

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County
City
Town
Village
of Howard

Local Law No. 3 of the year 2007

A local law Wind Energy Facilities Law
(Insert Title)

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

County
City
Town
Village
of Howard as follows:

(See Local Law annexed hereto)

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

Local Law No. 3, 2007**TOWN OF HOWARD
WIND ENERGY FACILITIES LAW**

Be it enacted by the Town Board of the Town of Howard, as follows:

Article 1. Title.

This Local Law shall be known as the Town of Howard Wind Energy Facilities Law, as amended. The Town of Howard is hereafter referred to as the "Town".

Article 2. Statement of Authority.

The Town Board of the Town of Howard, pursuant to the authority granted to the Town under Section 10 of the Municipal Home Rule Law of the State of New York, hereby enacts the Town of Howard Wind Energy Facilities Law as follows:

Article 3. State of Purpose and Findings.

The Town Board of the Town of Howard hereby finds that in order to facilitate the development of wind energy facilities within the Town of Howard, a local law must be enacted to regulate their development and set forth other requirements relative to wind power facilities. This law is to be consistent with the general intent of all other local laws heretofore enacted by the Town to accommodate the necessary infrastructure for the provision of commercial wind-powered electricity generation facilities so that they may be developed in a manner hereby deemed to be compatible with the general health, welfare and safety of the residents of the Town and furthermore, to address the environmental, visual, aesthetic and land use compatibility aspects of wind energy facilities.

Article 4. Definitions.

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

TOWN PLANNING BOARD- *Shall mean the Town of Howard Planning Board duly created and appointed by the Town of Howard Town Board.*

WIND ENERGY FACILITIES: Wind energy facilities, *structures, mechanical devices or like pieces of equipment that are designed to generate original power on site by converting wind energy into a form of energy for commercial sale or to be transferred to a transmission system for distribution to customers.* The definition of wind energy facilities shall not include individual wind energy facilities erected and used primarily for private use. Wind energy facilities shall include wind turbines and accessory facilities or equipment.

WIND TURBINE: Shall mean a component of the wind energy facility *that converts wind energy into electricity through the use of a wind turbine generator, and includes the turbine, blade, tower, base and pad transformer.*

Article 5. Authority and Procedure.

Section 1. Permit Approval, Delegation of Authority

- (A) *No such wind energy facility shall hereinafter be constructed, installed, or operated within the Town of Howard unless such wind energy facility has obtained and maintains a duly issued permit from the Town.*
- (B) The Town Planning Board is hereby authorized to approve, approve with conditions, or disapprove wind energy facility applications in accordance with this Local Law *and issue the necessary permits in accordance therewith as required under this section.*

Section 2. Application; Fee; Procedure; Public Hearing; Decision

- (A) Completed applications for siting a wind energy facility shall be submitted to the Town Clerk at least ten (10) days prior to the relevant regular meeting, *or special meeting*, of the Town Planning Board at which the proposed wind energy facility is scheduled to be heard.
- (B) Fees. A reasonable fee shall accompany such application. Such fee shall be set by resolution of the Town Board. *Any such fee shall not be refundable in whole, or in part.*
- (C) Any application for siting a wind energy facility must be in writing and must be duly signed by the applicant and must provide, at a minimum, *unless the Town Planning Board waives any such information set forth below; the following*:
- (1) The name of the project.
 - (2) The identity of the parcels to be affected, including the map numbers, acreage, names and addresses of the owners of the affected parcels and names and addresses of all owners of record of all abutting, adjacent, or neighboring parcels where the development is proposed.
 - (3) A survey map showing the boundaries of the lots in the affected areas.
 - (4) A map showing all existing lot lines, easements and right of ways, and a sketch plan showing all proposed road access including, provisions for paving, if any, proposed transmission lines and accessory facilities, and location of all existing and proposed utility systems to the facility.
 - (5) Show consent, *or acknowledge under penalty of perjury that such consent has been obtained*, of the participating property owners.
 - (6) Sufficient acreage to comply with setbacks and other conditions set forth in this Local Law.
 - (7) The distance to nearest residential structures.
 - (8) An Environmental Assessment Form prepared in accordance with the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law.

