

TOWN OF BETHANY

A PROPOSED LOCAL LAW IMPOSING A TWELVE-MONTH MORATORIUM ON THE PLACEMENT OF WIND ENERGY CONVERSION SYSTEMS/WINDMILLS/METS IN THE TOWN OF BETHANY

BE IT ENACTED by the Town Board of the Town of Bethany as follows:

SECTION 1. TITLE

This Local Law shall be referred to as “Imposing a Twelve-Month Moratorium on Placement of Wind Energy Conversion Systems/Windmills/Mets in the Town of Bethany.”

SECTION 2. PURPOSE AND INTENT

Pursuant to the statutory powers vested in the Town of Bethany (the “Town”) to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Bethany hereby declares a twelve-month moratorium on the establishment, placement, construction, enlargement and erection of wind energy conversion systems/windmills/mets in the Town.

The Town has become aware of significant number of options, easements and leases being secured within the municipality by a number of companies for wind energy conversion systems/windmills/mets. It is clear that applications for these facilities may be proliferating. The rapidly evolving technology and the unique location of several major wind corridors within the Town indicates that applications for the construction and location of wind energy conversion systems/windmills/mets may be imminent.

The integration of these commercial facilities within the Town’s existing pattern of predominantly residential and agricultural land use emphasizes the need for suitable siting, land use and zoning standards and controls with reference to wind energy conversion systems/windmills/mets.

The Town of Bethany regulations presently fail to adequately regulate wind energy conversion systems/windmills/mets in the face of present and anticipated applications, represents a clear and obvious deficiency in the Town of Bethany’s system of land use regulation.

The Town desires to address, in a careful manner, the establishment, placement, construction, enlargement and erection of wind energy conversion systems/windmills/mets on a comprehensive Town-wide basis, rather than on an ad hoc basis, and to adopt a land use law for provisions to specifically regulate same.

SECTION 3. SCOPE OF CONTROLS

A. During the effective period of this Local Law:

1. The Town Board of the Town shall not grant any approvals that would have as the result the establishment, placement, construction, enlargement or erection of wind energy conversion systems/windmills/mets within the Town, including any tower commonly referred to as a "MET" tower, for the gathering of information.
 2. The Town Planning Board shall not grant any preliminary or final approval to a subdivision plat, site plan, special use permit or other permit that would have as a result the establishment, placement, construction, enlargement or erection of a wind energy conversion systems/windmills/mets within the Town.
 3. The Town Zoning Board of Appeals shall not grant any variance or other permit for any use that would result in the establishment, placement, construction, enlargement or erection of a wind energy conversion systems/windmills/mets within the Town.
 4. The Building Inspector/Code Enforcement Officer of the Town shall not issue any permit that would result in the establishment, placement, construction, enlargement or erection of a wind energy conversion systems/windmills/mets within the Town.
- B. The Town Board of the Town reserves the right to direct the Town Building Inspector/Code Enforcement Officer to revoke or rescind any building permits or certificates of occupancy issued in violation of this Local Law.

SECTION 4. NO CONSIDERATION OF NEW APPLICATIONS

No applications for construction affected by this Local Law or for approvals for a site plan, subdivision, variance, special use permit or other permits shall be considered by any board officer or agency of the Town while the moratorium imposed by this Local Law is in effect.

SECTION 5. TERM

The moratorium imposed by this Local Law shall be in effect for a period of twelve (12) months from the effective date of this Local Law.

SECTION 6. PENALTIES

Any person, firm or corporation that shall establish, place, construct, enlarge or erect any wind energy conversion systems/windmills/mets in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall be subject to:

- A. Such penalties as may otherwise be provided by applicable local laws, ordinances, rules, regulations of the Town for violations; and
- B. Injunctive relief in favor of the Town to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction that may have taken place in violation of this Local Law.

SECTION 7. VALIDITY

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

SECTION 8. HARDSHIP

- A. Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law, then the owner of said property may apply to the Town Board of the Town in writing for a variation from strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary hardship shall not be the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law. A critical factor to the granting of such variance, is that it must be a single wind tower and related equipment and more than 51% of the energy produced is used or consumed upon the owner's property.
- B. Procedure.
1. Upon submission of a written application to the Town Clerk by the property owner seeking a variation of this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a Public Hearing on said application upon five (5) days' written notice in the official newspaper of the Town.
 2. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within fifteen (15) days of the close of said Public Hearing, render its decision either granting or denying the application for a variation from the strict requirements of this Local Law.
 3. If the Town Board determines that a property owner will suffer an unnecessary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall vary the application to this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

SECTION 9. EFFECTIVE DATE

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.