

**§ 280-11.2. Small-scale wind energy systems for on-site use.
[Added 7-12-2017 by L.L. No. 2-2018]**

- A. Scope. These regulations relate to small on-site-use wind energy systems and do not address medium- or large-scale wind turbines or wind farms which are typically intended to, in whole or substantial part, sell energy directly to power companies or retail users. Any non-small wind energy system applications for facilities within the Town of Tully shall require the grant of a use variance.
- B. Special authorization required; small wind energy system defined. No person, firm or corporation, or other entity being the owner or occupant of any land or premises within the Town of Tully shall use or permit the use of land or premises for the construction of a tower for a small on-site wind-energy collection system without obtaining a special authorization issued by the Tully Joint Planning Board, which procedure includes all required incidental site plans and any subdivision-related actions and, as well, any waivers sought by an applicant as provided at § 280-11.2M hereof. The small wind energy system permitted hereunder is also sometimes referred to as a "small wind energy collection system," "small wind system," "on-site wind energy system," or similar variation, all meaning the system described at § 280-11.2C(1) and the subsections thereof, including without limitation § 280-11.2C(1)(e), following and consisting of a wind energy system serving predominately on-site uses with only incidental surplus energy produced and made available to the public utility grid.
- C. Special authorization criteria.
 - (1) In addition to the general criteria for grant of a special authorization established pursuant to Town Code § 280-11.2D(2), the following criteria are hereby established for purposes of granting a special authorization for an on-site-use wind energy conversion system under this chapter:
 - (a) Noninterference. Individual on-site-use wind energy conversion systems shall not be installed in any location along the major axis of an existing microwave communications operation where its operation is likely to produce an electromagnetic interference in the link's operation.
 - (b) Proximity to radio, television and telephone systems. Individual on-site-use wind energy conversion systems

shall not be installed in any location where their proximity interferes with existing fixed broadcast, retransmission, or reception antennas for radio, television or wireless phones.

- (c) Scenic viewsheds. All wind energy conversion system's infrastructure and improvements that are not considered within the definition of small wind energy systems for on-site residential use of less than 100 feet in height are hereby legislatively determined to be, in many cases, in view from nearby properties, neighborhoods, communities and from differing surrounding directions and elevations, visually, aesthetically and otherwise much less appealing than the preexisting viewshed, or wholly undesirable. In many cases, even after thoughtful review, adverse effects are not avoided, i.e., as-built buffering, screening and the like may be as robust aesthetically or as conceivably possible even where sometimes at inordinate cost, replacing the preexisting viewshed from surrounding areas and elevations, including of and from preexisting scenic vistas, traditional village, hamlet, and Town and country locations and scenes, and from and to nearby and distant private properties, from local and interstate vehicle and bicycling transportation routes, public parks and recreational areas and vast open spaces, hillsides and other natural greenscapes with, at best, a viewshed including relatively large mechanical structures with, at best, a green area consisting of landscape, vegetation and berming which, regardless, removes only part of the objectionable structure but most of the former viewshed from sight. It likewise of concern, and the Town Board's specific finding, that remaining agricultural and open lands within the Town be protected and recognized as an important component of the Town, village and surrounding community's potential for continued stability and desired growth. The foregoing notwithstanding, it is nevertheless acknowledged and a specific finding of the Town Board that certain proposed sites may be situate, relative to nearby relatively or more significantly important properties and areas, such as public parks, recreational and/or nature preserves, scenic trails, roads, drives, bicycling and pedestrian ways, hillside and elevated areas, residentially developed and community centered areas (hamlets) and numerous and various other culturally, historically, environmentally and similarly

significant and sensitive locations that no measures taken in connection with development can adequately buffer and screen from the view of/from not only adjacent, contiguous and nearby parcels, but also from/to any lands or parcels within or outside the Town having or potentially having visibility to/from any wind energy system components, lands, and/or the like. Therefore, all wind energy systems' infrastructure shall be situate and located in such a manner as to minimize adverse impacts to surrounding properties. Infrastructure for on-site-use wind energy conversion systems shall not be installed in any location that would substantially detract from or block the view of all or a portion of a recognized scenic viewshed, as viewed from any public road, right-of-way or publicly owned land within the Town of Tully or that extends beyond the border of the Town of Tully. For purposes of this subsection, consideration shall be given to any relevant portions of the current and/or future officially recognized Town planning document or resource. Wind energy systems shall be enclosed by a security fence at a minimum height of eight feet and not exceeding 10 feet in height and having a lockbox with a key or code in order to permit access by emergency responders.

