimum size of each camp/travel trailer campsite shall be 2500 square feet.
- F. There shall be a minimum of fifty (50) foot green space buffer surrounding the campground/travel trailer park. No campsite or portion thereof, building, or structure shall be placed within the buffer area; nor shall the buffer serve as a recreation area.
- G. No campsite shall be located within fifty (50) feet of any stream, brook, pond, lake, or wetland area.

- H. The Zoning Board of Appeals may require that the campground/travel trailer park be substantially screened from the view of public roads and neighboring properties.
- I. Each campground/travel trailer park shall comply with all applicable rules and regulations of the New York State Department of Health and the Clinton County Health Department.
- J. Adequate plans shall be made for the collection and disposal of garbage, rubbish, and solid waste generated within the park.

### **Section 580 - Mobile Home Park Standards**

- A. All mobile home parks shall be located so as to be accessible by a public highway at least sixteen (16) feet in pavement width. The site shall be adequately drained and otherwise physically suitable for a mobile home park.
- B. Each mobile home park shall be divided and marked off into sites. Each site shall have an area of not less 7200 square feet.
- C. Each mobile home site shall front on an internal roadway, and have a minimum width of (75) feet.
- D. Each mobile home shall be located no closer than (40) feet from any other mobile home or permanent building in the mobile home park.
- E. Each mobile home or other structure shall be at least 40 feet from all boundaries of the mobile home park.
- F. Access roads shall intersect public roads at right angles.
- G. Every roadway within a mobile home park shall be designed and constructed to the following minimum standards: sixteen (16) feet wide pavement surface with two (2) feet shoulders on each side, a twelve (12) inch gravel base, and a gravel surface.
- H. Every roadway within a mobile home park shall be maintained in good repair and shall be open at all times reasonably possible for travel by occupants of the park and necessary fire, police, ambulance, public utility maintenance and fuel supply vehicles. The park owner shall be responsible for providing and paying the cost of such maintenance and all necessary snow removal.
- I. Turn-arounds shall be provided at the end at dead-end roads.
- J. Each mobile home lot shall have street parking spaces be provided with two (2) off street parking spaces.

- K. Water supply and sewage disposal shall be designed and constructed in compliance with Clinton County Health Department standards.
- L. The park operator shall provide adequate supervision to maintain the park, its common grounds, roads, facilities, and equipment in good repair and in a clean sanitary condition.
- M. All receptacles, including cans and dumpsters, shall be kept in a sanitary condition at all times. It shall be the responsibility of the park owner to ensure that garbage and rubbish shall be collected and properly disposed of outside of the park. All areas of the park shall be maintained free from organic and inorganic material that might become a health, accident or fire hazard.
- N. Each mobile home shall be enclosed at the bottom with a skirt or enclosure made of non-transparent permanent building material, such as metal, cement or building board. The appearance of the skirt or enclosure shall be in keeping with the appearance of a residential neighborhood. Such skirting shall be installed within 90 days of occupancy.
- O. Each mobile home site shall the full length and width of any mobile home intended to be furnished with a reinforced concrete slab at least four (4) inches thick which extends be placed upon it. The mobile home shall be provided with tie downs or anchors capable of securing the stability of the mobile home. Anchors/tie-downs shall be placed at least at each corner of the foundation or cement slab.
- P. No more than one mobile home shall be located on any mobile home lot. Every mobile home within a mobile home park shall be located on a mobile home lot, or temporarily located in a designated storage area shown on the approved site plan approved for said park.
- Q. All mobile homes shall be in compliance with standards equal to, or more stringent than the US Department of Housing and Urban Development (HUD) Manufactured Mobile Home Construction and Safety Standards, 24 CFR Part 3280 (1976) and any amendments and revisions thereto. The permit applicant is responsible for providing adequate evidence that these standards have been complied with. The presence of a permanent certification label affixed to the mobile home by the manufacturer shall be presumptive evidence that the construction of the mobile home is in compliance with such standards.
- R. All fuel tanks shall be located between the mobile home and the rear lot lines, or beneath the mobile home, and shall be concealed from public streets to the extent practical.
- S. A landscaping plan shall be prepared and carried out which will assure the Zoning Board of Appeals that an appropriate planting of trees and shrubs will be included in the park design. The Zoning Board of Appeals may require that the entire park shall be screened from view of adjacent properties and roadways by the planting of shrubbery of an appropriate species.
- T. Each park consisting of ten (10) or more mobile home lots shall have easily accessible

and usable open spaces. Such open spaces shall have an area equal to at least ten (10) percent of the gross land area of the park and shall be fully maintained by the park owner. Part or all of such space shall be in the form of developed recreation areas to be usable for active recreation purposes.

### **Section 585- Cluster Development**

- A. The purpose of this section is to provide for flexibility in design of housing developments so as to permit townhouse structures, other forms of attached residential structures (dwellings sharing a common wall or single family homes on small lots, designed as a unit as a residential development.
  
- B. Minimum lot size, minimum lot width, and minimum front, side and rear yard requirements as specified in this zoning law may be reduced provided that:
  - 1. One of the following applies:
    - a. two or more dwellings or principal structures are proposed to be placed on a single lot.
    - b. a subdivision of two or more lots in single ownership or in ownership by a group or two or more owners acting in concert is involved.
  - 2. The total number of dwellings permitted within the cluster development does not exceed the number which would otherwise be permitted on the site by application of the minimum lot size requirements for single family dwellings.
  
- C. Provision, whether by deed restriction, covenant, or other legal arrangement, shall be made to ensure that the undeveloped portion of the parcel remain as permanent open space or recreation area.
  
- D. The Zoning Board of Appeals shall maintain accurate records and maps showing the location of permanent open spaces. No further development upon the designated open spaces shall be permitted.
  
- E. Open spaces shall be chosen with the following objectives in mind:
  - 1. to preserve farmland.
  - 2. to preserve views and rural character.
  - 3. to avoid streams, wet areas, slopes not to exceed fifteen percent (15%) and other environmentally sensitive areas.
  - 4. to provide a green space buffer between neighboring properties.
  - 5. to provide for recreation areas.
  - 6. to avoid soils which are poor for on-lot septic systems.

## **Section 590 - Waste Disposal and Junkyards**

The following regulations shall apply to all new waste disposal areas for the disposal of construction and demolition debris generated within the Town of Ellenburg, and to all new junkyards.

- A. No waste disposal area or junkyard shall be located within:
  - 1. 100 feet of any adjoining property line.
  - 2. 200 feet of any lake, stream, pond or wetland.
  - 3. 100 feet from any public road right-of-way.
  
- B. In their conditional use review and approval the Zoning Board of Appeals shall take the following factors into account.
  - 1. Visibility of the site from highways, public use areas, and residential areas.
  - 2. The type of highway serving the site.
  - 3. Nature and development of surrounding property, such as the proximity of residential areas, recreational facilities, public parks, churches, educational facilities, nursing homes, or places of public gathering.
  - 4. Possible impact upon surface or groundwater quality.
  - 5. Whether or not the site can be reasonably protected from adversely affecting the public health, safety or welfare by reason of adverse environmental impact.
  - 6. The availability of other suitable sites.

Waste disposal areas and junkyards shall be screened from the view of neighboring properties and public highways either by an eight feet high fence or by the planting of appropriate evergreen trees or shrubbery. The Zoning Board of Appeals may require that a waste disposal area or junkyard be enclosed by an eight feet high security fence constructed of wood or other approved materials. Such fence shall be adequate to prohibit children and others from entering the waste disposal site or junk storage area.

## **Section 595 - Adult Use and Entertainment Establishments**

- A. No more than one adult entertainment use shall be permitted on any lot, and no such use shall be permitted within seven hundred, fifty (750) feet of any other such use.
  
- B. No adult entertainment use shall be permitted in any building used in whole or in part for residential purposes.
  
- C. No adult entertainment use shall be permitted on any lot that is located within seven hundred, fifty (750) feet of any lot used for residential purposes.
  
- D. No adult entertainment use shall be permitted on any lot that is located within seven hundred, fifty (750) feet of any lot on which is located a school, place of worship, counseling or psychiatric treatment facility, community center, day care center,

public park, playing field, or other area in which large numbers of minors regularly congregate.

- E. All building openings, including doorways, windows, etc. shall be located, covered, or screened in such manner as to prevent a view into the adult entertainment use from any public street, sidewalk, or parking area.
- F. As a condition to the issuance of a Conditional Permit for such adult entertainment use, there shall be a restriction that no person under the age of eighteen (18) years shall be permitted into or on the premises.
- G. As a further condition of the approval of any adult entertainment use, there shall be no outdoor display or advertising of any kind, other than one business identification sign complying with all signage requirements set forth in the Town Zoning.

