

Supervisor David P. Kelly opened the Workshop Meeting of the Town Board of the Town of Pawling at 7:00 PM March 5, 2014 at Pawling Town Hall, 160 Charles Colman Blvd., Pawling, New York. Present were Councilmen Johnson, Montemarano, Upham, DeRosa and approximately 12 interested citizens.

RESOLUTIONS

The Board discussed the proposed resolutions. Following discussion, it was agreed that resolutions 2014061 and 2014062 would be placed on the March 12, 2014 Town Board meeting agenda.

The Board decided to move forward with the other Resolutions as follows:

Resolution 2014063 Appointment Ad Hoc Implementation Committee

Whereas, the Town of Pawling has adopted a Comprehensive Plan Update (CPU) on Wednesday, July 11, 2012, and

Whereas, amendments were made to the Town Code regarding Zoning and Subdivision as they were contained within the CPU, and

Whereas, the CPU is considered to be a “Living Document” and shall be valued as such, and

Whereas, the CPU has a list of goals and objectives contained to allow for further action to be taken by the Town Board in coming years, and

Whereas, in the best interest of the Town, the Town Board should appoint an Ad Hoc Implementation Committee to the Town Board, now, therefore, be it

Resolved, that the Town Board hereby appoints an Ad Hoc Implementation Committee for the sole purpose of advising the Town Board on matters of the Goals and Objectives contained with the adopted July 11, 2012 Comprehensive Plan Update and shall make the best effort possible to meet such Goals and Objectives and to advise in general matters of the Town of Pawling’s Comprehensive Plan, and, be it, further

Resolved, that the Ad Hoc Implementation Committee shall contain two members of the Town Board, one member from both the Planning Board and Zoning Board of Appeals (not to be the Chairperson of such boards) and one member of the “Public at Large”, and, be it, further

Resolved, that the following members are hereby appointed: Mr. Phil DeRosa, Mr. Paul Upham, Mr. Aaron Cioppa, Mrs. Brenda Colberg and Mrs. Margaux Miller.

MOTION: Supervisor Kelly
SECOND: Councilman Johnson

ROLL CALL VOTE:

Councilman Johnson – “AYE” Councilman DeRosa – “AYE”
Councilman Upham – “AYE” Councilman Montemarano – “AYE”
Supervisor Kelly – “AYE”

LOCAL LAW #1 OF 2014 - OUTDOOR WOOD BURNING FURNACES

Councilman DeRosa said Tom Corrao, Building Inspector had some questions on the proposed local law. He met with Tom and went over his questions. There were two issues that were outstanding and he spoke with the Town Attorney Terry Stewart about them. One was the definition of a model, which has been changed for clarification. The other issue was regarding allowing variances and that was handled by limiting the front yard location. Mr. Stewart said the legal noticing did not have to be done again because the changes to the local law were very minor and less restrictive.

The Board reviewed the Short Environmental Assessment Form prepared for proposed Local Law #1, Outdoor Wood Burning Furnaces. Following review of the Short EAF, the Board concluded that the proposed action would not result in any significant adverse environmental impacts.

**RESOLUTION 2014057
SEQRA REVIEW OF THE OUTDOOR WOOD BURNING FURNACE
LOCAL LAW & NEGATIVE DECLARATION**

WHEREAS, the Town Board of the Town of Pawling is considering adoption of proposed Code Chapter 157, Outdoor Wood Burning Furnaces based upon review of drafts of the proposed local law; and

WHEREAS, the Town Board recognizes that the proposed local law is intended to regulate outdoor furnaces to allow them while addressing health, safety and environmental concerns related to their use, as stated in the proposed law’s legislative intent; and

WHEREAS, a Short Environmental Assessment Form (Short EAF) has been prepared to address adoption of the local law as the “Proposed Action” pursuant to 6 NYCRR Part 617, New York State Environmental Quality Review Act (SEQRA) regulations;

NOW THEREFORE BE IT RESOLVED, that the Town of Pawling Town Board hereby classifies the Proposed Action as an Unlisted Action, pursuant to SEQRA section 617.4 and 617.6; and

BE IT FURTHER RESOLVED, that the Town Board hereby declares that it will be the Lead Agency in this SEQRA review as it is the only identified Involved Agency and, therefore, a Coordinated Review under SEQRA is not necessary pursuant to SEQRA section 617.6; and

BE IT FURTHER RESOLVED, that the Town Board, as Lead Agency, hereby determines that the proposed action will not have a significant impact on the environment and that a Draft Environment Impact Statement (DEIS) will not be required pursuant to SEQRA section 617.7;

BE IT FURTHER RESOLVED, that the Town Board relies on the supporting reasons set forth in the SEQRA Negative Declaration Notice.

MOTION: Supervisor Kelly
SECOND: Councilman Johnson

ROLL CALL VOTE:

Councilman Johnson – “AYE” Councilman DeRosa – “AYE”
Councilman Upham – “AYE” Councilman Montemarano – “AYE”
Supervisor Kelly – “AYE”

Resolution 2014058
Approval Local Law #1 of 2014 Titled
Outdoor Wood Burning Furnaces

Whereas, the Town Board has considered a new Local Law Titled: Outdoor Wood Burning Furnaces, and

Whereas, the Town Board has circulated such Local Law to all interested agencies for comment, and

Whereas the Town Board has held a Public Hearing on the proposed Local Law, and

Whereas, the Town Board has considered the matter to be one of public health and safety, now, therefore, be it

Resolved, that the Town Board does hereby approve the passage of Local Law #1 of 2014, Titled: Chapter 157, Outdoor Wood Burning Furnaces.

MOTION: Supervisor Kelly
SECOND: Councilman Johnson

Supervisor Kelly thanked Councilman DeRosa, all of the Board members and the Implementation Committee for their input on this. He thanked Councilman DeRosa and Councilman Upham for moving this through the process.

ROLL CALL VOTE:

Councilman Johnson – “AYE”	Councilman DeRosa – “AYE”
Councilman Upham – “AYE”	Councilman Montemarano – “AYE”
Supervisor Kelly – “AYE”	

LOCAL LAW #2 OF 2014 – WIND ENERGY FACILITIES

Councilman DeRosa said he spoke with Town Attorney Terry Stewart regarding the Wind Energy Facilities proposed local law. Mr. Stewart said you can’t totally ban these things and zone them out of your town. Mr. Stewart felt the proposed Wind Energy Facilities proposed local law was adequate for our needs here in the town and there were no changes to the proposed local law.

The Board reviewed the Short Environmental Assessment Form prepared for proposed Local Law #2, Wind Energy Facilities. Following review of the Short EAF, the Board concluded that the proposed action would not result in any significant adverse environmental impacts.

RESOLUTION 2014059
SEQRA REVIEW OF THE WIND ENERGY FACILITIES LOCAL LAW
& NEGATIVE DECLARATION

WHEREAS, the Town Board of the Town of Pawling is considering adoption of proposed Code Chapter 210, Wind Energy Facilities based upon review of drafts of the proposed local law; and

WHEREAS, the Town Board recognizes that the proposed local law is intended to regulate wind energy facilities to allow them while addressing health, safety and environmental concerns related to their use, as stated in the proposed law’s legislative purpose; and

WHEREAS, a Short Environmental Assessment Form (Short EAF) has been prepared to address adoption of the local law as the “Proposed Action” pursuant to 6 NYCRR Part 617, New York State Environmental Quality Review Act (SEQRA) regulations;

NOW THEREFORE BE IT RESOLVED, that the Town of Pawling Town Board hereby classifies the Proposed Action as an Unlisted Action, pursuant to SEQRA section 617.4 and 617.6; and

BE IT FURTHER RESOLVED, that the Town Board hereby declares that it will be the Lead Agency in this SEQRA review as it is the only identified Involved Agency and, therefore, a Coordinated Review under SEQRA is not necessary pursuant to SEQRA section 617.6; and

BE IT FURTHER RESOLVED, that the Town Board, as Lead Agency, hereby determines that the proposed action will not have a significant impact on the environment and that a Draft Environment Impact Statement (DEIS) will not be required pursuant to SEQRA section 617.7;

BE IT FURTHER RESOLVED, that the Town Board relies on the supporting reasons set forth in the SEQRA Negative Declaration Notice.

