

A Local Law amending the Supplemental Regulations of the Somerset Zoning Code to add regulations applicable to tall structures.

Be it enacted by the Town Board of the Town of Somerset as follows:

Add §205-47 Structures Taller Than General District Regulations.

A. General Provisions.

- (1) A "tall structure" is any structure taller than generally permitted within a zoning district.
- (2) Unless otherwise specified in this Chapter, structures taller than 150 feet are not permitted in any district.
- (3) Any request for a tall structure as defined in this section shall be considered a Type I Action under the New York State Environmental Quality Review Act.
- (4) No tall structure shall hereafter be used, erected, moved, reconstructed, changed or altered except in compliance with a Special Use Permit granted by the Planning Board in conformity with these regulations. No existing structure shall be modified, and no existing Special Use Permit shall be renewed, unless in conformity with these regulations.
- (5) These regulations shall apply to all districts in the town.
- (6) Exceptions to these regulations are limited to new uses that are accessory to residential uses and lawful or approved uses existing prior to the effective date of these regulations. No existing Special Use Permit shall be renewed unless in conformity with these regulations.
- (7) Where these regulations conflict with other laws and regulations of the Town of Somerset, the more restrictive shall apply.
- (8) No special use permit shall be issued for a tall structure unless the proposed use is deemed by the Planning Board to be in compliance with the

Comprehensive Plan, the LWRP, and the Somerset Power Plant Multiple Use Plan, prepared by the Erie and Niagara counties Regional Planning Board, dated November, 1979.

- (9) At all times shared use of existing structures shall be preferred to the construction of new structures. Additionally, where such shared use is unavailable, location of antenna(e) on pre-existing structures shall be considered. An applicant shall be required to present an adequate report listing existing tall structures within a reasonable distance of the proposed site and the possible use thereof.
- (10) The applicant shall pay all reasonable fees and costs of adapting an existing structure to a new shared use. These costs include but are not limited to structural reinforcement, preventing transmission or receiver interference, additional site screening and other changes including real property acquisition or lease required to accommodate shared use.

B. Use-Specific Regulations.

- (1) Residential and commercial buildings and their accessory use(s) may, by Special Use Permit, use a tall structure not in accordance with regulations for the underlying district if the tall structure does not detract from the character of the surrounding structures and character of the neighborhood.
- (2) Telecommunications Facilities may be allowed by Special Use Permit in the Agricultural (I), Industrial (I), General Industrial (GI), and Planned Unit Development District (PUD) Districts only if the applicant provides specific scientific evidence that the facility site is required to maintain adequate service. Telecommunication Facilities in all other districts shall not be permitted. Telecommunication structures shall conform to Static Structure setback requirements of this Article.
- (3) Church steeples may be erected by Special Use Permit in any district.

- (4) Elevated water tanks connected to any public water supply system may be erected by Special Use Permit in any district and shall conform to Static Structure setback requirements of this Article.
- (5) Commercial and industrial Smokestacks may be erected by Special Use Permit only in Industrial (I), General Industrial (GI), and Planned Unit Development District (PUD) Districts and shall conform to Static Structure setback requirements of this Article.
- (6) Small chimney flues from heating appliances attached to residential and commercial structures shall not require a Special Use Permit, and are limited in height to 10 feet (10') above the highest roof elevation. The structure and chimney may be subject to other requirements in this Chapter.
- (7) Amusement and carnival rides such as roller coasters and Ferris wheels shall conform to Static Structure setback from parcel boundaries. Temporary installations associated with traveling shows installed for no more than fifteen (15) days do not require a Special Use Permit. Installations for longer durations including permanent structures require a Specific Use Permit before construction.
- (8) Any Wind Energy Facility shall use its electricity for primarily on-site consumption to offset utility expenses and/or provide independence from the power grid, with ties to the electrical grid as approved by the utility company. Power production primarily for sale to the electrical grid shall not be permitted unless in accordance with this Chapter. Each Facility shall conform to height and setback requirements of part D(1)(b) of this section.
- (9) Agricultural silos, barns, and other tall agricultural accessory use structures shall conform to the height regulations and Special Use Permit requirements outlined in this Article. Agricultural Wind Energy Facilities shall conform

to height, setback and Special Use Permit requirements defined in this Article.