- (9) A landscape plan showing all existing natural land features, trees, forest cover and all proposed changes to these features including size and type of plant material and erosion control measures.
- (D) The Town *Planning* Board shall hold a public hearing on any such application prior to permitting or denying such application. The notice shall be published in the official newspaper of the Town at least ten (10) days prior to the hearing. In addition, written notices shall be sent to:
- (1) All abutting, adjacent or neighboring property owners.
 - (2) All other municipal entities within 500 feet of the proposed project site.
- (E) The hearing shall be held within sixty-two (62) days of receiving a complete application. The Town *Planning* Board shall make a determination within sixty-two (62) days of when the public hearing is closed or when the application is deemed complete by the Town *Planning* Board, whichever is later. In addition, this sixty-two (62) day time limit may be extended upon mutual consent of the Town and the applicant.

Section 3. *Setback Standards; Measurements; Landscaping; Sound; Fall Zones; Roads*

- (A) Setback of Wind Turbine from any residential structure existing at the time the application is filed with the Town Clerk:
1. *One thousand (1000) feet unless the owner of said residential structure agrees to a lesser setback in writing duly filed with the Town as part of the application and the Town *Planning Board* agrees to waive such setback requirement for good cause shown.*
- (B) *Setback* of Wind Turbine from any structure existing at the time the application is filed with the Town Clerk:
1. *Five hundred (500) feet unless the owner of said structure agrees to a lesser setback in writing duly filed with the Town as part of the application and the Town *Planning Board* agrees to waive such setback requirement for good cause shown.*
- (C) Setback of Wind Turbine from adjacent road centerlines:
1. *Four hundred (400) feet.*
- (D) Setback of Wind Turbine from front, side and rear lots:
1. *Four hundred (400) feet.*
 2. *The four hundred (400) foot set back requirement set forth in paragraph (D) of this section for front, side and rear lot lines may be waived by the Town *Planning Board* as part of its review process if the applicant has secured*

written consent from the affected property owner agreeing to such encroachment and the Town *Planning Board* agrees such waiver is reasonable, safe and practicable.

- (E) *Measurements.* All measurements in this section are from the centerline of the Wind Turbine.
- (F) *Landscape and Screening:* Appropriate landscape and screening is required to keep the site in a neat and orderly fashion. Appropriate screening is required to screen accessory structures from adjacent residences.
- (G) *Sound:* Audible sound due to wind turbine operation shall not exceed fifty (50) dBA on a one hour average, when measured from adjacent dwelling units. In the event that the projected sound levels resulting from a wind energy facility exceed the criteria listed above, a waiver to said levels may be granted by the Town Board provided that the applicant obtains a permanent sound impact easement to be recorded in the Steuben County Clerk's office which describes the benefited and burdened properties and which advises all subsequent owners of the burdened property that sound levels in excess of those permitted by this Local Law may exist on or at the burdened property.
- (H) *Fall Zones.*
1. In addition to the setbacks set forth in paragraphs A, B, C, and D of this section, all wind turbine towers shall be set back from adjacent property lines and any pre-existing structures by a distance at least equal to its fall zone as certified by a New York State Licensed Professional Engineer. Additional setbacks may be required by the Town Board in order to provide for the public safety, health and welfare.
 2. The fall zone setback set forth in paragraph (H) of this section may be waived by the Town *Planning Board* as part of its review process if the applicant has secured written consent from the affected property owner agreeing to such encroachment and the Town *Planning Board* agrees such waiver is reasonable, safe and practicable.
- (I) *Roads:* If the Town Planning Board determines that any roads servicing the subject application shall be adversely affected thereby, the applicant shall improve such roads as necessary to minimize such impact and the required improvements shall be constructed in accordance with the specifications as determined by the Town Highway Superintendent in order to service such use.
- a. To ensure compliance with this standard, the Town *Planning Board* shall, unless waived for good cause shown, require the applicant to post a surety in the form of a letter of credit or cash in such amount as *deemed* reasonable to cover the costs of such improvements prior to any approval being granted on such application.
 - b. If the applicant fails to construct such improvements *in the time and manner as required under any approval obtained under this local law*, the Town may serve upon the applicant a notice for the applicant to complete such improvements within 60 days of such notice. Such notice shall be in writing and delivered personally to the individual so