MOTION: Supervisor Kelly
SECOND: Councilman Montemarano

ROLL CALL VOTE:

Councilman Johnson – “AYE” Councilman DeRosa – “AYE”
Councilman Upham – “AYE” Councilman Montemarano – “AYE”
Supervisor Kelly – “AYE”

Resolution 2014060
Approval Local Law #2 of 2014 Titled
Wind Energy Facilities

Whereas, the Town Board has considered a new Local Law Titled: Wind Energy Facilities, and

Whereas, the Town Board has circulated such Local Law to all interested agencies for comment, and

Whereas the Town Board has held a Public Hearing on the proposed Local Law, and

Whereas, the Town Board has considered the matter to be one of health, safety and environmental concerns, now, therefore, be it

Resolved, that the Town Board does hereby approve the passage of Local Law #2 of 2014, Titled: Chapter 210, Wind Energy Facilities.

MOTION: Supervisor Kelly
SECOND: Councilman Montemarano

Supervisor Kelly thanked Councilman DeRosa, all of the Board members and the Implementation Committee for their input on this. He thanked Councilman DeRosa and Councilman Upham for moving this through the process.

ROLL CALL VOTE:

Councilman Johnson – “AYE” Councilman DeRosa – “AYE”
Councilman Upham – “AYE” Councilman Montemarano – “AYE”
Supervisor Kelly – “AYE”

FURTHER BUSINESS TO COME BEFORE THE BOARD

PROPOSED MANUFACTURING TAX RESOLUTION

Supervisor Kelly said the Town has a request from Assemblyman Kieran Lalor relating to new tax zones, which would require manufacturing businesses to pay a 6.5% corporate tax. Assemblyman Lalor is asking the Town to pass a resolution to denounce this new tax. If the Board is agreeable, he would offer a resolution at the next meeting.

The Board agreed to entertain a proposed resolution denouncing the above noted manufacturing tax at the next meeting.

TEMPORARY EMPLOYEE

Supervisor Kelly said he has hired a temporary employee to take the place of an employee who will be out on leave and he gave the Board an update on this.

PAWLING HIGH SCHOOL/TRINITY PAWLING TO USE GOLF COURSE

Councilman Johnson said he has a letter from Golf Coach Don Utter asking for permission for the high school golf team to use the golf course. Mr. Utter also wrote a letter saying he has been coaching the varsity team for a few years and found the Dutcher Golf Course to be professional and Tom D'Ottavio to be very professional and always there to help the golf team members.

Councilman Johnson made a motion to authorize the use of the Dutcher Golf Course at no charge to both the Pawling High School and Trinity Pawling golf teams, with the understanding that they observe all appropriate etiquette of the Golf Course, seconded by Councilman DeRosa.

Supervisor Kelly disclosed that he is an employee of Trinity Pawling School and gains no monetary value for this process.

The motion passed unanimously.

DUTCHER GOLF COURSE

Councilman Johnson said he would like to make a motion this evening for the Board to allow him to enter into a contract with Tom D'Ottavio to run the golf course for one year, renewable upon approval of the Board. He and Councilman DeRosa had a meeting with Mr. D'Ottavio and got a lot of valuable information and good points as to how to improve play and keep track of play.

Councilman Johnson made a motion authorizing him to have Terry Stewart, Town Attorney, draw up a contract to enter into a one year renewable golf contract for Tom D'Ottavio as operator of the Dutcher Golf Course, seconded by Supervisor Kelly.

Councilman Upham asked about food.

Councilman Johnson said he would like to put in a kitchen and sell food. He felt it would be a worthwhile investment to the building. He will talk to Mr. D'Ottavio to see how he feels about being required to provide food. If it is something he does not feel he is capable of doing, he felt the Town could get someone to pay to operate the kitchen for the privilege of providing food service, under a separate contract. There also needs to be a better awareness on the Board's part by going there.

Councilman Montemarano said he appreciated all of the effort that went into this but he hoped that the Board could try to find a way of minimizing the shortfalls. The Town is \$70,000.00 in a hole this year and for financial reasons, he would not be voting in favor.

Councilman Johnson said he did not feel those figures were correct but even if it is \$40,000.00 or \$50,000.00, it is still a tough pill to swallow. It is still a physical attribute to the community. We need to increase play at the golf course.

Supervisor Kelly said the Board needs to be more engaged in the process, as well as the Golf Commissioners. He suggested monthly meetings and audits and being available to the operator.

Councilman Upham was in favor of professional audits.

Supervisor Kelly said the Board would be initiating some best practices and procedures and favored a one year contract with an extendable one year contract.

The motion passed with the following roll call vote:

Councilman Johnson – “AYE” Councilman DeRosa – “AYE”
Councilman Upham – “AYE” Councilman Montemarano – “NAY”
Supervisor Kelly – “AYE”

REPORTS

KELLY

Supervisor Kelly said he attended the Association of Towns Business Meeting in February. The classes were good and he had a one on one meeting with the Lt. Governor and discussed many issues. He also met with the State Comptroller on some other matters and met with the Budget Director on issues relating to the tax cap. Supervisor Kelly said he is proposing increasing the website and having the County IT department take it over. The County IT Department has offered to help the Town redevelop the website and take over and manage it. He will have cost estimates on that in April or May. Supervisor Kelly said on Friday, the website went down because the Town had lost its domain name as of February 28th. He spent three hours on the phone on Monday and got it restored and extended it for ten years. Supervisor Kelly said he ran an orientation meeting for new members of the East of Hudson. The Town will be in compliance by the end of this year and conversations will be continued with NYC DEP. Supervisor Kelly said the Pawling Joint Sewer Commission has been taking tours of plants to see new processes for the plant expansion. They are moving forward with the camera and cleaning work of the lines, which is the maintenance plan. They are looking at putting generators at all of the pump stations. There is a question as to ownership of the lines at Cedar Valley and as to whether or not the lines have ever been turned over to the Town. A letter will be sent to the Homeowner’s Association at Cedar Valley asking about that issue. Supervisor Kelly said he, Wendel Weber, Supervisor of Buildings and Grounds and Pete Setaro from Morris Associates and two of his employees took a physical plant tour today. As part of his overall capital project five year plan, he is looking at a series of five year projects for every facility owned by the Town. He asked Mr. Setaro to provide cost estimates for these capital projects. Supervisor Kelly said he will be setting up a driver’s safety course for Town and Village employees at Town Hall. Supervisor Kelly said he would like the showers at Murrow Park to be working and also to have warm water for hikers and small children to wash off. He would also like to see an enclosure around the shower area. He would also like to designate camping areas at Lakeside Park and Murrow Park. Supervisor Kelly said he received notification from Dutchess County Department of Planning & Development that the grant monies for the Holmes Whaley Lake Civic Association need to be expended and recovered from the County by August 31, 2014. Supervisor Kelly said he received a request from Dutchess County Board of Elections for the use of three polling sites, 6/24/14, 9/9/14 and 11/4/14. The Chamber of Commerce is launching a new website and is looking for donations and the Board can discuss whether or not they want to make a donation.

JOHNSON

Councilman Johnson said the previous test results of the cleaning of the big tanks at Pawling Water District #2 could not be found so the tanks have been cleaned and painted. He expected that when the weather breaks, the electrical repairs would be done. He liked the idea that the generator project would now get done. Councilman Johnson said The Interact Club had their new member meeting and at the meeting were 44 current members and 17 new members. This is a tremendous program for kids.