- (10) Public utility poles required for the delivery of electric, telecommunication, and/or street lighting service (s) to customer premises may be erected without a Special Use Permit in any district.
- (11) No tall structure shall be permitted within the Town unless the structure's use is explicitly enumerated in this section or otherwise permitted under this Chapter.

C Regulations relating to new tall structures.

- (1) Any applicant seeking a Special Use Permit under this Article shall be required to submit a site plan as described in Article XVA of this Chapter. If the application is for a Wind Energy Facility, the site plan shall also include documentation on the proposed capacity and uses as well as justification for the height of any structure and associated instrumentation or turbines. Additionally, all Special Use Permit applications to the Planning Board under this Article shall require that the site plan include a completed Visual Environmental Assessment Form. The Planning Board may require submittal of a more detailed visual analysis and/or Local Waterfront Revitalization Plan (LWRP) review, or other review, based on the results of the Visual Environmental Assessment Form.
- (2) For new telecommunication structures, the applicant shall be required to submit a "search ring" prepared, signed and sealed by a licensed engineer in New York State and overlaid on an appropriate background map depicting the area within which a communication facility needs to be located, in order to provide proper signal strength and coverage to the target cell. The applicant must explain to the Planning Board why it selected the proposed site and discuss the availability or lack thereof of a suitable structure within the search ring for co-location and the extent to which the applicant has explored locating the proposed structure in a

less sensitive area. All correspondence with other telecommunication providers shall be included as part of the application.

- (3) In the interest of minimizing the number of new Tall Structures, the Planning Board shall require as a condition of any permits granted, that the applicant indicate in writing its commitment to co-location of other uses on its tower(s). The applicant will agree to negotiate in good faith for shared use of the proposed tower by other co-locators in the future. The condition for future colocation may not be required if the applicant demonstrates that provisions of future shared usage are not feasible based on:
 - (a) Whether the kind of structure and site plan proposed is compatible with co-located uses.
 - (b) Whether there are already adequate available spaces on other existing and approved structures.
 - (c) Whether the potential for adverse visual impact of a new or changed structure would be increased by a design accommodating shared use and co-location.
- (4) All tall structures shall be sited to minimize the adverse visual effect on the environment.

D Additional Substantive Requirements

- (1) Setbacks
 - (a) Static Structure Setbacks. Tall structures supporting only non-moving Instruments shall maintain a property line setback of one-and-one-half times (1.5x) the total Structure Height. The setback measurement shall begin from the outermost edge of the structural base.
 - (b) Dynamic Structure Setbacks. Tall structures supporting any moving features or parts larger than one meter in diameter, including but not limited to a Wind Energy Facility, shall maintain a property line setback of five-and-one-half-times (5.5x) the total Structure Height. For Wind Energy

Facilities, the setback measurement shall start from the outermost point of any turbine blade at any directional position on the tower or outermost edge of the structural base, whichever is further from the central vertical axis of the tower. Tall structures with moving features or parts larger than one meter in diameter shall not be permitted closer than (3) miles of the Lake Ontario shoreline, the boundary areas of the Town of Somerset LWRP, or any planned or existing public park; nor within the greater of one half mile or 6 times the height of the turbine of any residence, structure, public road, or property line where one property owner has not entered into an agreement with any person or entity seeking to develop or operate a wind energy conversion system; nor within one mile of any village, hamlet, school, church, cemetery, or area eligible for listing on the National Registry of Historic Places.

