

**TOWN OF ENFIELD
CLOSED SESSION
WIND FARM LOCAL LAW
OCTOBER 26, 2016**

Please leave at front
of room for public to review.
Thank you!

Question Presented: What does the wind farm law require for permit issuance, and it is a "two-step" process?

Short Answer: It requires substantial compliance with permit requirements as spelled out in the local law, and no, permitting is not a two-step process (unless you intend wind farm permit to be step one and building permit to be step 2, but in reality these are not the same types of permits).

Analysis: Here is what the Wind Energy Facilities Local Law requires:

1. That the project be classified based on what is sought to be approved: a Wind Energy Facility, a WTG (wind turbine generator), a Small WTG, or a Wind Measurement Tower. § 1(A).
2. An application that substantially complies with § 2, such as the name, address, and phone number of Applicant, the name, address, and telephone number of the property owner of the proposed site of any wind energy facility, lists of adjacent owners and those within 500', tax parcel numbers, plot plans, project plans, surveying, proposed improvements and utilities, locations of residences, roads, setback mapping, wind turbine information, vertical drawings, model and manufacturer's specifications, MSDS information, etc.
3. A Landscaping Plan.
4. A Lighting Plan, including FAA required lighting (if any).
5. A Decommissioning Plan, including and addressing: (i) the anticipated life of the WTG; (ii) the estimated decommissioning cost in current dollars; (iii) how said estimate of decommissioning costs was determined; (iv) the method of ensuring that funds will be available for decommissioning and restoration costs; (v) the method by which the decommissioning and restoration cost funds will be kept current relative to increases and decreases in total decommissioning and restoration costs; (vi) the form of any type of security, bond, or other undertaking that will be posted to assure that the then current decommissioning and restoration costs are available for decommissioning and restoration; and (vii) the manner in which the WTG will be decommissioned and the Site restored.
6. A Complaint Resolution Plan, mainly to address complaints from Persons who live in nearby residences, it being envisioned that: (i) the process could use an independent mediator or arbitrator; and (ii) there would be a mandated time limit for acting upon any complaint.
7. Construction Information, such as a construction plan, blueprints, specifications, and similar construction documents duly sealed by a New York State licensed engineer or architect depicting the sequence, construction methodologies, methods and manners of proposed construction, times of operation, site and access controls, and safety and security plans; and also including things like a construction schedule, delivery routes and vehicle information.

8. A completed SEQRA environmental review, here including compliance with findings statement and mitigation requirements. Such SEQRA EIS process envisioning completion of a visual impact assessment, a noise study, a shadow flicker study, communication impacts (such as EMI), and a fire protection plan. These assessments were completed as part of the SEQRA EIS process and are set forth in the January 19, 2015 SEQRA Findings Statement adopted by the Town Board. In addition, the Findings Statement requires that the Project Sponsor pay for the Town to retain an Environmental Monitor and outlines the following mitigation measures to be conditions of the project:

- a) DEC-approved SPDES permit and SWPPP; SPCC Plan; dust control plan; and soil and erosion and sedimentation control plan.
- b) If necessary, a blasting safety and management plan.
- c) Restoration of any impacted agricultural soils.
- d) Invasive Control Plan.
- e) Post-Construction Avian Fatality Monitoring Plan.
- f) Road Use Agreements with Town of Enfield and County of Tompkins.
- g) Fire Protection and Emergency Response Plan in compliance with County requirements.
- h) Establishment of Decommissioning Funds of \$125,000 per turbine or such great amount that is reasonably determined by the Town for each wind turbine and/or wind energy facility comprising the Project. Decommissioning funds shall be retained for the life of the Project and shall be provided in the form of surety bond, letter of credit, cash or any other security instrument which shall guarantee the funds. —
- i) PILOT Agreement —
- j) Conduct regular meetings and coordination with local emergency service personnel.
- k) Community Outreach and Communications Plan. *Appendix V*

Pre-construction was done

9. *1) handicapping Plan* Documents showing compliance with the standards of Article IV of the Local Law, which includes almost two dozen varying technical standards, such as: rules for power transmission lines; antennae colocation; signage restrictions; lighting limitations; visual impact and camouflaging rules; rules on guy wires; microwave links; solid waste, hazardous waste and construction debris removal requirements; stormwater mitigation; wildlife preservation; wetland preservation; construction hours limitations; safety controls, ground clearance rules, and anti-climb devices; roadway and traffic rules; sound level rules; setback rules, including from occupied structures; property lines; other WTGs, and wetlands.

Permit issuance or denial is based upon "consideration of the standards contained in this Local Law and the record of the SEQRA review" and the permit is approved and issued or denied based upon a "written decision with the reasons for approval, conditional approval, or denial fully stated." If approved, the Town Board will direct the Town Clerk to issue a Wind Energy Permit upon satisfaction of all conditions for said Permit.

Thereafter, building permits issue upon demonstrating compliance with the Uniform Fire Prevention and Building Code, the applicable energy codes, other applicable codes, and other pre-construction conditions of this Local Law.

Thus, issuance of a Wind Energy Permit is a discretionary legislative action that weighs compliance with the local law and compliance with SEQRA mitigation requirements. Determinations must be reasonably based on evidence and the overall determination of the Town Board must be rational and supported by such evidence as the Town Board finds creditable.

10. The application process and SEQRA and permit reviews are intertwined resulting in a layered review process. Some of the required plans are finalized and reviewed prior to the issuance of the Wind Energy Permit, while others are finalized and reviewed prior to the issuance of the building permit, or even after the issuance of both permits, but before the commencement of construction. Based on the provisions of the Local Law, the following would be the sequence of final review of the required plans.

- a) Before issuance of the Wind Energy Permit, those plans and agreements highlighted in paragraph 8(a), (b), (d), (f), (g), (h), and (k), as well as the landscaping, lighting and complaint resolution plans would be finalized and approved. The Town Board could also require that the Environmental Monitor be selected and a funding commitment from the Project Sponsor confirmed.
- b) Before issuance of the building permit, the Project Sponsor shall provide the necessary information and documents showing compliance with the Uniform Fire Prevention and Building Code, the applicable energy codes, other applicable codes, and other pre-construction conditions of the Local Law, as well as the US Army Corp of Engineers Nationwide Permit. This information and plans would be reviewed and approved by building inspector prior to issuing the building permit.
- c) After issuance of the Wind Energy Permit and building permit, but before construction commences, the Project Sponsor shall complete the Pre-Construction Bat and Bird Survey and the Rare Plant Survey for the presence of Hooker's Orchid.
- d) After completion of the construction of the Wind Energy Facility, the Project Sponsor will complete the Post-Construction Bat and Bird Survey.

The Environmental Monitor retained by the Town (and funded by the Project Sponsor) would be in place to ensure compliance with the conditions of the Wind Energy Permit and building permit, as well as the post-construction requirements.