

SPECIAL MEETING, TOWN OF REDFIELD, March 27, 2018

The special meeting of the Redfield Town Board was held on March 27, 2018 at the Redfield Municipal Building starting at 7:13pm. Roll call was taken and the following board members were present:

Tanya Yerdon	- Supervisor
Carla Bauer	- Councilwoman
Elaine Yerdon	- Councilwoman
Erwin Webb	- Councilman
Matthew Tompkins	- Councilman

In addition, Susan Hough -Town Clerk, Paul Pratt -Highway Superintendent, Rob Brenner – Nixon Peabody LLP, Michael Yerdon- Code Enforcement Officer, Matt Smith – Woodwise/Camp Owner, Walter Meisner - Avangrid, Dan Murdie - Avangrid, Scott McDonald - Avangrid, Jim Muscato – Young/Sommer LLC, Mitch Yerdon, Richard Palmer - Mad River Club, Cheryl Cheney, Kevin Crawford - IBEW 43, John Cheney, John Yerdon, Cindy Cheney, James Cheney, Robert Genant - Town Attorney, Melody Westfall - Scalfone Law, Jon Halstead

Pledge of the Allegiance was said.

Supervisor Tanya Yerdon - this meeting is for the Town Board to review and discuss the proposed Local Law #2 of 2018 Wind Energy Facilities. Supervisor Tanya Yerdon will read down through and the Town Board Members please make speak up when there is something that you question. This is not a Public Hearing, she does appreciate that Mr. Brenner and Mr. Muscato sent their responses in to her.

FINDINGS

Supervisor Tanya Yerdon – we had made mention of #8, 9, 10 & 11, with reference to Fort Drum.

#8 The Town of Redfield provides residences for many of the soldiers in the 10th Mountain Division of Fort Drum. - CM M. Tompkins - He doesn't think this is accurate. CW C. Bauer knows of one (1) person that lives in Redfield, she doesn't even know if they live in Redfield.

#9 Fort Drum aircraft perform substantial and frequent aviation maneuvers in the area Wind Energy Facilities nearby the airfield may have negative operational impacts on the operational effectiveness and efficiency of aviation maneuvers. This might negatively impact National Defense and/or increase the possibility of Fort Drum closure during any future Department of Defense Base Realignment and Closure proceedings. The Town intends to continue to support and protect Fort Drum.

#10 The Town of Redfield actively supports Fort Drum as the Preferred Site for an East Coast Missile Defense Agency Ground Based Interception site and intends to avoid any interference with Fort Drum and/or that potential expansion. CM M. Tompkins- 9 & 10 are possibly important but not necessarily important for the findings section of this particular law.

#11 The Fort Drum Regional Liaison Organization, which advocates for the protection and enhancement of Fort Drum, opposes nearby wind energy projects, finding such projects

will have a negative impact on Fort Drum and threaten its future. Supervisor T. Yerdon – Liaison Organization – can't they cover their own. CM M. Tompkins – He would think so – is it a legitimate finding for our law? Do we mention anyone else, any other organizations in our Law who have particular feelings about this project or projects like this? He would say that's kind of the same thing. CW E. Yerdon she thinks it was in there because of possible loss of Employment since they are the largest Employer in NYS, she thinks Matt is correct it probably doesn't belong in the findings, she believes #8 should be removed for sure. Supervisor T. Yerdon – is not sure if #8, 9, 10 or 11 is anything that we can regulate or we don't have our hands in that anyway, we don't control the maneuvers. CM M. Tompkins – a lot of Finding Statements before this, possibly all, don't say that something may have an affect they say is or are – factual statements instead of hypothetical. CW E. Yerdon agrees they probably should be removed from this section.

After discussion the Town Board is in agreement to remove Findings **#8, 9, 10 & 11**.
#17 Review of professional and legal literature demonstrates there can be serious legal and economic downsides for landowners entering into complicated and one-sided lease/easement contracts written by industrial wind energy developers not available for public review and debate.

