

A Local Law amending the supplemental zoning regulations related to Commercial/industrial wind energy conversion systems.

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

Repeal § 205-43.2 in its entirety.

Repeal § 205-43.3 in its entirety.

Repeal § 205-43.5 (E) in its entirety and replace with:

Applicability/severability. No wind facility or wind energy conversion system shall be constructed, reconstructed, modified or operated in the town of Somerset, except in compliance with this section and in compliance with all conditions of approval established by the Town Board.

- (1) This section shall not supersede Sections 205-11 BB, 205-40 A (8), or 205-55 B (8) (g) of the Somerset Town Code. If any provision of this section conflicts with any provision of the Town of Somerset Town Code other than Sections 205-11 BB, 205-40 A (8), or 205-55 B (8) (g), provisions of this Section shall apply.
- (2) If any provision, section, or requirement of this section shall be finally determined not to apply, or to be unenforceable by any court or government agency or body, then all other applicable provisions of the Somerset Town Code shall apply, including but not limited to Sections 205-11 BB, 205-40 A (8), and 205-55 B (8) (g), and any tall structures zoning law the Town may adopt.
- (3) If any provision, section or requirement of this section shall be finally determined not to apply, or to be unenforceable or void, by any court, state or federal agency having authority to so determine, it shall not affect the validity or enforceability of this section as a whole or any other part thereof.
- (4) Nothing in this section shall prevent the ability of the Town of Somerset to appeal or seek court determination of any action by any agency, tribunal, or lower court.

Repeal § 205-43.5 (H) (1) (a) and replace with:

- (a) No commercial/industrial wind energy systems shall be allowed in any zoning district other than Industrial.

Add § 205-43 (H) (1) (c):

- (c) No commercial/industrial wind energy systems shall be allowed in any area where such system or systems are likely to have a material and adverse impact on the land use plans set forth in the Somerset Power Plant Multiple Use Plan, prepared by the Erie and Niagara counties Regional Planning Board, dated November, 1979.

Add § 205-43 (H) (1) (D):

- (d) No Wind Energy Conversion Systems shall be allowed within three miles of the Lake Ontario shoreline, the boundary areas of the Town of Somerset LWRP, or any planned or existing public park.

Repeal § 205-43 (H) (2) in its entirety and replace with:

- (2) Setbacks. No commercial/industrial wind energy systems shall be allowed within the following setbacks. If more than one setback applies, the most-restrictive setback shall prevail. To protect the public health and safety, the setbacks set forth in this section shall not be waived by any person or entity.
 - (a) The minimum setback from 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, shall be one-half mile or 6 times the height of the turbine, whichever is higher.
 - (b) Minimum setback from any villages, hamlets, schools, churches, cemeteries shall be one mile.
 - (c) Minimum setback from any structure, district, building, or site eligible for listing on the National Registry of Historic Places shall be one mile.

Repeal §205-43.5 H (15) and replace with:

(15) The maximum total height of any WECS shall shall not exceed 200 feet under any circumstances.

Repeal §205-43.5 H (16) and replace with:

(16) Construction of the WECS shall be limited to the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

Repeal §205-43.5 H (27) and replace with:

(27) Noise standards for wind energy systems. No wind generation facility shall emit A-weighted sound levels in excess of the following during operation:

(a) Facilities with a plant capacity up to and including 50 kilowatts. Operation of facilities with a plant capacity up to and including 50 kilowatts shall not result in: (1) sound pressure levels that exceed 42 dBA more than 5% of the time at a distance of 100 feet from any residence or inhabitable structure; or (2) audible prominent discrete-frequency tones pursuant to the latest revision of ANSI S1.13 Annex A at a distance of 100 feet from any residence or inhabitable structure.

(B) Facilities with a plant capacity greater than 50 and up to and including 150 kilowatts. Operation of facilities with a plant capacity greater than 50 kilowatts and up to and including 150 kilowatts shall not result in sound pressure levels in excess of 42 dBA, including any penalty for tonality pursuant to Section 5.710, at a distance of 100 feet from any residence or inhabitable structure.

(C) Facilities with a plant capacity greater than 150 kilowatts. Operation of facilities with a plant capacity greater than 150 kW shall not result in sound pressure levels in excess of 42 dBA between the hours of 7 A.M. and 9 P.M. or 35 dBA between the hours of 9 P.M. and 7 A.M., including any penalty for tonality pursuant to Section 5.710, at a distance of 100 feet from any residence or inhabitable structure.

Add §205-43.5 H (33)

- (33) All electrical transmission lines associated with WECS shall be buried underground to the maximum extent physically possible. Where above ground transmission lines must be installed, guy wires or similar support structures shall be prohibited.