

Chapter 137

WIND ENERGY CONVERSION SYSTEMS

[HISTORY: Adopted by the Town Board of the Town of Conklin 9-13-2005 by L.L. No. 1-2005. Amendments noted where applicable.]

GENERAL REFERENCES

Flood damage prevention — See Ch. 76.
Subdivision of land — See Ch. 115.
Telecommunications facilities — See Ch. 122.
Zoning — See Ch. 140.

§ 137-1. Statutory authority.

The Town Board of the Town of Conklin does hereby ordain and enact the Town of Conklin Wind Energy-Deriving Towers Law pursuant to the authority and provisions of § 10 of the New York State Municipal Home Rule Law.

§ 137-2. Title.

This chapter shall be known as the "Wind Energy-Deriving Towers Law."

§ 137-3. Intent and purpose.

- A. The purpose of this chapter is to regulate the development of wind energy-deriving towers (wind turbines) in the Town of Conklin. This chapter is to be consistent with the general purposes stated in the Comprehensive Plan of the Town to accommodate the necessary infrastructure for the provision of residential and commercial wind-powered electricity-generating devices and facilities so that they may be developed in a manner hereby deemed compatible with the general health, safety, and welfare of the residents of the Town of Conklin.
- B. In order to address the visual, aesthetic, and land use compatibility aspects of wind energy-deriving towers, these regulations will regulate and restrict the height, size, location, and other features of wind turbines and will, after reasonable consideration of the character of the Town and its peculiar suitability for particular uses, conserve and enhance natural resources and land values to protect the existing properties and environment.

§ 137-4. Definitions.

As used in this chapter, 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 at the tower facility.

APPLICANT — Any individual, corporation, estate, trust-partnership, joint-stock company,

association of two or more persons, limited liability company or entity submitting an application to the Town of Conklin for a special use permit for wind energy-deriving tower facilities.

APPLICATION — The form approved by the Board, together with all necessary and appropriate documentation, that an applicant submits in order to receive a special use permit for wind energy-deriving tower facilities.

BOARD — The Town Board of the Town of Conklin.

NACELLE — The portion of the wind turbine that connects the rotor to the support tower, and houses the generator, gearbox, drive train, and braking system.

RIGHT-OF-WAY — A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation and intended to be occupied by a road, crosswalk, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer and other similar uses.

SITING AGENCY — Person or persons who are applying to site a wind energy-deriving tower facility.

SPECIAL USE PERMIT — The official document or permit by which an applicant is allowed to construct and use wind energy-deriving tower facilities as granted or issued by the Town.

TOWER FACILITY — Site where one or more wind energy-deriving tower(s) or wind turbines will be located, including all accessory facilities or equipment.

TOWN — The Town of Conklin, New York.

WIND ENERGY-DERIVING TOWER OR WIND TURBINE — Any tower, pole, or other structure, whether attached to a building, guyed, or freestanding, designed to be used for the support of a rotor that consists of blades and hub, as well as a nacelle and generator for producing electricity.

WIND ENERGY CONVERSION SYSTEM (WECS) — Any mechanism designed for the purpose of converting wind energy into electrical energy. WECS may be:

- A. **COMMERCIAL** — A WECS that is the prime use on a parcel of land and supplies electrical power for off-site use.
- B. **NONCOMMERCIAL** — A WECS that is incidental and subordinate to another use on the same parcel and supplies electrical power for on-site use, except that when a parcel on which a noncommercial WECS is installed also receives electrical power supplied by a utility company, excess electrical power generated by noncommercial and not presently needed for on-site use may be used by the utility company in exchange for a reduction in the cost of electrical power supplied by the company to the parcel for on-site use, as long as no net revenue is produced by such electrical power.

§ 137-5. Authority to approve applications.

The Board is hereby authorized to approve, approve with conditions, or disapprove wind energy-deriving tower facility applications in accordance with this chapter.

§ 137-6. Special use permit application procedure.