CM M. Tompkins - He doesn't know that, that is the Towns problem - it would be up to the Landowner, if someone wants to enter into a complicated and one-sided lease or easement contract – that's their right, prerogative as a landowner. CW E. Yerdon agrees - it's not the job of the Town to question what a landowner signs. After discussion the Town Board is in agreement to remove Findings **#17**.

#22 A utility-scale industrial wind energy facility will be a significant source of noise and vibration for the community and wildlife. These can have negative health impacts on residents in neighboring properties, particularly in areas with low Residual Background Noise levels. These can also negatively affect the quiet enjoyment of the area, properties, and quality of life of residents. According to various medical experts and the World Health Organization, the infrasound component of such noise can be the most problematic. Impacts on wildlife related to predator-prey behaviors, mating opportunity, and other behavior can adversely impact wildlife populations and diversity.

#24 Independent experts (e.g. chiropterologists) have concluded that bats killed by industrial wind energy turbines can result in an appreciable reduction in regional agricultural yields. Estimates have been done for every county in the United States, and these experts have projected that this could adversely affect our local community's economy, by over a million dollars a year. Supervisor Tanya Yerdon - this was questioned before, the local community's economy – CM M. Tompkins – should it read Oswego County? Supervisor T. Yerdon – it doesn't say Redfield, could mean surrounding Counties/Towns. CW E. Yerdon – thinks they were questioning the "Local" before. S. T. Yerdon – has a question regarding the bats, the Indiana bats that are there, Matt said something about there was a study out? CM M. Tompkins – there's something about how negative air pressure surrounding Turbines effects the bats inner ears, it's pretty interesting, it's really not good for them, it throws off their sense of echolocation – they run into things or their ears explode. CW E. Yerdon – are those particular bats still around, she knows we lost a lot of the bat population. CM M. Tompkins – as far as he knows yes, but he has not conducted a study.

Supervisor T. Yerdon – so look for studies on this.

#25 Independent experts (e.g. ornithologists) have concluded that turbines kill large quantities of birds. Especially troublesome are the raptors that are destroyed.

#26 Independent experts have concluded that industrial turbines can have a variety of adverse health effects on other wildlife, livestock, and domestic animals.

#29 Significant public and private dollars have been invested in infrastructure within the Town to enhance and promote the region's principal industry, tourism. Several studies by independent experts have concluded that nearby industrial wind energy facilities can have a major negative economic impact on tourism-sensitive communities. - CW E. Yerdon - it also could also have a positive effect – you can get a study to say pretty much whatever you want. Supervisor T. Yerdon – look into the studies. The Town Board needs to look for studies on #24, 25, 26 & 29.

#31 Due to the unusually broad array of potentially problematic findings and lack of scientifically proven net benefits, the Precautionary Principle dictates that the Town be particularly conservative and cautionary in its regulation of industrial wind energy. CW E. Yerdon – is that such a thing Precautionary Principle. Supervisor T. Yerdon – she's not sure with this - this needs to be looked at.

#20 & #34 are the same - delete **#20** Construction of industrial wind energy facilities can create traffic problems and damage local roads.