DEROSA

Councilman DeRosa said Shorehaven Civic Association received a letter from the Dutchess County Water Wastewater Authority saying the water did not meet the radium requirements back in December for the first time in a couple of years. So all residents in the water district received a letter regarding the radium levels. Councilman DeRosa said

regarding Senator Greg Ball's Women of Distinction award, he suggested Sis Gamache be put in for that award.

MONTEMARANO

Councilman Montemarano said he is gearing up for the Murrow Park rehabilitation as well as the athletic facilities at Lakeside Park. Councilman Montemarano said Councilman Upham suggested earlier this year addressing the Ethics Board and made some recommendations for Ethics Law and he supported going forward with that.

UPHAM

Councilman Upham said he agreed with Councilman Montemarano on addressing the Ethics Board and law. Councilman Upham said the Association of Towns business meeting is very valuable. The Employee Handbook revision is now with the outside consulting firm, as they are trying to get it in order for the Town Board to vote on. Councilman Upham said the Village invited Julian Adams from the Historic Preservation Office up in Albany and he attended the presentation. There are 29 interested citizens in Pawling willing to help with that.

PUBLIC COMMENT

Vinny DiMarco thanked the Board for their hard work behind the scenes. He thanked Councilman Johnson for his hard work on the golf course. He volunteered to help in any way he could with the kitchen installation. He thanked the Board for passing the resolutions on the outdoor furnaces and windmills. He believed it was the right thing to do, regulate, don't eliminate.

Peter Cris, President of the Pawling Chamber of Commerce, invited everyone to the Chamber of Commerce meeting on March 18th where Kealy Salomon from Dutchess County Planning & Development will be the guest speaker. The Chamber has received donations from residents for the website upgrade and that project is ongoing. He attended the Village meeting with Julian Adams and a photo will be on the front page of Pawling Matters. Mr. Cris said the Chamber of Commerce could help promote the golf course and he suggested the possibility of holding mini events there in order to raise awareness for the golf course.

The motion to adjourn was made by Councilman DeRosa at 8:00 pm, seconded by Councilman Johnson, motion passed unanimously.

Town Clerk

Chapter § 157. OUTDOOR WOOD BURNING FURNACES

§ 157-1. Title, statutory authority

- A. This Chapter shall be known as the “Town of Pawling Outdoor Wood Burning Furnace Local Law”.
- B. It is adopted pursuant to Municipal Home Rule Law §10.

§ 157-2. Legislative Intent

Although outdoor furnaces may provide an economical alternative to conventional heating systems, concerns have been raised regarding the safety and environmental impacts of these heating devices, particularly the production of offensive odors and potential health effects of uncontrolled emissions. This chapter is intended to ensure that outdoor furnaces are utilized in a manner that does not create a nuisance and is not detrimental to health, safety and general welfare of the residents of the Town.

§ 157-3. Applicability

This chapter applies to outdoor wood burning furnaces. Sections 157-7 and 157-8 apply specifically to new outdoor wood burning furnaces. All other sections in this chapter apply generally to all outdoor wood burning furnaces.

§ 157-4. Definitions

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

AGRICULTURAL LAND

The land and on-farm buildings, equipment, manure processing and handling facilities, and practices that contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a 'commercial horse boarding operation' and 'timber processing'. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

CLEAN WOOD

Wood that has not been painted, stained, or treated with any other coatings, glues or preservatives, including, but not limited to, chromated copper arsenate, creosote, alkaline copper quaternary, copper azole or pentachlorophenol.

COMMENCE OPERATION

The initial start-up of the combustion chamber of a new outdoor wood burning furnace after all piping and electrical connections between the new outdoor wood burning furnace and the structure(s) it serves have been completed.

COMMERCIAL-SIZE NEW OUTDOOR WOOD BURNING FURNACE

A new outdoor wood burning furnace with a thermal output rating greater than 250,000 British thermal units per hour (Btu/h).

ENFORCEMENT OFFICER

The Town Building Inspector and any other person the Town Board may designate by resolution as an enforcement officer for purposes of this chapter.

MANUFACTURER

Any person who makes or produces a new outdoor wood burning furnace that is ultimately operated in New York.

MODEL

All new outdoor wood burning furnaces that must be modified by a single manufacturer and that are similar in all material and design respects.

NEW OUTDOOR WOOD BURNING FURNACE

An outdoor wood burning furnace that commences operation on or after the effective date of this chapter.

OUTDOOR WOOD BURNING FURNACE

A fuel burning device that is designed to burn wood or other fuels, is specified by the manufacturer for outdoor installation or installation in structures not normally occupied by humans, and is used to heat building space and/or water via the distribution, typically through pipes, of a gas or liquid (*e.g.*, water or water/antifreeze mixture) heated in the device.

PERSON

Any individual, firm, association, corporation, partnership, trust, estate, legal representative, company, foundation or fund, charitable organization, or other entity owning or occupying real property within the Town.

PRE-EXISTING OUTDOOR WOOD BURNING FURNACE

An outdoor wood burning furnace that was purchased and installed prior to the effective date of this local law.

RESIDENTIAL-SIZE NEW OUTDOOR WOOD BURNING FURNACE

A new outdoor wood burning furnace that has a thermal output rating of 250,000 Btu/h or less.

TEST METHOD 28-OWHH

"EPA Test Method 28 OWHH for Measurement of Particulate Emissions and Heating Efficiency of Outdoor Wood-Fired Hydronic Heating Appliances", Attachment 2 of the "EPA Outdoor Wood-fired Hydronic Heater Program Phase I Partnership Agreement" dated March 16, 2007 (see Chapter III, table 1, section 200.9 of the DEC Regulations).

THERMAL OUTPUT RATING

The heat value in Btu/h that a manufacturer specifies a particular model of new outdoor wood boiler is capable of supplying at its design capacity.

§ 157-5. Standards and prohibitions

No person shall operate an outdoor wood burning furnace that does not meet the requirements set forth in this Part:

- A. Building permit. No person shall cause, allow or maintain the use of an outdoor wood burning furnace within the Town of Pawling without first having obtained a permit from the Building Inspector. Application for permit shall be made to the Building Inspector on the forms provided. Owners of outdoor wood boilers in existence at the time this law went into effect must contact the Building Inspector to obtain a permit within one year of the effective date of this chapter.
- B. Months of operation. Outdoor wood burning furnaces are subject to a "no-burn" period between May 31 and September 1. Outdoor wood burning furnaces may not be used or otherwise operated during that no-burn period.
- C. Spark arrestor. All outdoor wood burning furnaces must be equipped with a properly functioning spark arrestor as per manufacturer recommendations.
- D. Manufacturer's specifications. All outdoor wood boilers must be in strict compliance with the manufacturer's specifications pertaining to construction, installation, use, operation, and maintenance. In the event of a conflict between the manufacturer's specifications and the requirements of this chapter, the more restrictive standard shall control.
- E. Locations. Outdoor wood burning furnaces shall be permitted only in R-1 or larger zoning districts as shown on the Town's Zoning Map, provided the parcel is at least

one acre. Outdoor wood burning furnaces are not allowed in the “HA” Hamlet Zoning District.

F. Minimum lot size. Outdoor wood burning furnaces shall be permitted only on lot(s) of one acre or more.

G. Prohibited fuels. No person shall burn any of the following items in an outdoor wood burning furnace:

- (1) wood that does not meet the definition of Clean Wood;
- (2) unseasoned wood;
- (3) garbage;
- (4) tires;
- (5) yard waste, including lawn clippings;
- (6) materials containing plastic;
- (7) materials containing rubber;
- (8) waste petroleum products;
- (9) paints or paint thinners;
- (10) household or laboratory chemicals;
- (11) coal;
- (12) paper except as described in section 157-6 (A)(4) of this Chapter;
- (13) construction and demolition debris;
- (14) plywood;
- (15) particleboard;
- (16) fiberboard;
- (17) oriented strand board;
- (18) manure;
- (19) animal carcasses;
- (20) asphalt products;
- (21) salt water driftwood; or
- (22) any other fuel that is not recognized as an approved fuel pursuant to section 157-6 of this chapter.