## **ARTICLE 6 - NON-CONFORMING LOTS, USES AND STRUCTURE**

### **Section 600 - Applicability**

This section shall apply to those land uses, structures and lots of record which legally existed at the time of enactment or amendment of this law but which are not in compliance with the regulations or standards herein.

### **Section 610 - Intent**

The intent of this section is to provide for limited development upon existing undersized lots, and to allow non-conforming uses to continue but not to encourage their expansion.

### **Section 620 Existing Undersized Lots of Record**

- A. A single family dwelling may be constructed on any recorded lot held in ownership prior to adoption of these regulations without regard to the minimum lot area, minimum lot width, and minimum lake frontage required by Article 3 of this law, provided that such lot does not adjoin any other lot or lots held by the same owner such that the owner might combine two or more lots in order to meet minimum requirements. Minimum front, side and rear yard requirements shall apply, and any deviation from such minimums shall require a variance. The establishment of uses other than a single family dwelling on such lots shall require a variance.
- B. Existing buildings located on undersized lots of record may be reconstructed to occupy the same ground area as the original structure.
- C. Existing buildings located upon undersized lots of record may be expanded provided that minimum front, side and rear yard requirements, and all other requirements of this zoning law, are satisfied.

### **Section 630 - Non-conforming Building Setbacks**

Existing buildings which are placed closer to front, side or rear lot lines than permitted by Article 3 of this law shall not be expanded in a manner which would increase the extent of their non-conformity

### **Section 640 - Non-Conforming Use**

Uses of land or structures which lawfully existed at the time these regulations were enacted, and which would be prohibited or restricted by these regulations, may be continued subject to the following conditions.

- A. **Enlargement.** Buildings containing a non-conforming use may be enlarged by an amount not to exceed one-quarter the size of the building without issuance of a variance by the Zoning Board of Appeals, provided that minimum building setbacks and maximum lot coverage requirements are met. If only a portion of a building contains a non-conforming use, then that square footage may be increased by one-quarter, either by using additional space within the structure or by constructing an addition. The area of a lot occupied by a non-conforming use which does not involve a building, such as a non-conforming automobile sales lot, an equipment storage area, or a junk storage area, may be expanded by one-quarter without the issuance of a variance by the Zoning Board of Appeals, provided that any expansion of a junkyard must occur contiguous to the existing junk storage area and on the same side of any public highway as the existing junk storage area.
- B. **Unsafe structures.** Any structure or portion thereof declared unsafe by proper authority may be restored to a safe condition.
- C. **Restoration.** If a building is destroyed by fire, flood, or act of God, then it may be rebuilt restored to house the specific use that existed at the time of its destruction, but it shall not be rebuilt for any other non-conforming use. It may be enlarged by the amount permitted in part A above.
- D. **Discontinuance.** Whenever a non-conforming use has been discontinued for a period of two years, the use shall not thereafter be re-established, and all future uses shall be in conformity with these regulations.
- E. **Changes.** Once changed to a conforming use, no structure or land so changed shall be permitted to revert to a non-conforming use.
- F. **Ownership.** Any non-conforming use sold to another party may be continued, provided that such use is re-established within one (1) year of the sale as specified in Part D above.

## ARTICLE 7 - DEFINITIONS

Except where specifically defined herein all words used in this law shall carry their customary meaning. Doubt as to the precise meaning of a word shall be clarified by the Board of Appeals under their powers of interpretation.

Accessory Structure: A building or structure which is of secondary importance to the principal structure of the parcel and which is not used for human occupancy, including but not limited to garages, sheds and swimming pools. Where an accessory structure is attached to the main structure in a substantial manner, as by a wall or roof, such accessory structure shall be considered part of the main structure.

Accessory Use: A use customarily incidental and subordinate to the principal use, and which is located on the same parcel with such principal use.

Advertising Sign: A sign which is intended primarily for advertising a service or product.

Adult Arcade: means any place to which the public is permitted or invited wherein coin-operated, slug-operated, electronically, electrically, or mechanically controlled still or motion picture machines, projections, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by depiction or describing "specified sexual activities" or "specified anatomical areas".

Adult Bookstore or Adult Video Store: means a commercial establishment which, as one of its principal business purpose offers for sale or rental for any form of consideration any one or more of the following:

- A. Adult Cabaret means a nightclub, bar, restaurant or similar commercial establishment which features:
  1. Persons who appear in a state of nudity;
  2. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities";
  3. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

Adult Motel: means a hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmission, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproduction.

Adult Motion Picture Theater: means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”.

Adult Theater: means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”.

Adult Use and Entertainment Establishments: A public or private establishment, or any part thereof, which presents any of the following entertainment, exhibitions or services topless, and/or bottomless dancers; strippers; topless waiter, busing or service; topless hair care or massages; service or entertainment where the servers or entertainers wear pasties or G-strings or both; adult arcade; adult bookstore or adult video stores; adult cabarets; adult motels; adult motion picture theaters; adult theaters; nude model studios and sexual encounter centers.

Agricultural Structure: Barns, storage buildings, equipment sheds, and other structures customarily used for agricultural purposes.

Agriculture: The raising of crops, animals or animal products, limited forestry, the selling of products grown on premises, and any other commonly accepted agricultural operations. Incidental mechanical processing and sale of products grown on the premises are included in the definition.

Boat Storage Facility: A place, site or structure used to park, house or store on anyone lot more than three (3) vessels in excess of eighteen (18) feet.

Building: Shelter having a roof supported by columns or walls and intended for the shelter or enclosure of persons, animals, or property.

Campground: Any area of land or water on which are located two or more cabins, tents, shelters, or other accommodations of a design or character suitable for seasonal or other temporary living purposes, which is used for economic gain.

Cluster Development A development consisting of two or more structures whereby individual lots may be reduced in size and/or where buildings may be placed closer together than permitted by Section 585 of this law. A cluster development may consist solely of residential units, or if commercial uses are permitted in the zone where the cluster development is located, may consist of a mixture of residential and commercial uses. A parcel of land containing a single multi-family dwelling structure shall not be considered to be a cluster development. A single structure occupied by two or more businesses shall be considered to be a shopping center, not a cluster development.

Commercial Use: Any use involving the sale, rental, or distribution of goods or services, either retail or wholesale, such as stores, offices or the provision of recreational facilities for a fee.

Commercial Waste: Solid waste generated by commercial and institutional processes which is not industrial, hazardous, or construction and demolition debris waste.

Communication Tower: shall be any structure used, intended or designed to support antennas. It includes without limit, free-standing towers, monopoles, guide towers, water towers and similar structures that employ camouflage technology. A communication tower is any structure intended for transmitting and/or receiving radio, television, phone, or microwave communications, or other similar communications.

Conditional Use Permit: An authorization of a particular land use which is permitted in this law subject to conditions which are designed to insure that the purposed use will not adversely affect the neighborhood if such conditions are met.

Construction and Demolition Debris: Uncontaminated solid waste resulting from the construction, remodeling, repair and demolition of structures and roads; and uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm related cleanup. Such waste includes, but is not limited to, bricks, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, electrical wiring and components containing no hazardous liquids, and metals that are incidental to any of the above. Solid waste that is not construction and demolition debris (even if resulting from the remodeling, repair and demolition of structures and roads, and land clearing) includes, but is not limited to, asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, carpeting, furniture, appliances, tires, drums and containers, and fuel tanks. Specifically excluded from the definition of construction and demolition debris is solid waste (including what otherwise would be construction and demolition debris) resulting from any processing technique. Other than that employed at a construction and demolition processing facility that renders individual waste components unrecognizable, such as pulverizing or shredding.

Coverage: That percentage of the plot or lot area covered by the area of buildings.

Disposal: A material is disposed of if it is discharged, deposited, injected, dumped, spilled, leaked, burned, incinerated, or placed into any or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into groundwater or surface water.

Directional Sign: Off-site sign intended primarily for the purpose of informing the traveling public where a business is located and what products or services are available there.

Dock: Any structure, whether affixed or floating, placed in or upon a lake, pond, river, stream or brook and which provides a berth for watercraft and/or a means of pedestrian access to and from the shoreline. This shall include boathouses, piers, wharfs, crib docks, stake docks, floating docks

and all such similar structures.

Dwelling: Building or part thereof used as living quarters. For purposes of this law, the terms dwelling unit, one family dwelling, two family dwelling and multi-family dwelling shall not include a motel, hotel, boarding house, tourist home.

Dwelling Unit: Building or part thereof used as living quarters for one family, containing independent cooking and sleeping facilities.