Jim Muscato – it's hard to follow along, he has the version that was originally introduced to the Town Board, he thinks they are about four (4) or five (5) numbers off, is there an updated version of the law is there a draft law a second version perhaps? Supervisor T. Yerdon – this is just one that was to fix the typos. Jim – it appears some of the numbers in the findings are off, that some were deleted or at least re-ordered, he believes this is the copy they commented on. Supervisor T. Yerdon – she has it – she knows where Jim is coming from. Supervisor T. Yerdon – went back to the original version of the Wind Law. Jim – was not asking that additional findings be added, he was just asking the difference in the some of the versions. #36 (The Town's geology, especially its Karst topography, appears dangerously incompatible with massive industrial development, specifically in regards to industrial wind construction requirements and conditions. Risks include: a. Aquifer and well water contamination via soil overburden infilling on shallow bedrock in a Karst topography-rich environment; b. Sinkhole collapse at turbine bases via increased bedrock erosion and dissolution; and c. Moderate regional seismic risk, according to the United States Geological Survey) Jim-wondering because of the definitive statements in 36, the one she just read, whether or not those are statements that were just not supported by any information that was provided to the board, so the board to make a definitive statement like - Karst topography, appears dangerously incompatible - He doesn't know that, that's within the Towns expertise to determine. What experts are you relying on and are the studies available to the public? Supervisor T. Yerdon – they weren't in the version she was reading – correct. Jim – doesn't want to delay this, if he could have the latest updated version of the Law, he can review that for the next meeting. Also if the Town is interested in receiving studies to support some of these statements or studies that refute these statement, they would be happy to provide the studies, some they have already provided, there are so many statements that are incorrect.

DEFINITIONS

CM M. Tompkins - **Core Forest** should be added to the definitions, we don't define it, whether it's our Zoning District Core Forest or it's the area designated by studies done by the Tug Hill Commission. **Setbacks** - called **Private Right of Way** -it's in our Setback requirements - should be defined if kept in the Law.

PERMIT REQUIRED

#2 No Wind Energy Conversion System ("WECS") shall be constructed, reconstructed, modified, or operated in the Town of Redfield, except in the Wind Energy Facility Overlay District, pursuant to a Special Use Permit approved pursuant to this Local Law. Such facilities shall be subject to the substantive and procedural requirements of this Local Law, in addition to other applicable local, state and federal laws.

CW E. Yerdon – What is the - Wind Energy Facility Overlay District? Supervisor T. Yerdon - we don't have one - questions on this. Jim Muscato – You do have districts permitted in the Town Zoning, What is the intent there – if the intent is to prohibit Wind Projects because the Town's not going to establish an Overlay District, it's inconsistent with the Zoning Law.

CM M. Tompkins - there is a definition in our definition section - **Wind Overlay District:** Those areas of the Town of Redfield that the Town Board has determined may or may not be appropriate for the development of Wind Energy Conversion Systems ("WECS") and related infrastructure, electrical lines and substations, access roads and accessory structures, depending on adequate health, environmental, economic, and safety setbacks. The boundaries of the Wind Overlay District shall consist only of those districts of the local zoning law that permit major Wind Generating Systems, as defined in the local zoning law. CM M. Tompkins - so basically it's anywhere that the Zoning Law says. Jim Muscato -Is the Town creating an overlay district for the Zoning District that the Zoning Law permits it? CM M. Tompkins - he thinks we're just saying this is applicable to the same areas, that's his reading of it. Supervisor T. Yerdon - so we will look into this, is this appropriate/necessary.

Attorney Genant - he appreciates Mr. Muscato's facilitating conversation and his attempt to help but those comments are ones that would be reserved for a Public Hearing.

WEF SITE PLAN

CM M. Tompkins - **F # XV**

To demonstrate compliance with the setback requirements of this Section, circles drawn around each proposed tower site having a radius equal to:

1. Five times the total height of the proposed WECS;
2. Three thousand feet;
3. One mile;
4. Two times the total height of the proposed WECS;
5. Five thousand feet; and
6. One and one-halftimes the total height of the proposed WECS.

CM M. Tompkins - would like to propose we re-order those in order of magnitude:

1. One and one-halftimes the total height of the proposed WECS;
2. Two times the total height of the proposed WECS;
3. Five times the total height of the proposed WECS;
4. Three thousand feet;
5. Five thousand feet; and
6. One mile

WEF MISC i. #iii

iii. Signed copies of all original leases/easements and agreements for this WEF (not memorandums) - CW E. Yerdon - once again doesn't think it's the Town's business - After discussion the Town Board is in agreement to remove **WEF MISC i. #iii**.