- (C) Setbacks shall apply to all structural foundations, appurtenances, and turbine parts excluding guy wires and anchors. All accessory structures shall comply with the existing setbacks within the underlying district regulations found in this Chapter.
 - (D) Guy wires and anchors shall have a minimum of fifteen feet (15') setback from any structure or property line.
 - (E) In no case shall setbacks be less than the existing setbacks within the underlying district.
 - (F) Additional setbacks may be required by the Planning Board to preserve privacy or protect health, safety and welfare of adjoining property owners.
- (2) Lighting. Tall Structures shall not be artificially lighting except to assure human safety as required by the F.A.A. and employ ground-avoidance in lighting fixture selection. Aviation safety lighting shall be night vision

goggle compliant. Tall Structures shall be galvanized finish or painted gray unless other standards are required by the F.A.A. Structures should be designed and sited, including height limitations so as to avoid, whenever possible, application of the F.A.A. lighting and painting requirements. Ground-based flood lights used for night-time illumination shall minimize light dispersion and pollution in directions other than onto the structure. The Planning Board may impose additional restrictions regarding illumination to reduce impacts to adjoining parcels and maintain neighborhood character.

- (3) Screening and Fencing. Tall structures shall be screened from public view to the maximum extent practicable. Existing on site vegetation shall be preserved to the maximum extent possible. Deciduous or evergreen tree planting may be required to screen portions of the structure (s) from nearby property. In addition, all tall structures, guy wires, and other supporting or appurtenant structures shall be surrounded by fencing sufficient to protect the public health and safety, as determined by the Planning Board and/or the Code Enforcement officer.
- (4) Parking. The applicant shall provide a single-lane service road to assure adequate emergency and service access. Road construction shall be consistent with proper practice to reduce loss of vegetation and eliminate soil erosion.
- (5) Supporting Documentation. The following documentation related to any tall structure sited in the Town of Somerset shall be provided to the Planning Board:
 - (a) All information prepared by the manufacturer of the proposed structure, tower, instruments, and/or turbine (if a Wind Energy Facility) including but not limited to:
 - (i) Make and model of tower or structure;
 - (ii) Manufacturers design data for installation instructions and construction plans;
 - (iii) Applicant's proposed maintenance and inspection

procedures and records systems; (iv) Anti-climb devices for the structure and any guy wires.

- (b) A copy of the Applicants F.C.C. and/or F.A.A. licenses (if applicable).
 - (c) When shared use is possible, an engineer's report certifying that a proposed shared use will not diminish the structural integrity and safety of the existing tall structure or explaining what modification (s), if any, will be required in order to certify to the above.
 - (d) Documentation from the owner of an existing tall structure or tower for allowed shared use.
 - (e) Documentation that all guy wires, guy wire anchors and structures shall be sufficiently secured to protect them from trespassing or vandalism.
 - (f) The applicant shall agree in writing to keep the tall structure facility, including road and all surrounding area in good working order and safe condition.
- (6) Removal of Obsolete and/or Unused Tall Structures.
- (a) The applicant shall agree in writing, and post a bond or other security acceptable by the Planning Board approximate to the sum of anticipated removal expenses at the end of useful service, to remove the structure if the facility becomes obsolete, damaged beyond use, or ceases to be used for its intended use for twelve (12) consecutive months. After that twelve month period removal shall take place within six (6) months. Such agreement shall also include a commitment by the applicant to impose a similar obligation upon any person subsequently securing any rights to the structure.

- (b) All applicants applying for tall structure special use permits shall reimburse the Town of Somerset for fees incurred for consultants and/or specialists to assist in the application and/or engineering costs, and may be required to enter into an agreement and maintain a fund with the Town for such purpose.
 - (c) The owners of any tall structure shall have it inspected by a New York State licensed engineer for structural integrity at least one time each calendar year, or more frequently if required by technical documentation, or if requested by the Code Enforcement Officer. A copy of the inspection report shall be submitted to the Code Enforcement Officer.
- (7) Additional Conditions. The Planning Board may impose any additional conditions to a tall structure special use permit necessary to protect public health, safety, and welfare, or any conditions that are otherwise to enforce the goals and objectives of this Chapter.