- (d) Noise limitations. The level of noise produced during wind turbine operation shall not exceed 50 dBa beyond the present ambient sound levels at preconstruction levels, as measured at the boundaries of the closest parcels that are owned by nonsite owners and that abut either the site parcels or any other parcels adjacent to the site held in common by the owner of the site parcel, as those boundaries exist at the time of the special authorization application. The applicant will be required to submit technical data to the satisfaction of the Joint Planning Board as to this requirement. This obligation shall be a continuing obligation with exceptions only for short-term events such as utility outages and severe windstorms.
- (e) Height. It is recognized that wind turbines require greater heights to reach elevations with wind currents reasonably adequate to generate energy. On-site-use wind energy conversion systems shall not exceed a total height of 100 feet for single-family residential applications (less

than or equal to 25 kW) and shall not exceed a total height of 150 feet for nonresidential applications [i.e., farm, small business, etc. (less than or equal to 125 kW)] from the ground to the top of the highest point of blade height (tip) as extended at its highest vertical point, provided that the application includes specific evidence that the proposed total height does not exceed the height recommended by the manufacturer or distributor of the on-site-use wind energy conversion system.

- (f) FAA requirements. If the proposed site is near an airport, seaplane base, or established flight zone, such wind energy conversion system must meet all Federal Aviation Administration requirements.
- (g) Ground clearance. The minimum distance between the ground and any part of the rotor blade must be 30 feet.
- (h) Emergency shutdown/safety. The applicant shall post an emergency telephone number so that the appropriate entities may be contacted should any wind turbine need immediate repair or attention. This telephone number should be clearly visible on a permanent structure or post located outside of the fall zone of the tower. The location should be convenient and readily noticeable to someone likely to detect a problem. Further, no wind turbine shall be permitted which lacks an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, and turbine components or enclosed shelter.
- (i) Lightning protection. All energy towers shall have lightning protection.
- (j) Ownership. Ownership of the wind energy conversion system must be the same as the owner of the fee interest in the real property upon which it is situated. In the event of transfer of ownership of the premises, the ownership of the wind energy conversion system must also be transferred to same or the tower must be decommissioned.
- (k) Utility service. All power lines from the wind turbines to on-site interconnection equipment shall be located underground and installed by certified professionals and

must meet all applicable national, state and local electrical codes.

- (l) Lighting. No on-site-use wind energy conversion systems under this provision shall be artificially lighted, unless so required by the FAA. Use of nighttime and overcast daytime conditions stroboscopic lighting to satisfy tower facility lighting requirements for the Federal Aviation Administration may be subject to on-site field testing before the Joint Planning Board as a prerequisite to the Board's approval, with specific respect to existing residential uses within 2,000 feet of each tower for which such strobe lighting is proposed.
- (m) Access road. To the greatest extent possible, existing roadways shall be used for access to the site and its improvements. In the case of constructing any roadways necessary to access the wind energy conversion system (WECS), they shall be constructed in a way that allows for the passage of emergency vehicles in the event of an emergency. Each application shall be accompanied by correspondence from the responding Fire Department and emergency care provider as to the acceptability of the proposed ingress to and egress from the tower.
- (n) Security/antivandal device. The design of each device shall not allow for climbing by the public for a minimum height of 15 feet from the ground.
- (o) Decommissioning. The applicant shall submit to the Town Board, with copy to the Joint Planning Board, a letter of intent committing the owner, and his or her successors in interest, to notify the Building Inspector within 30 days of the discontinuance of the use of the on-site-use wind energy conversion system. This letter of intent shall be filed with the Building Inspector prior to the issuance of a building permit. The owner shall remove the obsolete or unused wind turbines and accessory structures within one year of such notification. Failure to notify and/or remove the obsolete or unused tower in accordance with these regulations shall be a violation of this section, and the cost of removing the on-site-use wind-energy-deriving tower and accessory structures shall be placed as a lien on the property owner's tax bill. In addition, a reclamation bond shall be filed with the Town Clerk to cover the costs of reclamation of the tower. Should the