- A. All applicants for a special use permit for wind energy-deriving tower facilities shall, in addition to the other requirements in this chapter, comply with the procedures set forth in this section. The Board is the officially designated agency or body of the community that is authorized to review, analyze, evaluate, and make decisions with respect to granting or denying special use permits for wind energy-deriving towers and facilities. The decision of the Board on the application shall be filed in the office of the Town Clerk within five business days after such decision is rendered and a copy thereof mailed to the applicant.
- B. An application for a special use permit for wind energy-deriving tower facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different from the applicant, shall also sign the application. At the discretion of the Board, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- C. Applications not meeting the requirements stated herein or which are otherwise incomplete may be rejected by the Board.
- D. Completed applications for siting wind-energy deriving towers shall be submitted to the Town Clerk at least 10 days prior to the regular meeting of the Town Board. Applications may be made by the owner of the property or his/her duly authorized representative, who shall attend the meeting of the Board to discuss the application.
- E. Within 62 days after the Town Board meeting where the complete application is submitted, a public hearing shall be held. Notice of such public hearing shall be published in the official newspaper of the Town at least 10 days prior to the date thereof. In order that that Town may notify nearby landowners, the applicant, at least three weeks prior to the date of said public hearing, shall be required to provide the names and addresses of all landowners whose property is located within 1,500 feet of any property line of the lot on which the proposed WECS is proposed to be located.
- F. The Board will undertake a review of an application pursuant to this chapter in a timely fashion, consistent with its responsibilities under SEQRA, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and need to be involved and the applicant's desire for a timely resolution. The Board may refer any application or part thereof to the Town Planning Board or other advisory committee for a nonbinding recommendation.
- G. Except for necessary building permits and subsequent certificates of compliance, no additional permits or approvals from the Town shall be required for WECS covered by this chapter.
- H. After the public hearing and after formally considering the application, the Board may approve and issue or deny a special use permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the applicant.

- I. If the Board approves the special use permit for WECS covered by this chapter, the applicant shall be notified of such approval in writing within 10 calendar days of the Board's action, and the special use permit shall be issued within 30 days after such approval.
- J. If the Board denies the special use permit for WECS covered by this chapter, the applicant shall be notified of such approval in writing within 10 calendar days of the Board's action.
- K. No wind energy-deriving tower facilities shall be installed or constructed until the site plan is reviewed and approved by the Board and the special use permit has been issued.

§ 137-7. Development plan requirements.

A plan for the proposed development of a wind energy-deriving tower facility shall be submitted with the application, and such plan shall show and include:

- A. The name of the project, boundary lines of the parcel that the project will be located on, a location map showing the proposed site's location, date, North arrow, and scale of the plan.
- B. The name and address of the owner of the parcel where the development is proposed, the developer and seal of the engineer, architect, or surveyor preparing the plan.
- C. The name and address of all owners of record of abutting parcels and those within 1,500 feet of the property lines of the parcel where the development is proposed.
- D. A map showing all existing lot lines, easements and rights-of-way, and a sketch plan showing proposed road access, including provisions for paving, if any, proposed transmission lines and accessory facilities, and location of all existing and proposed utility systems to the facility.
- E. A survey of the land to be leased, if applicable.
- F. A map showing existing and proposed topography at five-foot contour intervals.
- G. A landscape plan showing all existing natural land features, trees, forest cover and all proposed changes to these features, including size and type of plant material and erosion control measures.
- H. State Environmental Quality Review Act (SEQRA) environmental assessment form (EAF).
- I. Photography assessing the visibility from key viewpoints, existing tree lines, and proposed elevations. Pictures shall be digitally enhanced to simulate the appearance of the as-built above ground site facilities as they would appear from distances within a three-mile radius of such wind turbines. Pictures from specific locations may be required by the Board and all pictures shall be no smaller than five inches by seven inches.
- J. Documentation of the proposed intent and capacity of energy generation as well as a justification for the height of any wind energy-deriving tower and justification for any clearing required.
- K. Preliminary report prepared by the wind turbine siting agency describing:
 - (1) Surrounding topography in relation to the capabilities for generation of electricity by

wind.

- (2) Required improvements for construction activities, including those within the public's right-of-way or land controlled by the Town of Conklin.
 - (3) Proposed mitigation measures for visual impacts of tower facility.
 - (4) Proposed safety measures to mitigate wind energy-deriving tower structural failure.
- L. Elevation map showing the wind energy-deriving tower's height and design, including a cross-section of the structure and components of the nacelle; the wind energy-deriving tower's compliance with applicable structural standards; and the wind energy-deriving tower's abilities in terms of producing energy.
- M. Demonstration of a need for the proposed wind energy-deriving tower facility.
- N. A description of the general geographic areas that would be acceptable for wind projects within the Town of Conklin; furthermore, demonstration that the proposed site is the most appropriate site within the immediate area for the location of the wind energy-deriving tower facility.
- O. Description of the applicant's long-range plans which project market demand and long-range facility expansion needs within the Town.
- P. Digital elevation model-based project visibility map showing the impact of visibility of the project from other locations, to a distance radius of three miles from the center of the project. The base map used shall be a published topographic map showing natural and structural or built features.
- Q. Report showing soil logs, soil profile analysis, and stormwater run-off calculations for the area being disturbed.
- R. Plans to prevent the pollution of surface water or groundwater, erosion of soil both during and after construction, excessive runoff, and flooding of other properties, as applicable. There should be preconstruction and postconstruction drainage calculations for the site completed by a certified engineer. From this the engineer must show how there will be no increase in runoff from the site.
- S. If any license, approval, permit, certification, or any type of registration or similar type of endorsement is required from any other agency, the applicant shall notify the Planning Board of such requirement and the Board shall coordinate the review as deemed appropriate.
- T. The Board, upon request in writing by the applicant, may waive specific requirements of § 137-7 when, in its opinion, such information is not necessary for the Board to take into account when considering an application. Any such waiver will not have the effect of nullifying the spirit and intent of these standards, the Comprehensive Plan, or any other regulations or ordinance, if such exist.