EAF: Environmental Assessment Board

EPA: Environmental Protection Agency

FAA: Federal Aviation Administration

FCC: Federal Communication Commission

Essential Service: Erection, construction, alteration, operation or maintenance by municipal agencies or public utilities of telephone dial equipment centers, electrical or gas substations, water treatment or storage facilities, pumping stations and similar facilities.

Excavation: A lot or part thereof used for the purpose of extracting stone, sand, gravel, or minerals for sale, as a commercial operation.

Family: One or more persons related to each other by blood, marriage or adoption of not more than four individuals who are not related, living together as a single housekeeping unit.

Farm: Any parcel of land containing at least ten (10) acres which is used for gainful intent in raising of agricultural products, horticultural products, livestock, poultry, or dairy products, provided that agriculture is the principal use of the property. This definition does-not include dog kennels.

Forestry Use: Any management, including logging of forest, woodland or plantation and related research and educational activities including the construction, alteration or maintenance of wood roads, skid-ways, landings, fences and forest drainage systems.

Fracking: The process of pressurizing the earth to force open fissures to extract gas, oil, minerals, etc...

Gross Floor Area: For the purpose of applying the requirements for off-road parking, "gross floor area" in the case of offices, merchandising, or service types of uses shall mean the total floor area to be used or intended to be used by tenants, or for service to the public as customers, patrons, clients or patients, including areas occupied by fixtures and equipment used for display or sales or merchandise. It shall not include areas used principally for non-public purposes such as storage, incidental repair, restrooms, fitting alteration rooms or general maintenance or enclosed pedestrian malls or corridors.

Hazardous Chemicals: Solid, liquid or gaseous substances which pose a potential hazard to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed, including but not limited to hazardous substances designated by the U.S. Environmental Protection Agency under Section 311 of the Clean Water Act (40 cfr 116).

Hazardous Waste: A waste or combination of wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (a) cause or contribute to an increase in mortality or an increase in irreversible, or incapacitating reversible illness, or (b) pose a present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed.

Height of structures: Vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat and mansard roofs, and to the average height between the eave and ridge for other types of roofs. Towers, steeples, cupolas, chimneys and similar structures are exempted in height computations.

Home Occupation: An occupation conducted in a dwelling unit or accessory structure which is clearly secondary to the property's residential use, and which does not change the character thereof. (See also Section 435.)

Hydraulic Fracturing: Natural gas exploration and production.

Industrial Use: Any use involving the act of storing, preparing for treatment, manufacturing or assembling any article, substance or commodity.

Industrial Waste: Solid waste generated by manufacturing or industrial process.

Junk Equipment Any equipment which is: (a) either abandoned, wrecked, stored, discarded, dismantled or partly dismantled, (b) is not in working order, and (c) has remained unused for more than one year.

Junk Vehicle: Any motor vehicle whether automobile, bus, trailer truck, tractor, motor home, motorcycle, all-terrain vehicle, minibicycle, or snowmobile or any other device originally intended for travel on public highways which meets all the following conditions: (a) it is unlicensed, (b) it is either abandoned, wrecked, stored, discarded, dismantled or partly dismantled, (c) it is not in any condition for legal use upon the public highway, and (d) it is in such condition as to cost more to repair and place in operating condition than its reasonable market value at that time before such repair. With respect to any motor vehicle not required to be licensed or motor vehicle not usually used on public highways, the fact that such motor vehicle has remained unused for more than six (6) months and is not in condition to be removed under its own power shall be presumptive evidence that such motor vehicle is a junk motor vehicle

Junkyard:The outdoor storage or deposit of any of the following:

- A. Five (5) or more junk vehicles.
- B. Two (2) or more abandoned mobile homes or travel trailers.
- C. Five (5) or appliances including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers and televisions.
- D. Five (5) or more pieces of junk farm equipment or construction equipment, except farm equipment stored on an active farm.
- E. Any combination of the above that totals five (5) items.

Kennel: An establishment in which more than five (5) dogs more than six (6) months old are housed, groomed, bred, boarded, trained or sold.

Large Retail Use: A retail store housed in a building or group of buildings greater than 5,000 (five thousand) square feet or more in ground area.

Lot Frontage: The portion of the lot abutting upon a street or road.

Lot Line: Property lot bounding a lot.

Lot of Record: A lot which is a parcel of land or which is part of a subdivision approved and recorded in the office at the county clerk.

Lot Width: The horizontal distance between the side lot lines measured at right angles to the depth, measured at a depth equal to the greater distance of (a) the minimum required front yard setback or (b) the distance from the public road to the nearest side of the building.

Marina: Any waterfront facility which provides accommodation services for vessels by engaging in any of the following: (a) the sale of marina products or services, (b) the sale, lease, rental or charter of vessels of any type, (c) the sale, lease, rental or any other provision of storage, wharf space or mooring for vessels not registered to the owner of said facility, members of the owner's immediate family, or overnight guests on said property, or (d) gasoline sales, including gasoline sales for automobiles.

Mining: The process of obtaining minerals, oil, gas, etc... from the earth.

Mobile Home: A movable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, and designed and constructed without a permanent foundation for year-round living. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity as well as two (2) or more separately towable components designed to be joined into one integral unit capable of being again separated into the components for repeated towing. "Mobile Home" shall mean \*units designed to be used exclusively for residential purposes, excluding travel trailers. Modular homes or other dwelling units that are constructed in two (2) or more main sections and transported to and permanently assembled on this site are not considered mobile homes.

Mobile Home Park: Any lot of record upon which two (2) or more mobile homes occupied for dwelling or sleeping purposes are located, regardless of whether or not a charge is made for such accommodations.

Modular Home: A prefabricated dwelling unit delivered to the site in two (2) or more structural units and permanently assembled.

Motel/Hotel: A building or group of buildings, whether detached or in connected units, containing transient and/or permanent lodging facilities for the general public and which may contain accessory facilities such as restaurants, meeting rooms, retail business activities and related activities primarily to accommodate the occupants, but not open to the general public, including buildings designated as auto cabins, auto courts, motor lodges, tourist courts and similar terms."

Motor Vehicle Repair Shop: A building, or portion thereof, arranged, intended or designed to be used for making repairs to motor vehicles, including auto body shops.

Multi-Family Dwelling: A building designed for, or occupied by, three or more families living independently of one another, to include row type attached or semi-attached dwellings which share a common wall or portion thereof.

Non-Conforming Lot: A tract of land lawfully existing at the time of enactment or amendment of this local law which does not conform to the minimum requirements of this law.

Non-Conforming Use: A use of land existing at the time of enactment of this law which is neither a permitted use nor a conditional use in the zone in which it is located.

Nude Model Studio: Means any place where a person who appears in the state of nudity or displays "specified anatomical areas" is regularly provided to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons who pay money or any form of consideration, other than as a part of a course of instruction offered by an educational institution established pursuant to the laws of the State of New York.

Nudity or State of Nudity: Means the appearance of "specified anatomical areas"

Outdoor Recreation: Any recreation use particularly oriented to and utilizing the outdoor character of an area, including children's summer camps, hunting and fishing camps, horseback riding stables, playgrounds, picnic areas, public beaches or similar uses.

Person: Means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.

Personal Service: Includes barber, hairdresser, beauty parlor, shoe repair, photographic studio, and similar businesses providing a service.

Principal Structure: The structure in which is conducted the principal use of the lot on which it is located.

Professional or Business Office: Offices and related spaces for use as professional services as provided by medical practitioners, attorneys, architects, surveyors, engineers, accountants, and similar professions.

Public Facility: Any usage by a governmental agency or other agency providing a not-for-profit public service, including but not limited to libraries; public recreation facilities; schools; not-for-profit fire, ambulance and public safety buildings; and not-for profit hospitals for the care of human beings, nursing homes, convalescent homes, homes for adults, homes for the aged as the same are defined under the Public Health Law or the Social Services Law of the State of New York, provided that they are duly licensed by the State of New York.

Residential Property Line: Lot line of a parcel of land five acres or less in size containing a residential use.

Recycling Business: A business engaged principally in reprocessing or redemption of used materials for the purpose of sales or reuse of such materials. Specifically excluded from this definition are junkyards as defined herein and any business involving the treatment disposal of solid waste as defined herein in the Town of Ellenburg.

Retail Gasoline Outlet: Any establishment which sells gasoline to the public, to include service stations, convenience stores, car washes and any other facility which sells gasoline.

Road Line: Right of way line of a road as dedicated by a deed or record. Where the width of a road is not established, the road line shall be considered to be twenty-five (25) feet from the center line of the road pavement.