named in the application or sent via registered certified U.S. mail to said individual's last known address. For purposes of being notified, such date shall be the date such writing is personally delivered or the date of the registered certified mailing regardless if the applicant actually receives such registered certified mailing. If the applicant fails to complete the improvement by the date set forth in the notice, the Town may, at the town's sole discretion, exercise upon the surety posted on the application and complete such improvements accordingly.

- (J) *Agricultural Districts: For applications located in a certified agricultural district of the Town, the applicant shall comply and follow the New York State Department of Agricultural and Markets "Guidelines for Agricultural Mitigation for Wind Power" dated March 25, 2003 and as amended thereafter.*

Section 4. Operational Considerations; Decommissioning

- (A) If a wind energy facility becomes inoperative or nonfunctional for a continuous period of one (1) year following construction of such wind energy facilities, the Applicant shall remove the wind energy facilities, including all wind turbines and any accessory facilities or equipment at their expense.
- (B) To ensure the applicant's performance of such decommissioning responsibilities as required in paragraph (A) above, the applicant shall file with the Town a surety in the form of a letter of credit or cash sufficient to cover the costs associated therewith. As such, prior to approval being granted, the applicant shall submit and the Town shall agree on an amount sufficient to cover the expenses of decommissioning such wind energy facilities. Such surety shall be drawn upon by the Town when the applicant fails to decommission the wind energy facilities within one hundred twenty (120) days from the date the applicant is notified in writing that the wind energy facility must be decommissioned. Such writing shall be delivered personally to the individual so named in the application or sent via registered certified U.S. mail to said individual's last known address. For purposes of being notified, such date shall be the date such writing is personally delivered or the date of the registered certified mailing regardless if the applicant actually receives such registered certified mailing.

Section 5. Emergency Shutdown / Safety.

- (A) Applicant shall post an emergency telephone number so that the appropriate people may be contacted should any wind energy facility need immediate attention.
- (B) No wind turbine shall be permitted to lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and turbine components or nacelle.

Section 6. Lighting.

Wind energy-deriving towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA).

Section 7. Height.

- (A) The minimum distance between the ground and any part of the rotor blade should be thirty (30) feet.

Section 8. Security Provisions.

No climbing device of any kind shall be attached to the wind turbine closer than fifteen (15) feet from the ground.

Article 6. License.

- (A) Upon final Town Planning Board approval and issuance of a permit hereunder, the applicant shall apply and obtain from the Town Planning Board a license to operate said approved Wind Energy Facility within the Town of Howard.
- (B) The license issued shall be for a minimum term of ten (10) years, subject to annual certification by licensee of compliance with the terms and conditions of such license, the minimum terms and conditions of such license shall be the terms and conditions of this local law and the permit issued hereunder.
- (C) The licensing fee shall be determined in an amount and duration by resolution of the Town Board.
- (D) In considering whether to issue a license under this section, the Town Planning Board shall consider the approved permit for the wind energy facility, the aesthetic impact of the particular wind energy facility, the location of the wind energy facility, the utilization and impact on the use of the Town right of ways or highway system for the transmission or distribution of the energy or electricity attributable to the wind energy facility or the equipment or machinery related thereto, the physical, economic, and sociopolitical impact the wind energy facility has on the Town of Howard, and the overall general health, safety and welfare impact the wind energy facility has on the community as a whole.
- (E) This Article is not intended to establish or create a right to operate a wind energy facility within the Town, but rather permits the Town to issue such a license to operate should the Town Planning Board determine such wind energy facility shall be able to operate under the terms and conditions of this local law, as evidenced by way of the Town Planning Board's issuance of a permit hereunder.
- (F) The licensee, as a result of obtaining said licensee, shall and does hereby, agree to defend, indemnify and save the Town of Howard, its officers, agents and/or employees, harmless from any liability imposed upon the Town of Howard, its officers, agents and/or employees, arising from the negligence, active or passive, of the licensee.