§ 137-8. Standards for towers and facilities.

The development of wind energy-deriving towers and related structures shall be permitted with

approval by the Board. Wind energy-deriving towers and facilities shall be subject to the following requirements:

A. Location. Applicants for wind energy-deriving towers shall locate, erect, and site towers in accordance with the following requirements:

- (1) No individual tower facility shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the links operation.
- (2) No individual tower facility shall be installed in any location where its proximity to existing fixed broadcast or reception antennas (including residential reception antennas) for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. Any unforeseen interference must be corrected to the satisfaction of the Board within 60 days of any complaint.
- (3) No individual tower facility shall be installed in any location where there is a recognized migratory flight path for birds or at a location where birds commonly congregate, unless the applicant can demonstrate that the operation of the wind energy-deriving tower will not have a significant impact on either migratory or residential birds.
- (4) All wind turbine towers shall be set back from adjacent property lines, rights-of-way, easements, public ways, power lines (not to include individual residential feed lines), and any preexisting structures by a distance at least equal to its fall zone as certified by a New York State licensed professional engineer plus an additional 50% of its fall zone. Additional setbacks may be required by the Board in order to provide for the public safety, health, and welfare. The Board may waive setback requirements from adjacent properties if such adjacent properties will also be participating in the wind project.
- (5) The level of noise produced during wind tower operation shall not exceed 45 (dBA) measured at a distance of 1,000 feet from the base of the wind energy-deriving tower or from the nearest residential structure.

B. Notice and safety considerations; specifications.

- (1) An emergency telephone number shall be posted so that the appropriate people may be contacted should any wind energy-deriving tower need immediate attention.
- (2) No wind turbine shall be permitted to lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and turbine components or nacelle.
- (3) All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point 12 feet above the ground. Setbacks for any wind turbine tower from any property line shall be a distance of 50 feet from any anchor point for guy wires or cables.
- (4) Caution signs shall be placed at the maximum engineer-calculated ice or blade throw

distance warning of ice and blade throws. Signs shall be placed at one-hundred-foot intervals and be four to six feet high, i.e., at eye level. Said signs shall be a minimum of one foot square and no larger than two square feet in size and shall have the words "CAUTION: FALLING OBJECTS" printed thereon. In addition, the owner's name, address, and telephone number shall be printed thereon.

- (5) Access to the tower shall be limited either by means of a fence six feet high around the tower base with a locking gate or by limiting tower climbing apparatus to no lower than 12 feet from the ground.
 - (6) Wind energy-deriving towers shall conform to the following specifications:
 - (a) KW limit: 10 KW for all noncommercial wind turbines; 20 KW for commercial wind turbines.
 - (b) Color: The color of all wind energy-deriving towers shall be battleship gray unless an agency of the state or federal government mandates something different.
 - (c) Structure: All wind energy-deriving tower structures shall be lattice or solid tube. All types of wind turbines will be allowed.
- C. Lighting. Wind energy-deriving towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Use of nighttime and overcast daytime condition stroboscopic lighting to satisfy FAA lighting requirements shall be subject to Board on-site review, with specific respect to § 137-8F(1) of this chapter.
- D. Utility service. All power transmission lines from the wind-generated electricity-generation facilities to on-site substations shall be underground.
- E. Height.
- (1) The minimum distance between the ground and any part of the rotor blade shall be no less than 30 feet.
 - (2) The height of any wind energy-deriving tower shall be limited to the minimum required to provide needed energy by demonstrated demand.
- F. Environmental impact.
- (1) Scenic/view impact. No wind energy-deriving tower or facility shall be installed in a location where the Board determines it to be detrimental to the general neighborhood character.
 - (a) Final determination of permissible tower height and location shall be decided by the Board as part of the site plan application review.
 - (b) No individual tower facility shall be installed in any location that would substantially detract from or block view of a portion of a scenic view, as viewed from any public road right-of-way, publicly owned land, or privately owned land within the Town of Conklin.