Roadside Stand: Any stand operated on a seasonal basis and selling products grown on the property. Stands operated on a year-round basis or which primarily sell products not grown on the property shall be considered a commercial use and shall be subject to all the requirements for commercial uses stated in this law.

Sawmill/Wood products: Manufacture A sawmills of wood products manufacturing facility located in a building or structure, or group of buildings or structures.

Seasonal Camp: Any land, including any building thereon, used for any assembly of persons for what is commonly known as camp purposes, whether or not conducted for profit and whether or not occupied by adults or by children, either as individuals, families, or groups, and occupied not more than six months per year.

Semi-Nude: Means a state of dress in which clothing covers no more than the "specified anatomical areas", as well as portions of the body covered by supporting straps or devices.

Septage : The contents of a septic tank, cesspool, dry well or other individual sewage treatment facility which receives sewage wastes. sewage, sludge (or derivatives of), bio solids, etc...

Sexual Encounter Center: Means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration, activities between male and female

persons and/or persons of the same sex when one or more of the persons is in the state of nudity or semi-nudity.

Shopping Center: Facilities providing space for two or more retail sales or service establishments, with aggregate gross leasable area in excess of 25,000 square feet.

Shoreline: That line at which land adjoins the water of streams, rivers or lakes at the mean high water mark.

Side Building Setback: The space on the side of a lot not occupied by a building, measured from the nearest side of a building to a side lot line and extending the full length of lot.

Sign: Any material, structure or object, or part, thereof, composed of lettered or pictorial matter which is located out-of-doors or on the exterior of a building, which is used for the purpose of bringing the subject matter thereof to the attention of others, but excluding any flag, emblem or insignia of a nation, political unit, school or religious group. Christmas lights or other holiday ornamentation shall not be considered to be signs.

Single Family Dwelling: Detached building designed for, or occupied by, one family.

Small Business: Any retail, service or trucking business which complies with each of the following criteria:

- A. the combined total ground area of buildings constructed for business purposes does not exceed a maximum of 2,500 square feet, excluding a one or two car garage. In addition to a building constructed for business purposes, any portion of a residence or of a one or two car garage may be used for the conduct of a small business.
- B. no more than 2,500 feet of outdoor space is devoted to storage of goods, materials or equipment, or for display area for equipment or vehicle sales.
- C. the business is conducted on a lot at least one (1) acre in size if there is no residential structure on the lot, or the business is conducted on a lot at least two (2) acres in size if there is a residential structure on the lot.
- D. no more than one semi-trailer type truck is stored outdoors on the property at one time. No more than two smaller trucks or vans principally used for business purposes are stored on the property at any one time.
- E. no more than three pieces of motorized construction or earth-moving equipment, or similar equipment, are stored outdoors on the property.
- F. there is no outdoor storage of junk or junked vehicles as defined herein; blinking or flashing signs; use of materials which pose a hazard due to their toxicity or potential to cause an explosion; gasoline pumps for retail sale of gasoline; on-site waste disposal other than sewage waste; creation of noise in excess of what would be

normal in a residential neighborhood; outdoor lighting in excess of what would be normal in a residential neighborhood.

Specifically excluded from the definition of a small business are gasoline sales establishments, taverns, nightclubs, restaurants, campgrounds, travel trailer parks, truck stops, warehousing, saw mills, motels/hotels, kennels, amusement parks, slaughterhouses, junk yards and motorized vehicle race tracks.

For the purposes of this definition, if essentially the same business is conducted on two or more adjacent lots which are owned, leased or rented by the same party, then said business shall be deemed to be a single business and each such group of lots shall be considered to be a single lot for the purpose of complying with the requirements (A) through (F) above.

Solid Waste: All putrescible and non-putrescible materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garage, refuse, industrial and commercial waste, medical and infectious waste, sludge from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles, and offal.

Specified Anatomical Areas: Means (a) unless completely and opaquely covered, human genitals, pubic region, buttocks, or breast below a point immediately above the top of the areola; and (b) even if completely and opaquely covered, male genitals in a discernibly turgid state.

Specified Sexual Activities: Means and includes any of the following:

- A. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus or breast
- B. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy
- C. masturbation, actual or simulated
- D. excretory functions.

Structure: Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

Travel Trailer: Shall include motor homes, truck campers, camping trailers, travel trailers and pop-up trailers less than forty- eight (48) feet in length used tor recreation and travel.

Travel Trailer Park: Any plot of ground upon which two (2) or more trailers, pickup coaches or similar recreational vehicles and/or tents occupied for dwelling or sleeping purposes tor transients are located.

Two Family Dwelling: Building designed for, or occupied by, two families living independently of one another.

Variance: A variance is any departure from the strict letter of this local law granted by the Zoning

Board of Appeals as it applies to a particular piece of property, usually pertaining to dimensional requirements only. Variances run with the land and are not particular to anyone landowner

Warehousing and Distribution: Terminal facilities for handling freight with or without maintenance facilities, and buildings used primarily for the storage of goods and materials.

Waste Disposal Area: Any area for the disposal of garbage, refuse, sewerage sludge, construction debris and other solid wastes, including sanitation landfills and dumps.

Zoning Board of Appeals: Town of Ellenburg Zoning Board of Appeals.

Zoning Enforcement Officer: The official designated to administer and enforce this law.

Zoning Permit: A document issued by the Zoning Officer authorizing the use of lots, structures, uses of land and structures, and the characteristics of the uses in conformity with this law.

## **ARTICLE 8 - CONDITIONAL USE REVIEW AND APPROVAL**

### **Section 800 - Applicability**

All uses listed as Conditional Uses in Article 3 shall require conditional use approval by the Zoning Board of Appeals before a Zoning Permit may be issued by the Enforcement Officer

### **Section 810 - Authorization**

The Zoning Board of Appeals of the Town of Ellenburg is hereby authorized to review and approve, approve with modifications, or disapprove proposed conditional uses in accordance with the standards set forth in Article 5 herein.

### **Section 820 - Application for Conditional Approval**

All applications for Conditional Use Approval shall consist of the following:

- A. Three copies of a site plan map (one to be retained for Town records, one to be returned to the applicant, one for referral to county if necessary), to include as applicable:
  1. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing.

2. North arrow, scale and date.
3. Boundaries of the property plotted to scale.
4. Existing watercourse and bodies of water.
5. Location of any slopes of 5% or greater.
6. Proposed grading and drainage.
7. Location, proposed use and height of all buildings and site improvements including culverts, drains, retaining walls and fences.
8. Location, design and construction materials of all parking and truck loading areas, showing points of entry and exit from the site.
9. Location of outdoor storage, if any.
10. Description of the method of sewage disposal and location of the facilities.
11. Identification of water sources; if well, locate.
12. Location, size and design and construction materials of all proposed signs.
13. Location and proposed development of all buffer areas, including existing vegetative cover.
14. Location and design of outdoor lighting facilities.

B. Accompanying data, to include the following as applicable:

1. Application form and fee.
2. Name and address of applicant and any professional advisors.
3. Authorization of owner if applicant is not the owner of the property in question.
4. Short Environmental Assessment Form.
5. Any additional endorsements, certifications or approvals required by the Zoning Board of Appeals.
6. Other information as the Zoning Board of Appeals may reasonably require to assess the proposed project; such as the location of fire lanes and hydrants, provisions for pedestrian access, or designation of the amount of building area proposed for use for retail sales or other commercial activity.

C. Communication Towers See Local Law Number 2 of 2012, Town of Ellenburg.

D. Wind Farms See Local Law Number 4 of 2005, Town of Ellenburg.

**The Zoning Board of Appeals may, at its discretion, require that such site plan be prepared by a licensed engineer or architect.**

### **Section 830 - Waiver of Submission Requirement**

The Board of Appeals may waive certain submission requirements in the case of minor projects of an uncomplicated nature.

### **Section 840 - Review Procedure**

Application to the Zoning Board of Appeals shall be processed in the following steps:

- A. The Zoning Board of Appeals shall undertake a preliminary review of an application at its first regularly scheduled monthly meeting after the application is submitted. At the preliminary review, the Board shall determine whether the application is complete. If the application is deemed to be incomplete, then the applicant shall be notified in writing of what further information is required. If the application deems to be complete, the Board shall proceed to schedule a public hearing.
- B. The Board shall schedule a public hearing within forty-five (45) days of receipt of a complete application and shall provide notice of such hearing by publication in a newspaper of general circulation in the Town at least five (5) days prior to the date thereof.
- C. As required by State Law, certain applications shall be forwarded to the Clinton County Planning Board. Applications for conditional use approvals must be mailed to the County Planning Board at least ten (10) days prior to the hearing and application for a variance or an appeal from a decision of the enforcement officer must be mailed at least five (5) days prior to the hearing.
- D. The Board of Appeals shall conduct a public hearing on the matter.
- E. Within forty-five (45) days of final public hearing, the Board shall render a decision to approve, disapprove, or approve with modifications or conditions. Said time period may be extended by mutual consent of the applicant and the Board.
- F. All decisions shall be in writing, shall be filed with the Town Clerk within five (5) business days of the decision, and a copy thereof shall be provided to the applicant.