CW E. Yerdon - are there other types of Turbine besides Class S? Supervisor Tanya Yerdon and CM M. Tompkins - the Board needs to look into the types of Turbines, do some research.

k. WEF ENVIRONMENTAL IMPACT STUDY# iii

All costs and expenses incurred related to the Environmental tests for the WEF shall be paid from the Escrow Account (see **§8(5)**). The Town shall use the Escrow Account funds to hire independent qualified experts, as needed, to do the following:

1. Provide the location and full description of any of the following: open drainage courses, streams, vernal pools, wetlands, and other important natural areas and site features, including, but not limited to, floodplains, deer wintering areas, Essential Wildlife Habitats, Significant Wildlife Habitats, livestock, Scenic or Special Resources, habitat of rare and endangered plants and animals, natural communities of endangered species (federal or state), unique natural areas, sand and gravel aquifers, wells, and historic and/or archaeological resources.
2. The Applicant must provide a written report from all appropriate state and federal agencies detailing their evaluation of the proposed WEF.
3. The Applicant must demonstrate, to the satisfaction of the Town, that the proposed WEF will not have undue hydro-geological consequences (e.g. with surface or subterranean water resources, and storm water runoff), or adverse effects on: geological stability; rare, threatened, or endangered wildlife; Significant Wildlife Habitat; Essential Wildlife Habitat; Raptor Habitat; livestock; threatened or endangered plants; or rare or exemplary natural plant communities and ecosystems
4. The Applicant must provide a cumulative-impact assessment of their WEF in the context of any other WEFs within twenty-five (25) miles, including migratory bird, bat and large mammal corridors, and demonstrate that the WEF is not located in an area that will result in degradation of important wildlife corridors or flyways.
5. Pre-construction and post-construction field studies shall be conducted using the most advanced techniques available. If the pre-construction field studies demonstrate significant adverse effect to birds, bats, game animals, water resources, habitat fragmentation or other ecosystem degradation, the WEF Applicant shall propose a remediation plan, subject to the Town's approval. The Applicant accepts that some environmental impacts cannot be satisfactorily resolved, and that such situations will be factored into the Town's decision regarding the net benefits of the WEF.
6. In determining the nature and effectiveness of such remediation plans, the Town will be guided by inputs of its citizens, its own consultants, the appropriate state & federal agencies, and applicable state and federal laws and regulations. The WEF Applicant will be responsible for the full cost of implementing any approved remediation plan, under the supervision of the Town and its designated agents
7. After implementation of any remediation plan, the Town will review the situation to determine its effectiveness. Should the Town find the remediation efforts inadequate, the WEF Applicant will be given sixty (60) days from that finding to

resolve the deficiencies? In the absence of a successful resolution, the Town (at its sole discretion) shall have the right to deny the WEF Permit.

8. A computer-generated "zone of visibility map" (covering at least a one [1] mile radius from the proposed WEF) shall be created to illustrate locations from which the proposed installation may be seen, with and without foliage.

CM M. Tompkins - **k. WEF ENVIRONMENTAL IMPACT STUDY# iii** - looks like there is a formatting issue- after iii. 1. - He thinks the other items in that list belong left justified with the small - we are talking about the Town using Escrow Account Funds to hire independent qualified experts to do the following - and we are calling for the Applicant to do certain things.

Supervisor Tanya Yerdon - discussed the re-numbering and separating. CM M. Tompkins - We're talking in #3 about the Town using Escrow Account Funds for certain things - then we're saying - the Applicant must provide a written report from all appropriate state and federal agencies - which has nothing to do with the Escrow Account. Supervisor Tanya Yerdon - We need to look at these numbers - so we want these re-numbered so it separates them - Escrow Account/Applicant. CW E. Yerdon - what is a vernal pool? CW C. Bauer - characteristic of or occurring in spring. Jim Muscato- little pools that will only be there in spring time.