wind energy conversion system be nonoperational for any continuous six-month period, the approvals granted shall be deemed void, and the wind energy conversion system shall be decommissioned, subject to a new approval under this section. Such bond shall be in place prior to the issuance of a building permit.

- (p) Setbacks. Wind energy conversion systems shall comply with all setbacks within the affected zone. However, in addition, all on-site use wind energy conversion systems shall be set back a distance equal to the height of the tower plus the blade length plus an additional 25 feet from all property lines, public roads, power lines and preexisting and future structures. Additional setbacks may be required by the Joint Planning Board in order to provide for the public's safety, health and welfare, including the possibility of ice thrown from the blades.
- (2) Public hearing. No action shall be taken by the Joint Planning Board to issue a special authorization or by the Zoning Board of Appeals to grant a variance in relation to an application for an on-site-use wind energy system until after public notice and a public hearing. Proper notice of a hearing before the Planning Board shall be given by legal notice published in the official newspaper of the Town of Tully at least five days before the date set for such public hearing(s) and by written notice mailed to the applicant or his agent at the address given in the application to be considered. The applicant shall be responsible for notifying, by certified mail, all property owners of record within 500 feet of the outside perimeter of the boundary line of the property involved in the application of the time, date and place of such public hearing at least 10 days prior to such hearing. Notice shall be deemed to have been given if mailed to the property owner at the tax billing address listed on the property tax records of the Town Assessor or at the property address if that is the address listed thereon. At least five days prior to such hearing, the applicant shall file with the board his/her affidavit verifying the mailing of such notices. Failure of the property owners to receive such notice shall not be deemed a jurisdictional defect. Proceedings before the Zoning Board of Appeals shall be as required for variance applications under the Town Law and, if applicable, any Town Code provisions. The notice to nearby property owners required for a variance shall be the responsibility of the applicant.

- (3) Waiver. The Joint Planning Board may, upon exercise of its reasonable discretion, waive one or more of the submission requirements imposed herein and certain substantive requirements pursuant to § 280-11.2M hereof. Relief from other height, location, area or dimensional requirements must be made by grant of an area or use variance from the Zoning Board of Appeals.

D. Submission requirements.

- (1) The following submission requirements must be observed regarding a special authorization application. The reviewing board may require any of the submission requirements under Chapter 280 governing site plan applications to be submitted as part of the application:
 - (a) A completed application form as supplied by the Town of Tully for special authorization approval for a small wind energy conversion system.
 - (b) Proof of ownership of the premises involved or proof that the applicant has written permission of the owner to make such application.
 - (c) A plot plan and development plan drawn in sufficient detail, as prepared by a licensed engineer or surveyor, clearly describing:
 - [1] Property lines and physical dimensions of the proposed site, including contours at five-foot intervals.
 - [2] Location, approximate dimensions and types of all existing structures and uses on the site.
 - [3] Location and elevation of the proposed on-site-use wind energy conversion system.
 - [4] Location of all existing aboveground utility lines and other on-site-use wind energy conversion systems within 1,200 linear feet of the site.
 - [5] Location and size of structures or trees above 35 feet within a five-hundred-foot radius of the proposed on-site-use wind energy conversion system.
 - [6] Where applicable, the location of all transmission facilities proposed for installation.