### **Section 850 - Condition**

In their review of a proposed conditional use, the Zoning Board of Appeals may impose any conditions it deems necessary to serve the interests of the public health, safety and general welfare, and to insure compatibility with surrounding properties. Such conditions may include, but shall not be limited to:

1. Requiring landscaping or vegetative screening.
2. Increasing building setback.
3. Limiting the size of buildings, parking areas or facilities.
4. Specifying the location and design of entrances, exits, and off-street parking space.
5. Requiring that materials be stored indoors or certain activities be conducted indoors.
6. Requiring noise barriers.
7. Requiring storm water retention ponds or other drainage and pollution control devices.

## **ARTICLE 9 - VARIANCES AND APPEALS**

### **Section 900 - Board of Appeals**

The Zoning Board of Appeals shall have the authority to review and approve requests for variances, hear appeals from a decision of the Zoning Enforcement Officer, and to decide any question involving the interpretation of any provision of this law.

### **Section 910 - Application**

\*\*\*See Section 820.

### **Section 920 - Variance Policy**

The granting of variances shall be principally for those seeking an area variance. A use variance shall only be granted if the provisions of Section 940, Part B of this law are strictly met.

### **Section 930 - Requirements for Area Variance**

- A. Area variances may be granted where the dimensional requirements of this law, such as minimum lot size; minimum lot width; required front, side and rear yards; maximum lot coverage by buildings; minimum road frontage; maximum height of buildings; and the size or placement of signs, cannot be reasonably met.
- B. In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted as weighed against detriment to the health, safety and welfare of the neighborhood or community. In making such determination, the Board shall consider:

1. Whether an undesirable change in character of the neighborhood will be produced or a detriment to nearby properties will be created by the granting of the area variance.
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
3. Whether the requested variance is substantial.
4. Whether the proposed variance will have an adverse impact on the physical or environmental conditions in the neighborhood.
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the ZBA, but shall not necessarily preclude the granting of the area variance.

\*\*\* Any area variance granted shall be the minimum necessary for the applicant to make reasonable use of the property.

### **Section 940 - Requirements for Use Variances**

- A. A variance may be granted to allow a land use to be established which would otherwise not be permitted by this law.
- B. No such use variance shall be granted by the ZBA without a showing by the applicant that the zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the ZBA all of the following:
  1. Under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence.
  2. That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.
  3. That the requested use variance, if granted, will not alter the essential character of the neighborhood.
  4. That the alleged hardship has not been self-created.
- C. Any use variance granted shall be the minimum necessary to address the unnecessary hardship proven by the applicant.

### **Section 950 - Procedures for Variances**

**See Section 840.**

## **ARTICLE 10 - ADMINISTRATION AND ENFORCEMENT**

### **Section 1000 - Zoning Permits**

- A. Except for exempt actions listed in Section 110 parts B and C of this law, no building or structure shall be erected, altered, moved, or use instituted, until a Zoning Permit has been issued. The exterior structural area of a building or structure shall not be enlarged until a Zoning Permit has been issued.
- B. Parking lots for places of public assembly and commercial or business uses shall require a Zoning Permit for placement.
- C. When establishing measurements to meet required setbacks, the measurements shall be taken from the road right-of-way, lot line, or nearest high water elevation to the furthestmost protruding part of the use or structure. This shall include such projecting facilities as porches, carports, and attached garages.
- D. A Zoning Permit issued under this law shall expire one (1) year from the date of issue if construction is not substantially started.
- E. Any use that has been discontinued for a period of twelve (12) months or longer shall be considered abandoned and may not be reinstated without applying for a new Zoning Permit.
- F. Applications for Zoning Permits shall be submitted to the Zoning Enforcement Officer. See Section 840.
- G. Permit fees shall be charged for non-permitted uses, as established by the Town Board.

### **Section 1010 - Certificate of Occupancy**

No land shall be occupied or used and no building or structure hereafter used, or changes made in the use until a Certificate of Occupancy has been issued by the Zoning Enforcement Officer stating that the building, structure, or proposed use thereof complies with the provisions of this law.

### **Section 1020 - Zoning Enforcement Officer (ZEO)**

- A. This law shall be enforced by the Zoning Enforcement Officer, who shall be appointed by the Town Board.

- B. The duties of the Zoning Enforcement Officer shall be to:
1. Approve and/or deny zoning permits.
  2. Scale and interpret zone boundaries on the Zoning Map.
  3. Approve and/or deny Certificates of Occupancy.
  4. Refer appropriate matters to the Zoning Board of Appeals.
  5. Revoke zoning permits where there is false, misleading or insufficient information.
  6. Revoke zoning permits and/or certificates of occupancy where the applicant has varied from the terms of the application.
  7. Investigate violations, issue stop work orders, and refer violations to the Town Board and local Town Justice for citation.
  8. Report at regular Town Board meetings the number of zoning permits and certificates of occupancy issued and fees collected.

### **Section 1030 - Zoning Board of Appeals**

Creation: A Zoning Board of Appeals is hereby created. Said Board shall consist of five (5) members. The Town Board shall appoint the members of the Board of Appeals on a staggered term basis in conformance with Town Law, and shall appoint a Chairman and Vice-Chairman. The Board of Appeals shall select a Secretary and may prescribe rules for the conduct of its affairs.

- A. Powers and Duties: The Zoning Board of Appeals shall have the following powers and duties with respect to this law:
1. Review and approval of conditional use permits.
  2. Review and approval of variances.
  3. Review of appeals from a decision of the Zoning Enforcement Officer.
  4. To decide any question involving the interpretation of a provision or definition contained in this law.
  5. Submittal of advisory opinion to the Town Board for any proposed amendment to this law.

## **Section 1035 - Meeting Procedures**

- A. Meetings shall be held at such times as the Board may determine, or at the call of the Chairman.
- B. A quorum shall consist of three (3) members, but in order to approve a conditional use or a variance, or reverse a decision of the Enforcement Officer, an affirmative vote of at least three (3) members shall be required.
- C. The Board shall keep minutes of its proceedings showing the vote of each member upon each question.
- D. All meetings and hearings of the Board shall be public.
- E. Every decision or determination of the Board of Appeals shall be in writing and shall be filed in the office of the Town Clerk within five (5) business days and shall be public record.

## **Section 1040 - Enforcement**

- A. Penalties. Any person owning, controlling or managing any such building, structure, land or premises wherein or whereon there shall be placed on or there exists or is practiced or maintained anything or any use in violation of any of the provisions of this law shall be guilty of an offense and subject to a fine or penalty of one hundred dollars (\$100.00) for the first offense. If a second offense is committed for the same violation within thirty (30) days, a two hundred fifty dollar (\$250.00) fine will be imposed for each such violation.

For each 24-hour period such violation continues, every such person shall be deemed guilty of a separate offense. Where the person committing such violation is a partnership, association or corporation, the principal executive officer, partner, agency or manager may be considered to be the "person" for the purpose of this section.

- B. Alternative Remedy. In the case of any violation or threatened violation of any of the provisions of this law, or conditions imposed by a zoning permit, in addition to other remedies herein provided, the Town may institute any appropriate action or proceedings to prevent such unlawful erection, structural alteration, reconstruction, occupancy, moving and/or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure or land, or to prevent *any* illegal act, conduct, business or use in or about such premises and to collect a penalty or fine assessed hereunder.
- C. Stop Work Order.
  - 1. The Town Board for the Town of Ellenburg herein grants the Zoning Enforcement Officer the administrative responsibility of determining in the first instance whether

a violation has occurred and immediately terminating said violation by posting a Stop Work Order on the premises herein the violation has occurred.