I. WEF AIR SPACE IMPACTS

m. Noise Impacts. Applicant shall provide a report demonstrating that the project design will be able to comply with the limits set by this regulation with an adequate margin of safety. The report shall demonstrate that the project design will result in sound emissions to be evaluated by means of a post-construction noise monitoring study. The report shall be prepared by a **Qualified Independent Acoustical Consultant** for the WEF boundaries and at property lines of proximate residences. The operating WEF sound shall not exceed 35 dBA (Leq) or 50 dBC (Leq) for more than five (5) consecutive minutes during a' representative range of operating and atmospheric conditions which includes full power operation during periods when surface winds are under 2 m/s. Further, at no time shall the sound pressure level (measured with averaging of 0.12 seconds or less e.g. fast meter response) exceed these limits by more than 5 dB. It shall not exceed the pre-operational baseline background sound levels (L90) as defined here-in by more than 6 dBA at any location beyond a 100 meter radius of a wind turbine tower to protect soundscape and wildlife. Instrumentation to verify this shall meet ANSI or IEC Type 1 standards, and measurement procedures shall comply with relevant portions of ANSI S12.9, Part 3 for evaluating compliance with these regulations. Each report will include the SCADA/Power output data, hub rpm, blade angle, wind direction, nacelle yaw, and theoretical full power at the time of the testing in spreadsheet form with details at ten (10) minute periods or less. If post-construction noise measurements demonstrate an exceedance of any of the limits in this section the project shall be considered to not comply. Noise mitigation shall include removing wind turbines or operating them in noise reduced operating modes sufficient to result in operating noise measurements that do not exceed the limits. CW C. Bauer- what is nacelle yaw - it is a stream line enclosure for an aircraft engine. CM M. Tompkins - it's the big thing that sits on top of the wind tower. Supervisor Tanya Yerdon - no discussion - ok we will continue.

- r. **DECOMMISSIONING PLAN:** A description of how the structural and turbine materials will be disposed of, how the site will be restored, as well as:
- i. Anticipated life of the WEF.
 - ii. Estimated decommissioning costs including contingency costs of at least 20% (in current dollars), as provided by an appropriately experienced licensed engineer.
 - iii. A verifiable means of determining if the decommissioning plan needs to be activated due to cessation of use, such as a letter from the electric utility stating that it will notify the Town Board within ten (10) business days if electricity is not received from any turbine within the WEF for any thirty (30) consecutive days.
 - iv. Method for ensuring that funds will be available for decommissioning and restoration as set forth in §8-8 of this Local Law.

Supervisor Tanya Yerdon - **Section 8-8.** CM M. Tompkins - it's kind of odd that we are asking for an estimate of what decommissioning is going to cost and then dictating what needs to be put into escrow for decommissioning - why ask the question if we don't care what the answer is - not only that we don't know in thirty (30) years two hundred thousand dollars (\$ 200,000.00) may not even touch it. The board agreed that is true. CM M. Tompkins - or it might be a ridiculous amount at that point - we don't know. Supervisor Tanya Yerdon - what we are looking at is:

8. WEF SURETY FOR REMOVAL WHEN DECOMMISSIONED.

- a. The applicant shall place with the Town an acceptable letter-of-credit, bond, or other form of security that is sufficient to cover the cost of removal at the end of each WEF turbine's useful life, as detailed in the decommissioning plan. Such surety shall be at least \$200,000 for each wind turbine. The Town Board may approve a reduced surety amount that is not less than 150% of a cost estimate that is certified by an Engineer, Salvage Company, or other expert acceptable to the Town Board. This calculation will not take into account any estimated salvage values.