- [7] Location of all roads and other service structures proposed as part of the installation.
 - [8] 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.
 - [9] Soil type at construction site.
- (d) Yard placement. All wind energy systems shall be located and placed in rear yards and upon yards in an appropriate manner to accomplish the goals and criteria as hereinafter provided.
 - (e) Color. Neutral paint colors (grays) may be required to achieve visual harmony with the surrounding area.
 - (f) Applications shall demonstrate that there will be no adverse impact on migratory bird patterns.
 - (g) In no event shall more than one on-site-use wind energy system be granted for a residential lot, unless a use variance is obtained from the Zoning Board of Appeals.
 - (h) All applications shall be accompanied by a full environmental assessment form, including a visual impact analysis. The following additional material may be required by the Planning Board:
 - [1] A digital-elevation-model-based project visibility map showing the impact of topography upon visibility of the project from other locations, to a distance radius of three miles from the center of the project. Scaled use shall depict a three-mile radius as not smaller than 2.7 inches, and the base map shall be a published topographic map showing cultural features.
 - [2] No fewer than eight and as many as 16 color photos taken from locations within a three-mile radius from the proposed location, as selected by the Planning Board and computer-enhanced to simulate the appearance of the as-built aboveground site facilities as they would appear from these locations.
- (2) Review criteria. In addition to the above, no special authorization shall be approved unless the Planning Board

determines that the proposed on-site-use wind energy system complies with the following:

- (a) The use is oriented in its location upon the site as to layout, coverage, screening, means of access and aesthetics so that:
 - [1] The flow control and safety of traffic and human beings shall not be adversely affected to an unreasonable degree;
 - [2] There is reasonable compatibility in all respects with any structure or use in the neighborhood, actual or permitted, which may be directly substantially affected;
 - [3] There should not be any unreasonable detriment to any structure or use, actual or permitted, in the neighborhood; and
 - [4] There is a reasonable provision for open space, yards and recreation areas appropriate to the structure and use.

E. Compliance with Uniform Building Code.

- (1) Building permit applications shall be accompanied by standard drawings of structural components of the on-site-use wind energy conversion system, including support structures, tower, base and footings. Drawings and any necessary calculations shall be certified, in writing, by a New York State registered professional engineer that the system complies with the New York State Fire Prevention and Building Code. This certification would normally be supplied by the manufacturer.
- (2) Where the structure, components or installation vary from the standard design or specification, the proposed modification shall be certified by a New York State registered professional engineer for compliance with the seismic and structural design provisions of the New York State Fire Prevention and Building Code.

F. Compliance with state, local and national electric codes.

- (1) Building permit applications shall be accompanied by a line drawing identifying the electrical components of the wind system to be installed in sufficient detail to allow for a

determination that the manner of installation conforms with the National Electric Code. The application shall include a statement from a New York State registered professional engineer indicating that the electrical system conforms with good engineering practices and complies with the National Electric Code, as well as applicable state and local electrical codes. This certification would normally be supplied by the manufacturer. All equipment and materials shall be used or installed in accordance with such drawings and diagrams.

- (2) Where the electrical components of an installation vary from the standard design or specifications, the proposed modifications shall be reviewed and certified by a New York State registered professional engineer for compliance with the requirements of the National Electric Code and good engineering practices.
- G. Guy wires. Anchor points for guy wires for the on-site-use wind energy conversion system tower shall be located within property lines and not on or across any aboveground electric transmission distribution lines.
 - H. Insurance. The applicant, owner, lessee or assignee shall maintain a current insurance policy which will cover installation and operation of the on-site-use wind energy conversion system at all times. Said policy shall provide a minimum of \$300,000 property and personal liability coverage and shall provide for written notice to the Town of Tully of not less than 20 days in advance of any expiration, cancellation or material modification of such coverages.
 - I. Inspections. The Building Inspector and/or Town Engineer shall have the right at any reasonable time to enter, in the company of the owner or his agent, the premises on which a wind energy conversion system is being or is constructed, to inspect all parts of said wind energy conversion system installation and require that repairs or alterations be made if, in his judgment, there exists a deficiency in the operation or the structural stability of the system. If necessary, the Building Inspector or Town Engineer may order the system secured or to otherwise cease operation. It shall not be required that the owner or agent be present in the event of an emergency situation involving danger to life, limb or property.
 - J. Districts where allowed. Subject to the issuance of a special authorization as required hereunder, wind energy conversion

systems permitted hereunder are allowed in all zoning districts in the Town.