2. The stop work Order shall serve notice to the owner, builder, developer, agent and/or any other individual or business on the premises that all such actions specified on the Stop Work Order must be terminated immediately.
- D. Appeal. Any person found to be in violation as described above may appeal the notice of violation to the Zoning Board of Appeals; such appeal must be in writing and may be made no later than thirty (30) days from the date of the notice. An Appeal to the Zoning Board of Appeals shall stay enforcement including the accumulation of fines and penalties from the date such appeal is filed in the office of the Zoning Board of Appeals to the date of a determination by the Zoning Board of Appeals.
- E. Misrepresentation. Any permit or approval granted under this law which is based upon or is granted in reliance upon any material misrepresentation, or failure to make a material fact or circumstances known, by or on behalf of an applicant, shall be void. This section shall not be construed to affect the remedies available to the Town under Section 1040 A-C of this law.

### **Section 1050 - Amendments**

- A. The Town Board may amend, supplement, or repeal any provisions of this law in accordance with procedures specified in Town Law pertaining to amendment of local laws. In addition, before acting on any proposed amendment, the Town Board shall receive a written recommendation from the Zoning Board of Appeals.

### **Section 1060 - Referral to the County Planning Board**

- A. State law requires that certain variance, conditional use approval or zoning amendment actions be referred to the Clinton County Planning Board for their review prior to taking final action on the matter. Such actions are those which affect real property within 500 feet of any of the following:
1. State or County highway,
  2. State or County land where a public building or institution is located,
  3. State or County owned park or recreation area,
  4. the Town boundary.
- B. If the County Planning Board does not respond within thirty (30) days from the time it receives a complete application, final action may be taken on the matter without such report; delivery at least one week in advance of this regularly scheduled County Planning Board meeting.

- C. In the event the County Planning Board disapproves the proposal, or approves it subject to modifications, then the local board may override the county opinion only by a vote of a majority plus one of its members. (A majority plus one on a five person board equals four members.)
  
- D. The local board shall send a copy of its final decision to the County Planning Board within seven (31) days after the local decision is reached. If the decision of the local board is contrary to a County Planning Board recommendation, then the local board shall send a resolution fully stating the reasons for its contrary action.

**Section 1070 - Severability**

Should any section or provisions of this law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

**Section 1075 - Supersession**

Local Law #1 of the year 2014 of the Town of Ellenburg, supersedes the preceding Zoning Law.

**Section 1080 - Effective Date**

The provisions of this law shall take effect upon filing with the Secretary of State.



**Local Law No. 4 of 2005**

**Be it hereby enacted by the Town Board of the Town of Ellenburg as follows:**

**Section 1: Local Law No. 4 of 2005, entitled "WIND ENERGY FACILITIES," is hereby adopted to read in its entirety as follows:**

**WIND ENERGY FACILITIES**

**Article I**

**§1 Title**

This Local Law shall be cited as the "Wind Energy Facility Law of the Town of Ellenburg, New York."

**§2 Purpose.**

The Town Board of the Town of Ellenburg adopts this Local Law to promote the effective and efficient use of the Town's wind energy resource through wind energy conversion systems (WECS), and to regulate the placement of such systems so that the public health, safety, and welfare will not be jeopardized.

**§3 Authority**

The Town Board of the Town of Ellenburg enacts this Local Law under the authority granted by

1. Article IX of the New York State Constitution, §2(c)(6) and (10).
2. New York Statute of Local Governments, § 10 (1), (6), and (7).
3. New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and §10 (1)(a)(6), (11), (12), and (14).
4. The supersession authority of New York Municipal Home Rule Law, § 10 (2)(d)(3), specifically as it relates to determining which body shall have power to grant variances under this Local Law, to the extent such grant of power is different than under Town Law §267.
5. New York Town Law, Article 16 (Zoning).
6. New York Town Law §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (7)(Use of streets and highways), (7-a)(Location of Driveways), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines).

7. New York Town Law §64(17-a)(protection of aesthetic interests), (23)(General powers).

#### **§4. Findings.**

A. The Town Board of the Town of Ellenburg finds and declares that

1. Wind energy is an abundant, renewable and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.

2. The generation of electricity from properly Sited wind turbines, including small systems, can be cost effective, and in many cases existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or on-Site consumption can be reduced.

3. Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public.

4. Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects.

5. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility and access road Sites, and harm farmlands through improper construction methods.

6. Wind Energy Facilities may present a risk to bird and bat populations if not properly Sited.

7. If not properly Sited, Wind Energy Facilities may present risks to the property values of adjoining property owners.

8. Wind Energy Facilities are significant sources of noise, which, if unregulated, can negatively impact adjoining properties.

9. Construction of Wind Energy Facilities can create traffic problems and damage local roads.

10. Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.

#### **§5. Permits Required**

A. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Ellenburg except in compliance with this Local Law.

B. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Ellenburg except in a Wind Overlay Zone, pursuant to an application for rezoning and special use permit approved pursuant to this Local Law.

C. No Wind Measurement Tower shall be constructed, reconstructed, modified, or operated in the Town of Ellenburg except pursuant to a Special Use Permit issued pursuant to this Local Law.

D. No Small Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Ellenburg except pursuant to a Special Use Permit issued pursuant to this Local Law.

E. This Local Law shall apply to all areas of the Town of Ellenburg.

F. Exemptions. No permit or other approval shall be required under this Local Law for mechanical, non electrical WECS utilized solely for agricultural operations.

G. Transfer. No transfer of any Wind Energy Facility or Special Use Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this Local Law. No transfer shall eliminate the liability of an applicant nor of any other party under this Local Law.

H. Notwithstanding the requirements of this Section, replacement in kind or modification of a Wind Energy Facility may occur without Town Board approval when (1) there will no increase in Total Height; (2) no change in the location of the WECS; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the WECS.

## **§6 Definitions.**

As used in this Local Law, the following terms shall have the meanings indicated:

EAF – Environmental Assessment Form used in the implementation of the SEQRA as that term is defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

RESIDENCE – means any dwelling suitable for habitation existing in the Town of Ellenburg on the date an application is received. A residence may be part of a multi-dwelling or multipurpose building, but shall not include buildings such as hunting camps, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools or other buildings used for educational purposes, or correctional institutions.

SEQRA - the New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

**SOUND PRESSURE LEVEL** -- means the level which is equaled or exceeded a stated percentage of time. An  $L_{10}$  - 50 dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for 6 minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedures.

**SITE** -- The parcel(s) of land where the Wind Energy Facility is to be placed. The Site could be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a Wind Energy Facility or has entered an agreement for said Facility or a setback agreement shall not be considered off-site.

**SMALL WIND ENERGY CONVERSION SYSTEM ("Small WECS")**-- A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-Site consumption of utility power.

**TOTAL HEIGHT** -- The height of the tower and the furthest vertical extension of the WECS.

**WIND ENERGY CONVERSION SYSTEM ("WECS")**-- A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill").

**WIND ENERGY FACILITY** - Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

**WIND MEASUREMENT TOWER** -- a tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

## **§7. Applicability**

A. The requirements of this Local Law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this Local Law.

B. Wind Energy Facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this Local Law, shall not be required to meet the requirements of this Local Law; provided, however, that

1. Any such preexisting Wind Energy Facility which does not provide energy for a continuous period of twelve (12) months shall meet the requirements of this Local Law prior to recommencing production of energy.

2. No modification or alteration to an existing Wind Energy Facility shall be allowed without full compliance with this Local Law.

3. Any Wind Measurement Tower existing on the effective date of this Local Law shall be removed no later than twenty-four (24) months after said effective date, unless a Special Use Permit for said Wind Energy Facility is obtained.

C. Wind Energy Facilities may be either principal or accessory uses. A different existing use or an existing structure on the same Site shall not preclude the installation of a Wind Energy Facility or a part of such facility on such Site. Wind Energy Facilities constructed and installed in accordance with this Local Law shall not be deemed expansions of a nonconforming use or structure.

### **§§8-9 Reserved for Future Use**

## **Article II**

### **Wind Energy Conversion Systems**

#### **§10 Creation of Wind Overlay Zones**

A. Wind Overlay Zones may be created in the RU Rural Use and RA Rural Arterial Zones.

B. Initial requests for Wind Overlay Zones shall be submitted with applications for WECS Special Use Permits. No Wind Overlay Zone may be initially created without specific requests for WECSs.

C. Once a Wind Overlay Zone has been created, new WECSs or accessory structures or facilities may be added in that zone by grant of a Special Use Permit pursuant to the requirements of this Article.

#### **§11 Applications for Wind Energy Conversion Systems**

A. A joint application for creation of a Wind Overlay Zone and Special Use Permit for individual WECS shall include the following:

1. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.

2. Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.

3. Address, or other property identification, of each proposed tower location, including Tax Map section, block and lot number.

4. A description of the project, including the number and maximum rated capacity of each WECS.

5. A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following.

(1) Property lines and physical dimensions of the Site;

(2) Location, approximate dimensions and types of major existing structures and uses on Site, public roads, and adjoining properties within five hundred (500) feet of the boundaries of the proposed Wind Overlay Zone.