- (2) Access roads. Whenever possible, existing roadways shall be used for access to the wind energy-deriving tower facility site. In the case of constructing roadways, they shall be constructed in a manner so that they are not conspicuous to the surrounding environment.
- (3) Accessory structures/facilities. Transmission facilities or buildings shall be located behind ridges or vegetation, where feasible, to screen from visibility.

G. Operating considerations.

- (1) Removal if not operational. The applicant shall submit to the Board a letter of intent committing the tower owner, and any successor in interest, to notify the Building Inspector within 30 days of the discontinuance of use of the wind energy-deriving tower. This letter shall be filed with the Building Inspector prior the issuance of a building permit. The owner shall remove the obsolete or unused wind turbines and accessory structures from any site and restore the site to preconstruction conditions within one year of such notification. Failure to notify and/or remove the obsolete or unused WECS in accordance with these regulations shall be a violation of this chapter. The Town may undertake the removal of the WECS, and all expenses incurred by the Town in connection with the removal shall be assessed against the land on which the WECS is located and shall be levied and collected in the same manner as provided in the Town Law for the levy and collection of a special ad valorem levy.
- (2) Building and grounds maintenance. Upon completion of installation, the site shall be returned as close as possible to its natural state. Any damaged or unused parts shall be removed from the premises within 30 days or kept in an on-site storage facility. All maintenance equipment, spare parts, oil, and all similar materials shall also be kept in said on-site storage facility.
- (3) Ownership changes. If the ownership of a wind turbine operating under a special use permit (permission of the Board) changes, the special use permit shall remain in force. All conditions of the special use permit will continue to be obligations of succeeding owners. The Town Clerk shall be notified and the ownership change registered with the Town. All signs required under provisions of this chapter shall be changed accordingly.
- (4) Modifications. Any and all modifications, additions, deletions, or changes to wind turbines authorized to operate under this chapter, whether structural or not, shall be made by application to the Board, pursuant to §§ 137-5 and 137-6 of this chapter, except where modification is required for repairs which become necessary in the normal course of use of such wind turbines or become necessary as a result of natural forces, such as wind or ice.
- (5) Performance security. The applicant and the owner of record of any proposed wind energy-deriving tower property site shall, at its cost and expense, be jointly required to execute and file with the Town a bond or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount of at least \$75,000 for commercial WECS and at least \$10,000 for noncommercial WECS,

and with such sureties as are deemed sufficient by the Town to assure the faithful performance of the terms and conditions of this chapter and conditions of any special use permit issued pursuant to this chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and for until the removal of the wind turbine and any necessary site restoration is completed. The failure to pay any annual premium for the renewal of any such security shall be a violation of the provisions of the special use permit and shall entitle the Board to revoke the special use permit after prior written notice to the applicant and holder of the permit and after a hearing upon due prior notice to the applicant and holder of the special use permit.

H. Certifications.

- (1) Post-installation. A post-installation field report identifying the facility's generation of electricity and impacts upon the environment shall be submitted to the Town within 60 days of when such information becomes available.
- (2) Insurance/liability.
 - (a) Prior to the issuance of an approved application, the applicant shall provide the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, of public liability insurance, of a level to be determined by the Board in consultation with the Town's insurer, to cover damage or injury which might result from the failure of a tower or towers or any other part(s) of the generation or transmission facility.
 - (b) The public liability insurance policy shall specifically include the Town and its officers, boards, employees, committee members, attorneys, agents, and consultants as additional named insureds (using endorsement No. CG2026), with coverage of at least \$1,000,000 per occurrence/\$2,000,000 aggregate.
- (3) National and state standards. The applicant shall show that all applicable manufacturers, New York State and U.S. standards for the construction, operation, and maintenance of the proposed wind turbine have been met or are being complied with. Wind turbines shall be built, operated, and maintained to applicable industry standards of the Institute of Electrical and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI). The applicant shall furnish evidence, over the signature of a professional engineer licensed to practice in the State of New York, that such wind turbine is in compliance with such standards.
- (4) Lightning strike/grounding. The applicant shall show that all applicable manufacturers, New York State and U.S. standards for the construction, operation, and maintenance of the proposed wind turbine have been or are being complied with.
- (5) Wind speed/wind load. Certification is required by a registered professional engineer or manufacturer's certification that the tower design is sufficient to withstand wind-load requirements for structures as established by the Building Code of New York State.
- (6) Continuing obligations. All requirements detailed in § 137-8H(1) through (5) above

shall remain in force for the life of the special use permit,

§ 137-9. Application approval rights reserved; decisions.