H. Emissions. No person shall cause or allow emissions of air contaminants from an outdoor wood burning furnace to the outdoor atmosphere of a quantity, characteristic or duration which is injurious to human, plant or animal life or to property, or which unreasonably interferes with the comfortable enjoyment of life or property. This prohibition applies, but is not limited to, the following conditions:

- (1) activating smoke detectors in neighboring structures;
- (2) impairing visibility on a public highway; or

- (3) causing a visible plume migrating from an outdoor wood boiler and contacting a building on an adjacent property.

The prohibition further applies to any particulate, fume, gas, mist, odor, smoke, vapor, toxic or deleterious emission, either alone or in combination with others, emitted from an outdoor wood burning furnace that results in the conditions or circumstances listed in this subdivision notwithstanding the existence of specific air quality standards or emission limits.

- I. Smoke Plume. No person shall operate an outdoor wood burning furnace in such a manner as to create a smoke plume with an opacity of 20 percent or greater (six minute mean) as determined using EPA Reference Method 9 (or equivalent) (see Chapter III, table 1, section 200.9 of the DEC Regulations).

§ 157-6. Approved fuels

A. A person who operates an outdoor wood burning furnace may only burn the following fuels in such furnace:

- (1) seasoned Clean Wood;
- (2) wood pellets made from Clean Wood;
- (3) heating oil in compliance with Chapter 3, Subpart 225-1 of the DEC Regulations, L.P. gas or natural gas may be used as starter fuels for dual fuel-fired outdoor wood burning furnaces;
- (4) non-glossy, non-colored papers, including newspaper, may be used only to start an outdoor wood burning furnace; and
- (5) other fuels approved by the DEC per the certification requirements of Chapter 3, part 247, section 247.8 of the DEC Regulations.

§ 157-7. Residential-Size New Outdoor Wood Burning Furnaces

A. Emission limits. In order for a Residential-Size New Outdoor Wood Burning Furnace to be certified pursuant to Chapter 3, part 247, section 247.8 of the DEC Regulations, it must not emit particulate emissions at a rate greater than a weighted average of 0.32 pounds per million British thermal units heat output using the year-round weighting factors in Test Method 28-OWHH (see Chapter III, table 1, section 200.9 of the DEC Regulations). The particulate emission rate for any test run with a burn rate less than or equal to 1.5 kilograms per hour must not exceed 15 grams per hour. The particulate emission rate for any test run with a burn rate greater than 1.5 kilograms per hour must not exceed 18 grams per hour.

B. Setback. A Residential-Size New Outdoor Wood Burning Furnace shall not be located less than 100 feet from the nearest property boundary line and shall be permitted in the rear yard only.

- (1) Notwithstanding the above, a Residential-Size New Outdoor Wood Burning Furnace installed on contiguous agricultural lands larger than five acres shall not be located less than 100 feet or more from the nearest residence not served by the outdoor wood burning furnace.

C. Stack height. A Residential-Size New Outdoor Wood Burning Furnace shall be equipped with a permanent stack extending a minimum of 18 feet above ground level. Notwithstanding the foregoing, if there is a roof structure within 150 feet of the Residential-Size New Outdoor Wood Burning Furnace, the permanent stack must extend at least two feet above the peak of said roof structure.

§ 157-8. Commercial-Size New Outdoor Wood Burning Furnaces

- A. A Commercial-Size New Outdoor Wood Burning Furnaces shall not be used in a solely residential application.
- B. Emission limits. In order for a Commercial-Size New Outdoor Wood Burning Furnace to be certified pursuant to Chapter III, part 247, section 247.8 of the DEC Regulations, it must not emit particulate emissions at a rate greater than a weighted average of 0.32 pounds per million British thermal units heat output using the year-round weighting factors in Test Method 28-OWHH (see Chapter III, table 1, section 200.9 of the DEC Regulations). Further, the particulate emission rate for any test run must not exceed 20 grams per hour.
- C. Setbacks. A Commercial-Size New Outdoor Wood Burning Furnace shall not be located:
- (1) less than 200 feet from the nearest property boundary line;
 - (2) less than 300 feet from a property boundary line of a residentially zoned property; and
 - (3) less than 1,000 feet from a school;
 - (4) notwithstanding the above, a Commercial-Size New Outdoor Wood Burning Furnace installed on contiguous agricultural lands larger than five acres must be sited 300 feet or more from the nearest residence not served by the outdoor wood boiler and 1,000 feet or more from a school.
- D. Stack height. A Commercial-Size New Outdoor Wood Burning Furnace shall be equipped with a permanent stack extending a minimum of 18 feet above ground level. Notwithstanding the foregoing, if there is a roof structure within 150 feet of the Commercial-Size New Outdoor Wood Burning Furnace, the permanent stack must extend at least two feet above the peak of said roof structure.

§ 157-9. Suspension of permit

- A. A permit issued pursuant to this chapter may be suspended, as the Building Inspector may determine to be necessary, to protect the public health, safety and welfare of the residents of the Town of Pawling if any of the following conditions occurs:
- (1) Emissions from the outdoor wood burning furnace exhibit greater than 20% opacity (six minute average), except for one continuous six-minute period per hour of not more than 27% opacity, which shall be determined as provided in 6 NYCRR 227-1.3(b);
 - (2) Malodorous air contaminants from the outdoor wood burning furnace are detectable outside the property of the person on whose land the outdoor furnace is located;
 - (3) The emissions from the outdoor furnace interfere with the reasonable enjoyment of life or property;
 - (4) The emissions from the outdoor furnace cause damage to vegetation or property; or
 - (5) The emissions from the outdoor furnace are or may be harmful to human or animal health.
- B. The suspended permit may be reinstated once the condition which resulted in suspension is remedied and reasonable assurances are given that such condition will not recur. Recurrence of a condition which has previously resulted in suspension of a permit shall be considered a violation of this chapter subject to the penalties provided in §157-11 hereof.

§ 157-10. Waivers

- A. Where the Zoning Board of Appeals finds that extraordinary and unnecessary hardship may result from strict compliance with this chapter, it may vary the regulations so that substantial justice may be done and the public interest secured, provided that such variations will not have the effect of nullifying the intent and purpose of this chapter or of jeopardizing the health, safety or welfare of the public. In varying any regulations, the Zoning Board of Appeals may impose such conditions and requirements as it deems reasonable and prudent. The Zoning Board of Appeals will hold a public hearing as part of its review. If the Zoning Board of Appeals grants the waiver, a permit shall be issued for the outdoor furnace. If the Zoning Board denies the waiver, the outdoor furnace must either be brought into compliance with this chapter or removed.
- B. In no event may any variance be given with respect to the front yard location of the outdoor wood burning furnace.
- C. If a pre-existing Outdoor Wood Burning Furnace had been installed prior to adoption of this Local Law, a replacement Outdoor Wood Burning Furnace may be replaced at the exact location on the property, subject to all of the provisions of this Local Law,

§ 157-11. Penalties for offences

Failure to comply with any of the provisions of this chapter shall be a violation and, upon conviction thereof, shall be punishable by a fine of not less than \$500.00 or imprisonment for a period of not more than 10 days, or both, for the first offense. Any subsequent offense shall be punishable by a fine not less than \$1,000 or imprisonment for a period of not more than 30 days, or both. In addition, any permit issued pursuant to this chapter shall be revoked upon conviction of a second offense and the subject outdoor furnace shall not be eligible for another permit. Each day that a violation occurs shall constitute a separate offense. The owners of premises upon which prohibited acts occur shall be jointly and severally liable for violations of this chapter. Any fine imposed hereunder shall constitute a lien upon the real property where the outdoor furnace is located until paid.