(3) Location and elevation of each proposed WECS.

(4) Location of all above ground utility lines on the Site or within one radius of the Total Height of the WECS, transformers, power lines, interconnection point with transmission lines, and other ancillary facilities or structures.

(5) Location and size of structures above 35 feet within a five-hundred-foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.

(6) The zoning designation of the subject and adjacent properties as set forth in Town Zoning Law.

(7) Proposed boundaries of the Wind Overlay Zone.

(8) To demonstrate compliance with the setback requirements of this Article, circles drawn around each proposed tower location equal to:

(i) One and a half times the tower height.

(ii) Five Hundred foot perimeter.

(iii) One Thousand foot perimeter.

(9) Location of the nearest residential structure on the Site and located off-Site, and the distance from the proposed WECS.

(10) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units, and fencing.

6. Vertical drawing of the WECS showing Total Height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each WECS of the same type and Total Height.

7. Landscaping Plan depicting vegetation describing the area to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.
8. Lighting Plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.
9. List of property owners, with their mailing address, within 500 feet of the boundaries of the proposed Wind Overlay Zone. The applicant may delay submitting this list until the Town Board calls for a public hearing on the application.
10. Decommissioning Plan: The applicant shall submit a decommissioning plan, which shall include: 1) the anticipated life of the WECS; 2) the estimated decommissioning costs in current dollars; 3) how said estimate was determined; 4) the method of ensuring that funds will be available for decommissioning and restoration; (5) the method, such by annual re-estimate by a licensed engineer, that the decommissioning cost will be kept current; and 6) the manner in which the WECS will be decommissioned and the Site restored, which shall include removal of all structures and debris to a depth of 3 feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner.
11. Complaint Resolution: The application will include a complaint resolution process to address complaints from nearby residents. The process shall use an independent mediator or arbitrator and include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint.
12. An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:
  - (1) A construction schedule describing commencement and completion dates; and
  - (2) A description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
13. Completed Part 1 of the Full EAF.
14. Applications for Wind Energy Permits for Wind Measurement Towers subject to this Local Law may be jointly submitted with the WECS.
15. For each proposed WECS, include make, model, picture and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.

16. If the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town Board may issue a positive declaration of environmental significance.

17. If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the Draft Environmental Impact Statement (DEIS) prepared for a Wind Energy Facility. Otherwise, the following studies shall be submitted with the application:

A. Shadow Flicker: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.

B. Visual Impact: Applications shall include a visual impact study of the proposed WECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed Site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

C. A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Zone.

D. Noise Analysis: a noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest residence not on the Site (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall include low frequency noise.

E. Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring WECS Sites.

F. An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communication.

18. The applicant shall, prior to the receipt of a building permit, provide proof that it has executed an Interconnection Agreement with the New York Independent System Operator and the applicable Transmission Owner.

19. A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.

## §12 Application Review Process

- A. Applicants may request a pre-application meeting with the Town Board, or with any consultants retained by the Town Board for application review. Meetings with the Town Board shall be conducted in accordance with the Open Meetings Law.
- B. Six copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any variances are requested, variance application fees shall be paid at the time of the receipt of the application.
- C. Town staff or Town designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this Article is included in the application. Unless the Town Board waives any application requirement, no application shall be considered until deemed complete.
- D. If the application is deemed incomplete, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.
- E. Upon submission of a complete application, including the grant of any application waiver by the Town Board, the Town Clerk shall transmit the application to the Town Board.
- F. The Town Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 500 feet of the boundaries of the proposed Wind Overlay Zone, and published in the Town's official newspaper, no less than ten nor more than twenty days before any hearing; but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.
- G. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested variances.
- H. Notice of the project shall also be given, when applicable, to (1) the Clinton County Planning Board, if required by General Municipal Law §§239-l and 239-m, and (2) to adjoining Towns under Town Law §264.
- I. SEQRA review. Applications for WECS are deemed Type I projects under SEQRA. The Town may conduct its SEQRA review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Town's proceedings. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a

Statement of Findings, which Statement may also serve as the Town's decision on the applications.

J. Upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Board may approve, approve with conditions, or deny the applications, in accordance with the standards in this Article.

### §13 Standards for WECS

A. The following standards shall apply to all WECS, unless specifically waived by the Town Board as part of a permit.

1. All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
2. No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the Town Zoning Law. Applications may be jointly submitted for WECS and telecommunications facilities.
3. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
4. Lighting of tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Site plan.
5. All applicants shall use measures to reduce the visual impact of WECSs to the extent possible. WECSs shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Individual WECSs within a Wind Overlay Zone shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the Zone, to provide reasonable uniformity in overall size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
6. The use of guy wires is disfavored. A WECS using guy wires for tower support shall incorporate appropriate measures to protect the guy wires from damage which could cause tower failure.
7. No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate

this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Permit for the specific WECS or WECSs causing the interference.

8. All solid waste and hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations.

9. WECSs shall be designed to minimize the impacts land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible.

10. WECSs shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity, particularly bird and bat species.

11. Wind energy conversion facilities shall be located in a manner consistent with all applicable state and Federal wetlands laws and regulations.

12. Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations.

13. The maximum Total Height of any WECS shall be 440 feet.

14. Construction of the WECS shall be limited to the hours of 6 a.m. to 8 p.m. except for certain activities that require cooler temperatures than possible during the day, subject to approval from the Town.

#### **§14 Required Safety Measures**

A. Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.

B. Unless the property owner submits a written request that no fencing be required, a six-foot-high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate.

C. Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24 hour, 7 day a week coverage. The Town Board may require additional signs based on safety needs.

D. No climbing pegs or tower ladders shall be located closer than twelve (12) feet to the ground level at the base of the structure for freestanding single pole or guyed towers.

E. The minimum distance between the ground and any part of the rotor or blade system shall be twenty (20) feet.

F. WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.

### **§15 Traffic Routes**

A. Construction of WECS poses potential risks because of the large size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and /or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include (1) minimizing traffic impacts from construction and delivery vehicles; (2) minimizing WECS related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Permit conditions may limit WECS-related traffic to specified routes, and include a plan for disseminating traffic route information to the public.

B. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Town Board, sufficient to compensate the Town for any damage to local roads.

C. If the applicant uses any seasonal use highway in the off-season, it shall be solely responsible for the maintenance of said highway including but not limited to snow plowing, no act of maintenance on a seasonal use highway by an applicant shall be considered as Town maintenance of that highway for purposes of determining the seasonal use status of the highway.

### **§16 Setbacks for Wind Energy Conversion Systems**

A. The statistical sound pressure level generated by a WECS shall not exceed  $L_{10} - 50$  dBA measured at the nearest inhabited off-Site dwelling existing at the time of application. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.

B. In the event audible noise due to Wind Energy Facility operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph 1) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.

C. In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project Site are sufficient to allow Wind Turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

D. Any noise level falling between two whole decibels shall be the lower of the two.

E. Each WECS shall be setback from Site boundaries, measured from the center of the WECS:

1. 500 feet from the nearest Site boundary property line.
2. 500 feet from the nearest public road.
3. 1,000 feet from the nearest off-Site residence existing at the time of application, measured from the exterior of such residence.
4. One and a half times the Total Height of the WECS from any non-WECS structure or any above-ground utilities.
5. 100 feet from state-identified wetlands. This distance may be adjusted to be greater or lesser at the discretion of the reviewing body, based on topography, land cover, land uses and other factors that influence the flight patterns of resident birds.

#### **§17 Noise and Setback Easements**

A. In the event the noise levels resulting from a Wind Energy Facility exceed the criteria established in this Local Law, or setback requirement is not met, a waiver will be granted from such requirement by the Town Board in the following circumstances:

1. Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this Local Law, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed or (2) all setbacks less than required; and
2. In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been recorded in the County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this

Article, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.

B. Waivers granted under this Section differ from variances under Article IV of this Local Law in that no variance is required if a waiver is given under this Section, and a variance must be sought rather than a waiver if the adjoining property owner will not grant an easement pursuant to this section.

### **§18 Creation of Wind Overlay Zones and Issuance of Special Use Permits**

A. Upon completion of the review process, the Town Board shall, upon consideration of the standards in this Local Law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated.

B. If approved, the Town Board will direct the Town Clerk to modify the Official Map to reflect the creation of the Wind Overlay Zones, and direct Town staff to issue a Special Use Permit for each WECSs upon satisfaction of all conditions for said Permit, and direct the building inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this Local Law..