- K. Power to impose conditions. In granting any special authorization or variance for an on-site-use wind energy conversion system, the Joint Planning Board or Zoning Board of Appeals, as the case may be, may impose reasonable conditions to the extent such Board finds that certain conditions are necessary to minimize any adverse effect or impacts of the proposed use on neighboring properties or the surrounding community.
- L. Fees. Fees for applications and permits under this section are as established by resolution of the Town Board of the Town of Tully from time to time as part of its Fee Schedule. All applications shall be subject to the requirements of the Town of Tully Code, professional fees reimbursement and similar provisions under the Town Zoning or Subdivision Code provisions requiring the payment and/or reimbursement of the Town's professional fees incurred in connection with the application or any violation or enforcement actions, including, specifically, the requirement of execution of a professional fees reimbursement agreement and deposits, as necessary, of escrows for same.
- M. Waiver. The Planning Board may, under appropriate circumstances, waive one or more of the submission requirements contained herein and, as well, in connection with review and issuance of a special authorization for wind energy systems, the Planning Board shall have the authority to waive the strict application of any of the area, height, location or dimensional requirements under Chapter 280 or this § 280-11.2. Such waiver(s) may be granted only after consideration of the following:
 - (1) Whether the granting of such waiver(s) will result in an undesirable change in neighborhood or community, local area character or to adjacent, contiguous, nearby and/or other area properties the project site is or will be within the viewshed of.
 - (2) Whether the granting of any such waiver(s) will result in any adverse physical or environmental effects.
 - (3) Whether there are any feasible alternatives to the granting of the requested waiver(s) in order for the applicant to realize the same or substantially similar benefit(s).

- (4) Whether the requested waiver(s) is/are substantial in nature, i.e., if such request is the minimal necessary to achieve the desired benefit.
 - (5) Whether there are any conditions that can or should be imposed in connection with the grant of a waiver(s) to minimize or nullify any adverse impacts or effects.
 - (6) In connection with consideration of a waiver, and as part of any special authorization issued, the Planning Board may impose such conditions as it deems reasonable and/or necessary to address the foregoing.
 - (7) Application of the foregoing criteria shall be limited to consideration of the waiver requested as compared to the requirements set forth under § 280-11.2C and D2. The criteria may be considered singularly and/or collectively and subjectively, such that failure to satisfy or otherwise favorably address any specific criterion or number of criteria shall not necessarily warrant denial or approval of a requested waiver; and
 - (8) The Planning Board shall make specific findings within the resolution authorizing or denying a waiver(s), addressing each of the foregoing criteria.
 - (9) The denial or grant of a waiver shall not prohibit the appeal from such Planning Board grant or denial to the Town Zoning Board of Appeals; provided, however, any grant of relief from the Zoning Board of Appeals shall be subject to § 280-11.2N following. Alternatively, the applicant or Planning Board may request a stay of proceedings at any time in order to seek such appeal based upon an informal advisement from the Planning Board to the applicant on the issue of a proposed waiver or need for assistance in this regard. In such event, the applicant shall execute and deliver to the Planning Board a request for such referral, stay and waiver of any claim from delay in proceedings resulting therefrom.
- N. Zoning Board of Appeals variance review. Any decision by the Zoning Board of Appeals to grant a variance shall not in any other way be deemed to affect the applicability of any provision of the Zoning Code, Planning Board authorization and approval issued hereunder, or any other Town Code provision applicable to the applicant's plan or project. If the application or provisions of any variance significantly changes the plan or application submitted to the Planning Board and upon which the special authorization

and approval was granted, the same shall be deemed inoperative until reviewed by the Planning Board to determine what, if any, changes to the previously approved authorization and/or site plan may be required as a result of the variance grant. This provision shall not be operative if the applicant has sought review by the Zoning Board of Appeals prior to any Planning Board approvals.

- O. SEQRA determination. All applications for small wind energy systems in excess of 100 feet in height, as described at § 280-11.2, shall be a Type 1 action pursuant to the State Environmental Quality Review Act. A long SEQRA EAF form with a visual impacts addendum shall be submitted with an application.