§ 157-12. Effect on other regulations

Nothing contained herein shall authorize or allow burning which is prohibited by codes, laws, rules or regulations promulgated by the United States Environmental Protection Agency, New York State Department of Environmental Conservation, and, or any other federal, state, regional or local agency. Outdoor furnaces, and any electrical, plumbing or other apparatus or device used in connection with an outdoor furnace shall be installed, operated and maintained in conformity with the manufacturer's specification and any and all local state and federal codes, laws, rules and regulations. In case of conflict between any provisions of this chapter and any applicable federal, state or local ordinances, codes, laws, rules and regulations, the more restrictive or stringent provisions or requirements shall prevail.

TOWN OF PAWLING
WIND ENERGY FACILITIES
LOCAL LAW #2 OF 2014

- §210- 1. Title
- §210- 2. Purpose
- § 210- 3. Authority
- § 210- 4. Applicability
- § 210- 5. Permits
- § 210- 6. Waivers
- § 210- 7. Enforcement and Penalties
- §210- 8. Severability
- §210- 9. Effective Date
- § 210- 10. Definitions
- § 210- 11. Application Requirements
- § 210- 12. Application Review Process
- § 210- 13. Wind Energy Facility Development Standards
- § 210- 14. Required Site Safety Measures
- § 210- 15. Traffic Routes and Road Maintenance
- §210- 16. Setbacks and Noise
- § 210- 17. Noise and Setbacks Easements
- § 210- 18. Issuance of Wind Energy Facility Permits
- §210- 19. Abatement
- § 210- 20. Limitation on Approvals
- §210- 21. Permit Revocation
- § 210- 22. Wind Measurement Towers
- § 210- 23. Small Wind Turbines
- § 210- 24. Fees
- § 210- 25. Tax Exemptions

Be it hereby the Town Board of the Town of Pawling, Dutchess County, New York, as follows:

§210 - 1. Title

This local law may be cited as the “Town of Pawling Wind Energy Facility Law”.

§ 210 - 2. Purpose

The purpose of the law is to provide for the construction and operation of Wind Energy Facilities in the Town of Pawling, subject to reasonable conditions that will protect the public health, safety and welfare.

§ 210 - 3. Authority

The Town Board of the Town of Pawling enacts this local law under the authority granted by Section 10 of the New York State Municipal Home Rule Law and the New York State Town Law.

§ 210 - 4. Applicability

The requirements of this law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after this effective date of this law, including modification of existing Wind Energy Facilities and wind measurement towers erected for the purpose of testing feasibility of wind energy generation.

§ 210 - 5. Permits

A. Permit Requirements. No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of Pawling except by first obtaining a Wind Energy Facility Permit as provided under this law.

B. Exemptions. No permit or other approval shall be required under this law for mechanical, non-electrical wind turbine utilized solely for agricultural operations. Replacement in-kind or modification of a Wind Energy Facility may occur without Planning Board approval when;

- 1) There shall be no increase in total height.
- 2) No change in location of the wind turbine.
- 3) No additional lighting or change in facility color.
- 4) No increase in noise produced by the wind turbine.

C. Transfer. Neither transfer of any Wind Energy Facility or Wind Energy Facility Permit, nor sale of the entity owning such facility shall eliminate the liability of an applicant or of any party under this law.

§ 210 - 6. Waivers

The Planning Board may, after a Public Hearing grant a waiver (which may be combined with other Public Hearings on Wind Energy Facilities, so long as the waiver request in detailed in the public notice from the strict application of the provisions of this law to improve the quality of any Wind Energy Facility and better protect the health, safety and welfare of the Town. Area requirements (setbacks) and/or noise requirements shall not be waived by the Planning Board except as describe in §17 of this law. The Planning Board shall consider the impact of the waiver on the neighborhood, including the potential benefits or detriments to nearby properties, the benefits or detriments to the applicants, feasible alternatives and the scope of the request. The Planning Board may attach such condition as it deems appropriate to waiver approvals to ensure public health, safety and welfare.

§210 - 7. Enforcement and Penalties

A. The Town of Pawling Town Board shall designated a Code Enforcement Officer to enforce the provisions of this law and may employ such professional expertise as may be necessary to support these enforcement efforts and assist the Planning Board with application reviews. Such professional fees shall be the responsibility of the applicant to pay (see §24).

B. Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this law or in noncompliance with the terms and conditions of any permit issued pursuant to this law, or any order of the Code Enforcement Officer, and any person who shall assist in so doing, shall be guilty of a violation of this law and subject to a fine of not more than \$1,000.00. The Town of Pawling may institute a civil proceeding to collect civil penalties in the amount of \$1,000.00 for each violation and each week said violation continues shall be deemed a separate violation.

C. The Town may, in the case of any violation or threatened violation of any of the provisions of this law, including permit terms and conditions, 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. This shall be in addition to other remedies and penalties herein provided.

§ 210 - 8. Severability

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

§210 - 9. Effective Date

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

§ 210 - 10. Definitions

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

ACCESSORY FACILITIES OR EQUIPMENT- Any structure other than a wind turbine, related to the use and purpose of deriving energy from such towers, located on the Wind Energy Facility Site.

AGRICULTURE- the Town of Pawling's definition for the purposes of this law complies with the official New York State Agriculture and Markets legal definition relating to agriculture. This definition can be found at the following website <http://public.leginfo.state.ny.us/LAW>. The informational guide created by Agriculture and Markets titled "Guidance for Review of Local Laws Affecting Small Wind Energy Facilities" is available for review from the Town of Pawling Code Enforcement Officer.

AMBIENT SOUND – The background sound level (pre-development) found to be exceeded 90% of the time over which sound is measured in a noise analysis.

APPLICANT – The entity or person seeking a permit for the siting of a Wind Energy Facility

DECOMMISSIONING – The term shall mean to "physically remove" and shall include, but not be limited to:

a. Removal of the entire Wind Energy Facility, including the turbine, tower, all accessory facilities and equipment, transmission equipment, fencing and all other related above grade structures and improvements.

b. Removal of the foundations to a depth of no less than three (3) feet below grade.

c. Removal of project access roads (except for any roads that the project landowner wishes to retain).

d. Restoration of the location of the Wind Energy Facility to its natural condition, except that any landscape, grading or below-grade foundation may remain in the after-conditions.

FINANCIAL ASSURANCE- The reasonable assurance from a credit worthy party, examples of which include a surety bond, trust instrument, cash escrow or irrevocable line of credit and acceptable to the Town Attorney..

LANDOWNER- The owner of the land upon which Wind Energy Facility (ies) are located.

NYSERDA- NEW YORK ENERGY RESEARCH AND DEVELOPMENT

AUTHORITY- NYSERDA is a public benefit corporation created in 1975 under Article 8, Title 9 of the State Public Authorities Law through the reconstitution of the New York State Atomic and Space Development Authority. Its mission is to help New York meet its energy goals, reducing energy consumption, promoting the use of renewable energy sources, and protecting the environment.

NYISO-NEW YORK INDEPENDENT SYSTEM OPERATOR-NYISO is not for profit organization formed in 1998 as part of the restructuring of New York State's electric power industry. Its mission is to ensure the reliable, safe and efficient operation of State's major transmission system and to administer an open, competitive and non discriminatory wholesale market for electricity in New York State.

OPERATOR- The entity responsible for the day to day operation and maintenance of the Wind Energy Facility, including any third party subcontractor.

OWNER – The entity or entities with equity interest in the Wind Energy Facility, including their respective successors or designees.

PLANNING BOARD – The Planning Board of the Town of Pawling as appointed by the Town Board.

RESIDENCE – Any dwelling suitable for habitation existing on the date an application is received. A residence may be part of a multi-family dwelling or multipurpose building, and shall include buildings such as hotels or motels, hospitals, day care centers, dormitories, sanitariums, nursing homes, municipal buildings, senior housing, schools or other buildings used for educational purposes or correctional institutions.