The Board reserves the right to approve the application, deny the application, or grant the application with certain stated conditions. All action upon the application shall be by written decision based upon substantial evidence submitted to the Board.

§ 137-10. Retention and reimbursement of expert assistance.

- A. The Board may hire, at the applicant's expense, any consultant and/or expert necessary to assist the Board in reviewing and evaluating the application and any requests for recertification.
- B. Reimbursement funds; escrow account maintenance.
 - (1) An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Board in connection with review of any application. The Board, by resolution, shall set the initial deposit. These funds shall accompany the filing of an application, and the Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town not less than monthly for its services in reviewing the application and performing its duties. If at any time during the review process the escrow account has a balance of less than \$2,500, the applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$2,500. Such additional escrow funds must be deposited with the Town before any further action or consideration is taken on the application. In the event the amount held in escrow by the Town is more than the amount of the actual cost of the Town's experts/consultants at the conclusion of the review process, the difference shall be promptly refunded to the applicant.
 - (2) The total amount of funds set forth in § 137-10B(1) may vary by the scope and complexity of the project, the completeness of the application and other information as may be needed by the Board or its consultant/expert to complete the review process.

§ 137-11. Extent and parameters of special use permit; recertification.

- A. At any time between 12 months and six months prior to the five-year anniversary date after the effective date of the special use permit and all subsequent fifth anniversaries of the effective date of the original special use permit, the holder of the permit shall submit a signed written request to the Board for recertification.
- B. In the written request, the holder of such special use permit shall note the following:
 - (1) The name of the holder of the special use permit for the WECS.
 - (2) If applicable, the name or number of the special use permit.
 - (3) The date of the original special use permit.

- (4) Whether the WECS has been moved, relocated, rebuilt or otherwise modified since the issuance of the original special use permit and, if so, in what manner.
- (5) That the WECS is in compliance with the special use permit and in compliance with all applicable codes, rules, laws and regulations.

C. Board decisions.

- (1) If, after such review, the Board determines that the permitted WECS is in compliance with the special use permit and all applicable codes, rules, laws and regulations, then the Board shall issue a recertification special use permit for the WECS, which may include any new provisions or conditions that are mutually agreed upon or required by applicable statutes, laws, local laws, ordinances, codes, rules and regulations.
- (2) If, after such review, the Board determines that the permitted WECS is not in compliance with the special use permit and all applicable codes, rules, laws and regulations, then the Board may refuse to issue a recertification special use permit for the WECS, and in such event, such WECS shall not be used after the date that the applicant receives written notification of such decision by the Board.
- (3) Any such decision shall be in writing and supported by substantial evidence contained in a written record.

D. If the holder of a special use permit for a WECS does not submit a request for recertification of such special use permit within the time frame noted in § 137-11A, of this article, then such special use permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original special use permit or subsequent fifth anniversary, unless the holder of the special use permit adequately demonstrates to the Board that extenuating circumstances prevented a timely recertification request. If the Board agrees that legitimate extenuating circumstances were present, the Board may permit the holder to submit a late recertification request or application for a new special use permit.

E. Any special use permit granted hereunder shall be:

- (1) Nonexclusive.
- (2) Not assigned, transferred or conveyed without the express prior written consent of the Board, and such consent shall not be unreasonably withheld or delayed.
- (3) Subject to revocation, termination, cancellation or modification following a hearing upon due prior written notice to the applicant for a violation of the conditions and provisions of the special use permit for WECS or for a material violation of this chapter.

§ 137-12. Conflicts with other laws.

Where this chapter differs or conflicts with other laws, rules, and regulations, unless the right to do so is preempted or prohibited by the county, state, or federal government, the rule, or regulation which is more restrictive or protective of the Town and public shall apply.

§ 137-13. Severability.

- A. If any word, phrase, sentence, part, section, subsection, or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion or the proscribed application thereof shall be severable and the remaining provisions of this chapter and all applications thereof not having been declared void, unconstitutional or invalid shall remain in full force and effect.
- B. Any special use permit issued under this chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect by a competent authority or is overturned by a competent authority, the permit shall be void in total, upon determination by the Town Board.