Supervisor Tanya Yerdon - So over here we are saying at least twenty percent (20 %) in current dollars. CM M. Tompkins - there estimated decommissioning cost has to include a contingency of twenty percent (20 %). Supervisor Tanya Yerdon - so we need to look at this - what is your suggestion? CM M. Tompkins - this might warrant some further research - but essentially what 8. - r. -ii. Says to him is - there estimated decommissioning cost should be one hundred twenty percent (120%) of some engineers estimate - we're saying we will approve one hundred fifty percent (150%) - so there's a discrepancy there - but he also thinks we might benefit by changing 8. - 8. - to some sort of formula based item or maybe it's just one hundred fifty percent (150%) of that cost estimate, one hundred twenty percent (120%) - but he doesn't think it's smart to go forward with a set dollar amount. Supervisor Tanya Yerdon - so look at this and see about a formula instead of a set dollar amount. CM M. Tompkins - he thinks we should look into it to see what others have done.

t. **TOWN BOARD DECISION:** The approval by the Town Board shall be valid for a period of two (2) years. Prior to the expiration of such approval, the Owner of the WEF may submit one (1) approval extension application for up to an additional two (2) years. Such approval extension application shall be accompanied by a second application fee (see §8(1l) of this Local Law), as well as a letter explaining the reasons that would justify an approval extension.

CW E. Yerdon - is the two (2) years just for the construction period? CM M. Tompkins - he thinks that is the intent - they could go back to the Site Plan Approval section of our Zoning Law where we have a similar clause about construction of buildings and try to match that language, because we are not trying to talk about operation right. Supervisor Tanya Yerdon - right.

WEF DIMENSIONAL REQUIREMENTS:

- a. To provide for at least minimal operational safety for persons and property located outside of a WEF, all WEFs shall comply with the minimums and maximums contained in the following table:

Type of Wind Energy Facility	Minimum Wind Turbine Setback from any Property Line, Public or Private Right of Way, and/or Access Easement*	Maximum Wind Turbine Height**
SWEF (up to 100 kW)	1.5 feet for each foot of height from any property line and any vacant or occupied dwelling unit on the same property. If the Town Board determines there will be no significant impact on abutting properties or those across a stream, lake, or other body of water, no such setback is required from the waterward property line for a turbine placed in a body of water, or on a dock or pier.	75 feet
WEF (100 kW or more)	1.5 feet for each foot of height	500 feet

Supervisor Tanya Yerdon - obviously from the beginning of time they said they are going to be higher than five hundred (500) feet, what do you think. CM M. Tompkins - the wind energy laws that we have reviewed he hasn't seen anybody with a maximum height that is taller than five hundred (500). It seems to be pretty standard across the board for other people that have had wind laws they have put in place. Supervisor Tanya Yerdon - so say GE comes out with a six hundred or seven hundred footer - are we telling them they can't go with anything higher? CM M. Tompkins - it does say maximum turbine height. CW E. Yerdon - thinks that is unrealistic. Supervisor Tanya Yerdon - well it brings into the fact that with the new turbines with what they are developing, they are higher and bigger, the generators are bigger, so if we keep it at five hundred (500) feet we could end up with more than less wind turbines to put out the same capacity, what do we want to take into consideration - the height or the impact of extra turbines. CW E. Yerdon - doesn't want more turbines, obviously they can't do the proposed project with the five hundred (500) maximum turbine height limit. CM M. Tompkins - might warrant more research. CW C. Bauer - we need to look at it - CW E. Yerdon - believes it's unrealistic and will be challenged.

*Such minimum setbacks for a WEF shall be measured from its outermost extension (whether blade tip, nacelle/turbine housing, or tower/pole edge) that is nearest the WEF property line, public or private right-of-way, and access easement. CM M. Tompkins - here's where we call it a private right-of-way but he doesn't know that we can legislate setbacks for a private right-of-way, or easements if they aren't the towns. Need to look into this.

7. WEF REAL PROPERTY VALUE PROTECTION PLAN: The WEF Applicant shall assure the Town that there will be no loss in real property value within two (2) miles of each wind turbine within

their WEF. To legally support this claim, the Applicant shall consent in writing to a Real Property Value Protection Agreement ("Agreement": §8(7)) as a condition of approval for the WEF. This Agreement shall provide assurance to non-participating real property owners (i.e. those with no turbines on their property) near the WEF, that they have some protection from WEF-related real property values losses. CW E. Yerdon - can we legislate such a thing? Can we make a company pay people if their property value goes down, there are so many other things that may determine it. Supervisor Tanya Yerdon - she does not know - this is something that definitely needs more research.