SHADOW FLICKER – The visual effect of viewing the moving shadow of the Wind Energy Facility rotor blades when they are in apposition between the receptor (person viewing them) and the sun and/or the “strobe” lighting effect of this condition as perceived by receptor either directly or indirectly (as in a reflection off a light colored wall).

SITE – The parcel(s) of land where a Wind Energy Facility is to be placed. The Site can 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 one considered as be for purposes of applying setbacks 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.

SOUND PRESURE LEVEL – According to the NYSDEC Program Policy on Assessing and Mitigating Noise Impacts, sound pressure level is the sound pressure in the atmosphere, which pressure is expressed in decibels. The sound pressure is measured by the sound level meter satisfying the requirements of the American National Standards specification of sound level meter S1.4-1971, according to a frequency-weighted decibel scale. The sound pressure can be determined according to the International Standard for Acoustic Noise Techniques for Wind Generators (IEC 61400-11), or other accepted procedure. Also, the perceived loudness of a sound as expressed in decibels (dB). For example, the A-weighted decibel scale dB(A) represents those frequencies most readily audible to the human ear. The C-weighted decibel scale dB(C), approximates response of the human ear to low frequency sounds. The G- weighted decibel scale dB(G) is designed for infrasound.

TOTAL HEIGHT – The height of the tower and the farthest vertical extension of the wind turbine rotor plane.

TRANSMISSION OWNER – The owner of the electric distribution networks. Examples include New York State Electric & Gas, National grid and Con Edison.

VIEWSCAPE – The range of view from a point toward the horizon including natural and man-made components.

VIEWSHED – An elevated or obstructed location, position or area that permits an unhindered panoramic vista of particular interest or pleasure or unique view to or from a particular point.

VERTICAL AXIS – The vertical orientation of the rotation of the rotor cage on a WECS.

WIND ENERGY CONVERSION SYSTEM –WECS – Any wind energy conversion systems consisting of any wind turbine, vertical or horizontal axis wind turbines, wind measurements tower or combination of these, including all but not limited to related infrastructure, electrical lines and substations, access roads and accessory structures or equipment.

WIND ENERGY FACILITY – Any wind turbine, small wind turbine or wind measurement tower or combination of these, including all related infrastructure, electrical lines and substation, access roads and accessory structures.

WIND ENERGY FACILITY PERMIT - A permit pursuant to this law granting the holder the right to construct, maintain or operate a Wind Energy Facility.

WIND MEASUREMENT TOWER – A temporary tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

WIND TURBINE – A wind energy conversion system consisting of a wind turbine, a tower and associated control or conversion electronics, which has a rated capacity of more than 100 kW and which is intended to produce power for distribution on the utility grid.

WIND TURBINE SMALL - 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 25kW and which is intended primarily to reduce consumption of utility power at that location.

§ 210 - 11. Application Requirements

A complete application for a Wind Energy Facility Permit shall include:

- A. A Site Plan prepared by a licensed professional engineer, including
1. Property lines and physical dimension of the Site;
 2. Location, approximate dimensions and types of major existing structures and uses on the Site, public roads, and adjoining properties within 500 feet of the boundaries of any wind turbines or 1 ½ times the total height of such turbines, whichever shall be greater.
 3. Location and elevation of each proposed wind turbine.
 4. Location of all above and below ground utility lines on the Site as well as transformers, the interconnection point with transmission lines, and other ancillary facilities or structures.
 5. Location of all buffers as required by this law.
 6. Location of the nearest residential structure(s) on the Site and located off the Site, and the distance from the nearest proposed wind turbine.
 7. All proposed facilities, including access roads, electrical substations, storage or maintenance units, and fencing.
- B. View Shed Rendering- A vertical drawing of the wind turbine 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 wind turbine of the same type and total height. The make, model, picture and manufacturer's specifications, including noise decibels data and Material Safety Data Sheet documentation for all materials used in the operation of the equipment shall be provided for each proposed wind turbine. A visual analysis of the turbine(s) as installed, which includes a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. These vantage points will be determined by the Planning Board based on a site map to include a topographical and aerial simulation.
- C. A lighting plan showing any FAA-required lighting and other proposed lighting. Lighting shall be directed up and out, not down.
- D. Stormwater Pollution Prevention Plan prepared to Town of Pawling, Town code and New York State Department of Environmental Conservation standards is applicable and to such standards as may be established by the Planning Board on the recommendation of its Town Engineer or consultants.
- E. A construction schedule describing commencement and completion dates, including a traffic analysis with a description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
- F. An operations and maintenance plan providing for regular periodic maintenance schedules, any special maintenance and requirements and procedures and notification requirements for restarts during icing events.

G. A decommissioning plan that addresses the anticipated life of the wind turbine, the estimated decommissioning costs, the method of ensuring funds shall be available for decommissioning and restoration, the method by which decommissioning cost shall be kept current, and the manner in which the wind turbine shall be decommissioned and the Site restored, less any fencing or residential minor improvements requested by the landowner.

H. List of property owners, with their mailing addresses, within 2,000 feet of the outer boundaries of the proposed Site.

I. A complaint resolution process to address complaints from nearby residents. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint, not to exceed 60 days.

J. A transportation plan (see§15) describing routes to be used in delivery of project components, equipment and building materials and those to be used to provide access to the Site during and after construction. Such plan shall describe any anticipated improvements to existing roads, bridges or other infrastructure, as well as measures which will be taken to restore damaged/disturbed access routes following construction.

K. A Full Environmental Assessment Form (EAF), as provided by the New York State Environmental Quality Act (SEQRA) shall be prepared for the Wind Energy Facility. This Full Environmental Assessment Form (EAF) shall, at a minimum, Include:

1. A study of potential shadow flicker, including a graphic to identify locations where shadow flicker may be caused by the wind turbines and expected duration of the flicker at these locations. The study shall identify areas where the shadow flicker may interfere with residences and describe measurements to be taken to eliminate shadow flicker problems. If shadow flicker impacts are either high intensity or duration (more than 25 hours per year), then a second level analysis of shadow flickers modeling will occur, including an on-site assessment of property conditions.

If shadow flicker cannot be minimized to a shorter duration or intensity, project modifications may be required. It is desirable to have shadow flicker on off-site residences.

2. A visual impact study and its impact to the view shed with the proposed wind turbines as installed, which may include a computerized photographic simulation and digital elevation models demonstrating visual impacts from strategic vantage points. Color photographs of the Site accurately depicting existing conditions shall be included as well as a map indicating areas where the wind turbines will be visible to a person at five (5) feet above ground level. The visual analysis shall also indicate color treatment of system components and any visual screening to be incorporated into the project to lessen the system's visual prominence.

3. A fire protection and emergency response plan, created in consultation with the Fire Department(s) shall have jurisdiction over the proposed Site, as well as Pawling Emergency Services including but not limited to the Fire Marshall, emergency management, sheriff.

4. A noise analysis by a competent acoustical consultant including;

a. A description and map of the project's noise producing features which will include but not be limited to the range of noise levels expected (A-weighted, C-weighted and G-weighted), the tonal and frequency characteristics expected, the duration of sound, frequency of occurrence, and the effects of changes in wind speed and direction;

b. The manufacturer's data and standards for all structures, including designed noise levels and the noise levels determined by testing in the field;

c. A survey and report prepared by an independent, qualified, New York State engineer that analyzes the preexisting ambient noise including seasonal and twenty four (24) hour variations at residences within one (1) mile of the Site boundary;

d. The analysis must be accompanied by a topographic map showing, in increments of 5 decibels out to the level of 20 decibels, the noise level contours of the Site vicinity, in order to visualize the cumulative noise impacts from Wind Energy Facility on surrounding properties. All residences within greater than one (1) mile of the Site boundary or the twenty (20) decibel contour shall be clearly shown;

e. Where noise can carry far and in unexpected directions, the study must consider sounds carried from hilltop to hilltop, hilltop to valley, and along valleys in a radius of ten miles from a Wind Energy Facility. The study must also produce analysis of cumulative noise impacts; and

f. The applicant shall submit a design for post-development noise monitoring as well as a description of proposed noise control features, including specific measures to protect workers, and to mitigate noise impacts to a level of insignificance off- site. A summary of the applicant's proposed noise complaint resolution program must be included.