C. The decision of the Town Board shall be filed within five days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.

D. If any approved WECS is not substantially commenced within two years of issuance of the permit, the special use permit shall expire.

### **§19 Abatement**

A. If any WECS remains non-functional or inoperative for a continuous period of 1 year, the applicant agrees that, without any further action by the Town Board, it shall remove said system at its own expense. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's limit the ability to order a remedial action plan after public hearing.

B. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSEERDA or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) 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 WECS is functioning, which reports may be redacted as necessary to protect proprietary information.

C. Decommissioning Bond or Fund The applicant, or successors, shall continuously maintain a fund or bond payable to the Town for the removal of non-functional towers and appurtenant facilities in an amount to be determined by the Town for the period of the of the life

of the facility. This fund may consist of a letter of credit from a State of New York-licensed financial institution. All costs of the financial security shall be borne by the applicant.

#### **§20 Limitations on Approvals; Easements on Town Property**

A. Nothing in this Local Law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this Local Law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

B. Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state or local law.

#### **§21 Permit Revocation**

A. Testing fund. A Special Use Permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit and this Local Law and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

B. Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

C. Notwithstanding any other abatement provision under this Local Law, and consistent with §19(A) and §21(B), if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, (1) order either remedial action within a particular timeframe, or (2) order revocation of the Wind Energy Permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommission Plan to remove the WECS.

## Article III

### Wind Measurement Towers

#### §22 Wind Site Assessment

The Town Board acknowledges that prior to construction of a WECS, a wind Site assessment is conducted to determine the wind speeds and the feasibility of using particular Sites. Installation of Wind Measurement Towers, also known as anemometer ("Met") towers, shall be permitted as Special Use in the RU Rural Use and RA Rural Arterial Zones.

#### §23 Applications for Wind Measurement Towers

- A. An application for a Wind Measurement Tower shall include
1. Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  2. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
  3. Address of each proposed tower Site, including Tax Map section, block and lot number.
  4. Site plan
  5. Decommissioning Plan, including a security bond or cash for removal.

#### §24 Standards for Wind Measurement Towers

- A. The distance between a Wind Measurement Tower and the property line shall be at least the Total Height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
- B. Special Use permits for Wind Measurement Towers may be issued for a period of up to two years. Permits may be renewed if the Facility is in compliance with the conditions of the Special Use Permit.

## Article IV

## Small Wind Energy Conversion Systems

### §25 Purpose and Intent

The purpose of this Article is to provide standards for small wind energy conversion systems designed for on-site home, farm, and small commercial use, and that are primarily used to reduce on-site consumption of utility power. The intent of this Article is to encourage the development of small wind energy systems and to protect the public health, safety, and community welfare.

### §26 Permitted Areas.

1. Small Wind energy systems may be permitted in the RA or RU districts any zoning district on a Site of at least 5 acres, upon issuance of a Special Use Permit.

### §27 Applications.

A. Applications for Small WECS special use permits shall include:

1. Name, address, telephone number of the applicant. If the applicant will be represented by an agent, the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
2. Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (i) confirming that the property owner is familiar with the proposed applications and (ii) authorizing the submission of the application.
3. Address of each proposed tower Site, including Tax Map section, block and lot number.
4. Evidence that the proposed tower height does not exceed the height recommended by the manufacture or distributor of the system.
5. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code.
6. Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity.
7. Written evidence that the electric utility service provider that serves the proposed Site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states so in the application, to connect the system to the electricity grid.
8. A visual analysis of the Small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

### **§28 Development Standards.**

All small wind energy systems shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this Article that are not in conflict with the requirements contained in this section.

1. A system shall be located on a lot a minimum of one acre in size, however, this requirement can be met by multiple owners submitting a joint application.
2. Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for purposes of this Article.
3. Small Wind energy systems may be used primarily to reduce the on-Site consumption of electricity.
4. Tower heights may be allowed as follows:
  - a. 65 feet or less on parcels between one and five acres.
  - b. 80 feet or less on parcels of five or more acres.
  - c. The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.
5. The maximum turbine power output is limited to 10 KW.
6. The system's tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate non-reflective surfaces to minimize any visual disruption.
7. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). To the greatest extent feasible a small wind energy system:
  - a. Shall not project above the top of ridgelines.
  - b. If visible from public viewing areas, shall use natural landforms and existing vegetation for screening.
  - c. Shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.
8. Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
9. All on-site electrical wires associated with the system shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission

poles, towers and lines. This standard may be modified by the decision-maker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.

10. The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.

11. At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner

12. Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:

- a. Tower-climbing apparatus located no closer than 12 feet from the ground.
- b. A locked anti-climb device installed on the tower.
- c. A locked, protective fence at least six feet in height that encloses the tower.

13. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.

14. Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be re-graded and re-vegetated to the pre-existing natural condition after completion of installation.

15. To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a 250 foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.

16. All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Building Code and National Electric Code.

17. All small wind energy systems shall be equipped with manual and automatic over-speed controls. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacture.

## **§29 Standards**

A Small Wind Energy System shall comply with the following standards:

1. Setback requirements. A Small WECS shall not be located closer to a property line than one and a half times the Total Height of the facility.

2. Noise. Except during short-term events including utility outages and severe wind storms, a Small WECS shall be designed, installed, and operated so that noise generated by the system shall not exceed the 50 decibels (dBA), as measured at the closest neighboring inhabited dwelling.

### **§30 Abandonment of Use**

A Small WECS which is not used for twelve (12) successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the City.

B. All Small WECS shall be maintained in good condition and in accordance with all requirements of this section.

## **Article IV Variances**

### **§31 Variances.**

A. The Town Board may, after a public hearing (which may be combined with other public hearings on Wind Energy Facilities, so long as the variance request is detailed in the public notice), grant a variance from the strict application of the provisions of this Local Law in accordance with the following:

B. **USE VARIANCE:** The Town Board may grant a use variance, to allow a Wind Energy Facility outside a Wind Overlay District, based upon unnecessary hardship, only where the applicant has established all of the following factors:

1. the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
2. the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
3. the requested use variance, if granted, will not alter the essential character of the neighborhood; and
4. the alleged hardship has not been self-created.

C. **AREA VARIANCE:** Area variance may be considered where setback, lot size, height or other requirements of this local law cannot be reasonably met. The Town Board may grant an area variance, upon a balancing of the following factors:

1. whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
2. whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
3. whether the requested area variance is substantial;
4. whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
5. whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Town Board, but shall not necessarily preclude the granting of the area variance;
6. whether the proposed variance is the minimum variance necessary to afford relief; and
7. whether feasible alternatives not requiring a variance are available.

D. The Town Board may attach such conditions as it deems appropriate to variance approvals as it deems necessary to minimize the impact of the variance.

## **Article V**

### **Miscellaneous**

#### **§32 Fees**

A. Non-refundable Application Fees shall be as follows:

1. Wind Overlay Zone rezoning: \$500 per zone.
2. WECS Special Use Permit: \$50 per megawatt of rated maximum capacity
3. Wind Measurement Towers: \$200 per tower.
4. Small WECS: \$150 per WECS
5. Wind Measurement Tower Special Use Permit renewals: \$50 per Wind Measurement Tower.

B. **Building Permits.** The Town believes the review of building and electrical permits for Wind Energy Facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall \$25 per permit request for administrative costs, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection

and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or conduct inspections as agreed by the parties.

C. Nothing in this Local Law shall be read as limiting the ability of the Town to enter into Host Community agreements with any applicant to compensate the town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

D. The Town Board may amend these fees, by resolution after a properly noticed public hearing.

### **§33 Tax Exemption**

The Town hereby exercises its right to opt out of the Tax Exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by paragraph 8 of that law.

### **§34 Enforcement; Penalties and remedies for violations.**

A. The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this Local Law.

B. Any person owning, controlling or managing any building, structure or land who shall undertake a wind energy conversion facility or wind monitoring tower in violation of this Local Law or in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$350 or to imprisonment for a period of not more than six months, or subject to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$350 for each violation and each week said violation continues shall be deemed a separate violation.

C. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

**SECTION 2:** The "Zoning Regulations for the Town of Ellenburg, New York," are amended by adding the following to "Definitions":

**WIND ENERGY FACILITY** - Any Wind Energy Conversion System, Small Wind Energy Conversion System, or Wind Measurement Tower, as each is defined in Local Law No. - of 2005, including all related infrastructure, electrical lines and substations, access roads and accessory structures. Public Utility uses otherwise allowed under this Law do not include Wind Energy Facilities.

**SECTION 3: Severability**

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

**SECTION 4: Effective Date**

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.