Article 7. Review.

Any person or persons, jointly or severally aggrieved by any decision of the Town Planning Board hereunder, or any officer, department, board or bureau of the Town, may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceeding

shall be instituted within thirty (30) days after the filing of a decision of the Town Board in the office of the Town Clerk.

Article 8 Penalties

Every person convicted of violating this local law shall be subject to a fine up to two hundred fifty dollars (\$250.00) and may be sentenced to up to fifteen (15) days in jail, or any combination of both such penalties. Further, each day such violation exists shall be an independent and separate offense for which the offending person may be sentenced accordingly.

Article 9. Review Fees; Consultant costs

In determining whether a license shall be issued under this local law or in conducting any necessary environmental reviews associated therewith under any applicable federal, state or local rule, regulation, statute or law, the Town is hereby authorized to contract or employ any and all necessary independent consultants, professional service providers or similar entities or individuals to ensure all aspects of the application or review processes are thoroughly reviewed and analyzed.

If such independent services are employed or contracted, any and all costs, fees or disbursements associated therewith shall be the full and complete responsibility of the applicant. If such costs, fees or disbursements are estimated to exceed five hundred dollars (\$500.00), the applicant shall post or deposit with the Town a sum of money sufficient to cover the estimated costs, fees or disbursements associated with such services unless such posting or deposit of monies is waived by the Town for good cause shown. If such sum of money is not deposited with the Town, no further action by the Town shall occur in regard to such application or environmental review.

Article 10. Severability.

If any part of this *Local Law* shall be found to be void, voidable or unenforceable for any reason whatsoever, it shall not affect the validity or enforceability of any remaining section or provision of this Local Law.

Article 11. Repeal.

The Town hereby repeals, rescinds, amends and modifies all previously adopted local laws relative to the subject matter of this local law, specifically, but not limited to, Local Law No. 1, 2006. In addition, all other local laws and ordinances of the Town of Howard inconsistent with the provisions of this Local law are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this Local Law shall be in addition to such other local laws or ordinances regulating and governing the subject matter covered by this local law.

Article 12. Effective Date.

This local law shall take effect immediately upon filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2007 of the (County)(City)(Town)(Village) of Howard was duly passed by the Town Board on March 14, 2007 in accordance with the applicable provisions of law. (Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County)(City)(Town)(Village) of was duly passed by the on 19, and was (approved)(not approved)(repassed after disapproval) by the (Elective Chief Executive Officer*) and was deemed duly adopted on 19, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County)(City)(Town)(Village) of was duly passed by the on 19, and was (approved)(not approved)(repassed after disapproval) by the (Elective Chief Executive Officer*) on 19. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on 19, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County)(City)(Town)(Village) of was duly passed by the on 19, and was (approved)(not approved)(repassed after disapproval) by the (Elective Chief Executive Officer*) on 19. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of 19, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 19____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 19____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____, above.

(Seal)

Loreen A. Kane
Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body
LOREEN A. KANE, Town Clerk
Date: MARCH 22, 2007

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF STEVEN

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Thomas W. Reed, Jr.
Signature
THOMAS W. REED, JR., Atty.
Title

County
~~City~~ of Howard
Town
~~Village~~

Date: 3/19/07