5. An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, 911 and other wireless communication by an independent contractor as determined by the Planning Board with the applicant paying the consultant fees.

6. An assessment of the impact of the proposed development on the flora and fauna, including migratory and resident avian species and bat species. The scope of such assessment shall be developed in consultation with the New York Department of Environmental Conservation and the United States Fish and Wildlife Service and must at a minimum consist of literature survey for threatened and endangered species and provide relevant information on critical flyways, and shall describe the potential impacts of any proposed facilities on bird and bat species, and an avoidance or mitigation plan to address such impacts, as well as plans for post-installation studies.

7. An assessment of potential immediate and long term impacts to local flora and fauna, micro and macro habitats, and ground and surface water related to but not limited to, excavation, blasting, clear cutting and grading during the Site preparation phase including construction of access roads.

8. An assessment of archaeological resources that may be impacted by the project. Such assessment shall be conducted in coordination with the New York State Office of Parks, Recreation and Historic Preservation.

9. A report from an independent New York profession engineer that calculates the maximum distance that ice from the turbine blades and pieces of turbine blades could be thrown. (The basis of the calculation and all assumption must be disclosed). The incidence of reported ice and blade throws and the conditions at the time of the ice and blade throw must be included.

10. An assessment, pre-and post - installation of possible stray voltage problems on the Site and neighboring properties within one (1) mile of the project boundary to show what properties need upgraded wiring and grounding.

11. A geotechnical report that includes:

- Soils engineering and engineering geologic characteristics of the Site based on Site sampling and testing
- A bedrock profile within one (1) mile of the Site
- Information on depth of well, average flow rate, and with permission by owner, test water quality for all wells within two (2) miles of the Site
- Grading criteria for ground preparation, cuts and fills, soil compaction
- A slope stability analysis

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

§ 210 - 12. Application Review Process

- A. Applicants must arrange a pre-meeting with the Planning Board and the professional consultants retained by the Town for application review. The applicants will be responsible for any expenses incurred for this meeting with consultants.
- B. 12 copies of the complete application shall be submitted to the Planning Department Clerk. Payment of all application and escrow fees shall be made at the time of submission.
- C. The Planning Board shall, within 45 days of receipt, or such longer time as may be accepted by the applicant, determine if all information required hereunder is included in the application. If the application is deemed incomplete, the applicant shall be provided with a written statement listing missing data. If applicant fails to provide data within 45 days, the application shall expire. Upon submission of a complete application, the Planning Board shall proceed with its review.
- D. The Planning Board shall hold at least one Public Hearing on the application. Notice shall be published in the Town's official newspaper, no less than 14 or more than 31 days before any hearing, but, where any hearing is adjourned by the Planning Board to hear additional comments, no further publication will be required. All property owners within 2000 feet of the property lines of the proposed Wind Energy Facility shall be given notice of a public hearing via certified mail at the expense of the applicant. The mailing receipts must be submitted to the Planning department prior to the Planning Board meeting.
- E. Referral. The Planning Board shall comply with the provision of Article 12-B, §239-1 and §239-m of the General Municipal Law, as amended, and refer to the Dutchess County Department of Planning such site plans as are within its jurisdiction.

§210 - 13. Wind Energy Facility Development Standards

The following standards shall apply to Wind Energy Facilities in the Town of Pawling.

- A. All power transmission lines from the tower to any building, substation, or other structures shall be located underground in accordance with National Electrical Code Standards.
- B. No television, radio or other communication antennas may be affixed or otherwise made part of any wind turbine, except with approval by the Planning Board.
- C. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
- D. No tower shall be lit except to comply with Federal Aviation Administration (FAA) requirements. Minimum security lighting for ground level facilities shall appear on the Wind Energy Facility development plan indicating the direction of lighting and must be approved by the Planning Board and their consultants.
- E. All applicants shall use measures to reduce the visual impact of wind turbines to the greatest extent possible. Wind turbines shall use tubular towers. All structures in a project shall be finished in a single non-reflective matte finished color or a camouflage scheme. Wind turbines within a multiple wind turbine project shall be generally uniform in size, geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be part of the tower, hub or blades.
- F. Guy wires shall not be permitted except to address unique safety issues and then only with specific permission by the Planning Board in the form of a waiver.
- G. No wind turbines shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antennas for radio television, or wireless phone or other communication systems would produce electromagnetic interference with signal transmission or reception. If it is determined a wind turbine is causing electromagnetic interference, the operator shall take necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution

of issues with affected parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Facility Permit for the specific wind turbine or wind turbines causing the interference.

H. All construction debris shall be removed from the Site and disposed of in a legal manner under the county & local waste management regulations and re-cycling methods.

I. Wind turbines shall be designed to minimize the impacts of land clearing and the loss of important open spaces. Development on agricultural land shall follow the Guidelines for Agriculture Mitigation for Wind Power Projects published by the New York State Department of Agriculture and Markets.

J. Wind Turbines shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity.

K. The Stormwater Erosion and Sediment Control shall be managed in a manner consistent with all applicable State, Federal, and Town laws and regulations standards and shall be applied by the Planning Board in the advice of the Town Engineer and Stormwater Manager Officer and other Town consultants.

L. Wind turbines shall be located in a manner that minimized shadow flickers on off-site residences. It is desirable to have no shadow flicker on off-site residences.

M. Color: WECS shall be a non obtrusive reflecting color. Galvanized steel or metal is acceptable for support structures. The painting or coating shall be kept in good repair for the life of the wind turbine.

§ 210 - 14. Required Site Safety Measures

A. All wind turbines shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.

B. Accessory facilities or equipment shall be gated or fenced to prevent unrestricted public access to the facilities and reduce any attractive nuisance aspects of use.

C. Warning signs with a minimum size of 2 square feet shall be posted at the entrances to the Wind Energy Facility and at the base of each tower warning of electrical shock or high voltage and must contain emergency contact information.

D. No climbing pegs or tower ladders shall be located closer than 15 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 30 feet.

F. Wind Energy Facilities shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

§210 - 15. Traffic Routes and Road Maintenance

A. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a Wind Energy Facility. A public improvement bond shall be required prior to the issuance of any building permit in the amount, determined by the Planning Board, sufficient to compensate the Town, Village, County or State for any damage done to the Town, Village, County or States roads if any of these roads will be among the designated traffic routes. The applicant shall consult with the Town Highway Superintendent and/or the New York State Department of Transportation or Dutchess County Department of Public Works to obtain a written recommendation for bonding form and amount, which form and amount shall be approved by the Planning Board.

B. The applicant shall provide pre-development and post development photographic evidence of the condition of any Town, Village, State or County roads along the proposed

route. These photos will be submitted to the Planning Board prior to the start of the project and also at the completion of the project for review.

§210 - 16. Setback & Noise

A. Each wind turbine shall be set back as follows:

Residences: a distance no less than the greater of (a) two (2) times its total height or (b) one thousand (1000) feet.

Property lines: a distance no less than one and a half (1.5) times its total height.

Public Roads: a distance no less than the greater of (a) one and half (1.5) times its total height or (b) five hundred (500) feet.

State Wetlands: a distance no less than one thousand five hundred (1,500) feet.

The statistical sound pressure level generated by Wind Energy Facility shall not exceed the ambient level, both A-weight and C-weight, plus 5 decibels measured anywhere along the Site boundary. Ambient sound level measurements shall employ all practical means to reduce or compensate for the effect of wind generated noise artifacts at the microphone so as to measure the actual sound level most accurately. Ambient sound level measurements should be performed when wind velocities aloft are sufficient to allow wind turbines operation and should report ambient sound levels for wind speeds aloft corresponding to turbine cut-in as well as the wind speed aloft corresponding to production of the greatest noise. The sound pressure level at any off- site residence shall not exceed ambient sound plus 5 decibels, both A-weight and C-weight, as determined in accordance with the stipulation of Section 11(L)(4) of this Local Law. Independent verification by an acoustical engineer certified with the Institute of Noise Control Engineering shall be provided before and after construction demonstrating compliance with its requirements.

§210 - 17. Noise and Setback Waiver

A. In the event a Wind energy Facility does not meet a setback requirement or exceeds noise or other criteria established in this Local law as it existed at the time Wind Energy Permit is granted, a waiver may be granted from such requirements by the Planning Board.

B. Such waiver shall be in the form required for filing of deeds and the waiver shall be filled with the Dutchess County's Clerks office. The waiver shall include a statement of findings made by the Planning Board and all conditions required by the Planning Board for the issuance and continuation of the waiver. Such waiver shall be permanent and shall state that they may not be revoked without the consent of the Planning Board, which consent shall be granted upon either the decommissioning of the benefited wind turbine in accordance with this law, or the acquisition of the burdened parcel by the owner of the wind turbine. No such waiver shall permit noise levels at any other location within or outside the areas prescribed to exceed the limitations of this law.

§210 - 18. Issuance of Wind Energy Facility Permits

A. The Planning Board shall, within 120 days of determining the application is complete and upon consideration of the standards in this law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated. The time period may be extended for another 60 days at the request of the applicant and/or the Planning Board as deems it necessary for additional information, to seek expert and/or legal or other legitimate reasons.

B. Upon written approval, the Planning Board shall direct the Town Code Enforcement Officer to issue Wind Energy Facility Permit upon satisfaction of all conditions for the permit and upon completion of the New York State Building Code.

C. The decision of the Planning Board shall be filed within fifteen (15) days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.

D. If any approved Wind Energy Facility is not substantially commenced within two (2) years of issuance of the Wind Energy Facility Permit, the Wind Energy Facility Permit shall expire unless the Planning Board shall have granted an extension.

§210 - 19. Abatement

A. If any wind turbine remains inoperative for a continuous of twelve (12) months, the owner shall remove said system at owner's expense following the requirements of the decommissioning plan. Removal of the system shall include at least entire above ground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the owner demonstrates to the Town Board that it has been making good faith efforts to restore the wind turbine to an operable condition, but nothing in this provision shall limit the Town Board's ability to order a remedial action plan after public hearing.

B. Lack of operation may be proven by reports to the Public Service Commission, the New York State Energy Research and Development Authority (NYSERDA), New York Independent System Operator (NYISO), or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Planning Board all reports to and from the purchaser of energy from individual wind turbines, if requested and necessary to prove the wind turbine is functioning, which reports may be edited as necessary to protect proprietary information.

C. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town of Pawling, in a form approved by the Town Board for the removal of inoperable towers and appurtenant facilities, in the amount to be determined by the Town Board, for the period of the life of the facility. This fund may consist of a letter of credit from the New York licensed-financial institution. All costs of the financial security shall be fully described in the decommission plan.

§210 - 20. Limitation on Approvals

Nothing in this law shall be deemed a guarantee against any future construction or Planning Board 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 necessary wind flow or turbulence easements, or rights to remove vegetation.

§ 210 - 21. Permit Revocation

A. The applicant shall fund periodic noise testing by a qualified independent third party acoustical measurement consultant, which may be required as often as biannually, or more frequently upon request of the Code Enforcement Officer in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Wind Energy Facility Permit, and this law and shall also include an evaluation of any complaints received by the Town or Planning Board and Code Enforcement Officer. The applicant shall have 90 days after written notice from the Code Enforcement Officer, to cure any deficiency. An extension of the 90 days period may be considered by the Code Enforcement Officer for review, but the total period may not exceed 180 days.

B. A wind turbine 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 wind turbine become inoperable, or should any part of the wind turbine be damaged or should a wind turbine violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Code Enforcement Officer. The applicant shall have 90 days after written notice from the Code Enforcement Officer, to cure any deficiency. An extension of the 90 day period may be considered by the Code Enforcement Officer for review, but the total period may not exceed 180 days.

C. Should a wind turbine not be repaired or made operational or brought into permit compliance after said notice, the Town Board 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, or either a remedial action within a particular time frame, or order revocation of the Wind Energy Facility Permit for wind turbine and require its removal within 90 days. If the wind turbine is not removed, the Town Board shall have

the right to use the security posted as part of the decommission plan to remove the wind turbine and restore the property.

§210 - 22. Wind Measurement Towers

Installation of wind measurement towers, also known as anemometer towers, shall be permitted, upon the issuance of a Wind Energy Facility Permit, to determine the wind speeds and the feasibility of using particular sites. The distance between a wind measurement tower and the property line shall be at least 1 ½ times the total height of the tower. Wind Energy Facility Permit for wind measurements towers shall be issued for a period of two years and shall be renewable upon application to the Planning Board. An application for a wind measurement tower shall include:

A. Name address, telephone number and signatures of the applicant and agent for the applicant, if any

B. Name address, telephone number and signatures of the property owner along with written authorization by the property owner to submit the application.

C. Proposed development plan.

D. Decommissioning plan, including a security bond for removal, should the tower not be converted to permanent use for a wind energy generation.

Other development standards as set forth above for Wind Energy Facilities shall be applied to the maximum extent practicable, as determined by the Planning Board, recognizing the temporary nature of wind measurement towers.

§ 210 - 23. Small Wind Turbines

The Planning Board is hereby authorized to approve, approve with conditions, or disapprove small wind turbine applications designed for residential, farm, institutional and business use on the same parcel. Such applications shall be processed in the same manner as those prescribed above for all wind energy facilities, but may be appropriately modified by the Planning Board to reflect the scale of the proposed facility. All small wind turbines shall comply with the following standards and with all other requirements of this law not in conflict herewith;

A. 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.

B. Small wind turbines shall be used primarily to reduce the on-site consumption of electricity.

C. Total heights shall be a maximum of 100 feet on parcels between one and five acres, and 150 feet or less on parcels of 5 or more acres.

D. A small wind turbine shall be set back one and half (1.5) times the height of the tower.

E. The maximum combined turbine power output is limited 25kW.

F. Tower-climbing apparatus shall be located no closer than 12 feet from the ground, a locked anti-climb device shall be installed on the tower or a locked, protective fence of at least six feet in height that encloses the tower shall be installed to restrict tower access.

G. 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 in height or sheathed in bright orange or yellow covering from the ground up to a minimum of eight feet.

H. If any wind turbine remains inoperative for a continuous period of twelve (12) months, the owner shall remove said system at owner's expense following the requirements of decommissioning plan. 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 owner demonstrates to the Town Board that it has been making good faith efforts to restore the wind turbine to an operable condition, but nothing in this provision shall limit the Town Board ability to order a remedial action plan after public hearing.

§210 - 24. Fees

A. The Town Board shall, by resolution, establish and from time to time modify a schedule of fees for Wind Energy Facility Permit applications.

B. The Planning Board may hire any consultants and/or expert necessary to assist the Code Enforcement Officer in reviewing and evaluating the application, including, but not limited to Site inspections, the construction and modification of the Site, once permitted, and any request for recertification. An applicant shall deposit with the Town Board sufficient funds to reimburse the Town Board for all reasonable costs of consultants and expert evaluation and consultation to the Town Board in connection with the review of this application.

C. Fees are based on the current Town of Pawling fee schedule

§210 - 25. Tax Exemption

The Town Board hereby reserves the right to opt out of the tax exemption provision of Real Property Tax Law §487, pursuant to authority granted by paragraph 8 of that law.