WEF LIABILITY INSURANCE.

- a. Applicant shall maintain continuous comprehensive liability insurance until the WEF is fully decommissioned. Such insurance must be in a sufficient dollar amount to cover potential personal and property damages associated with the construction and operation of the WEF and in no event less than \$ 5,000,000 per occurrence and \$ 2,000,000 per year.
- b. The insurance policies shall specifically include the Town and its officers, councils, employees, committee members, attorneys, agents and consultants as additional named insureds.
- c. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A"
- d. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days prior written notice in advance of a cancellation.
- e. Renewal or replacement policies shall be delivered to the Town at least 15 days before the expiration of the insurance that such policies are to renew or replace.
- f. No more than 15 days after the grant of the permit and before construction is initiated, the permit holder shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.
- g. A certificate of insurance that states that it is for informational purposes only and does not confer sufficient rights upon the Town, shall not be deemed to comply with this Local Law.

CM M. Tompkins - are those insurance amounts in keeping generally accepted practice. Supervisor Tanya Yerdon - she has never seen any of the amounts. CM M. Tompkins - think we should research this more. Highway Superintendent Paul Pratt - believes we carry \$ 2,000,000 for plowing County roads.

11. PERMIT FEES. Non-refundable Permit Application Fees shall be as follows:

- a. WEF Permit: \$200 per megawatt (MW) of rated maximum capacity
- b. SWEF Permit: \$500 per turbine
- c. Wind Measurement Towers Permit: \$200 per tower.
- d. Wind Measurement Tower Permit renewals: \$100 per tower.

Supervisor Tanya Yerdon - this is something we need to look at.

12. STANDARDS FOR TOWN BOARD'S WEF PERMIT APPLICATION DECISION. The Town Board may disapprove a WEF Permit Application for a variety of reasons, including but not limited to, the following:

- a. Conflict with safety and safety-related codes and requirements.

- b. The use or construction of a WEF that is contrary to an already-stated purpose of a specific zoning or land use designation.
- c. The operation of a WEF would be a net economic liability to the community.
- d. The operation of a WEF would create unacceptable health risks to the public.
- e. The placement and operation of a WEF that would create an unacceptable risk to wildlife and/or regional ecosystems.
- f. The placement and location of a WEF would result in a conflict with, or compromise, or significantly change, the nature or character of the surrounding area
- g. The operation of a WEF would create unacceptable interference with any type of civilian or military radar systems.
- h. Conflicts, as determined by the Town Board, with the military's unrestricted ability to use the Restricted Air Space, including no flight hazards and/or use limitations. In addition, the Town Board will consider whether construction or operation of the proposed WEF would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any military installation or branch of military in the State, and possibly result in a detriment to continued military presence in the State.
- i. Conflicts with any provisions of this Local Law

After discussion the board is in agreement to delete **h**.

8. WEF Decommissioning. The Town Board will review the projected Decommissioning costs every five (5) years. The WEF **owner** will adjust their security to any changes from the original calculation.

If the Town Building Codes official condemns any portion of a WEF, or if no electricity is generated from any turbines for three (3) consecutive months, the WEF owner and/or property owner shall have three (3) months to remedy the safety issues or complete the decommissioning of the WEF, according to the approved plan.

- a. The Town Board may grant extensions of time for repair and/or maintenance, for good cause, such as the need to back-order parts that are not currently available from the supplier or the need to repair a WEF damaged by a storm.
- b. Decommissioning shall include the complete removal of turbines, buildings, electrical components, cabling, roads, and any other associated facilities and/or structures, including below-ground items (e.g. foundations), to a depth of four (4) feet below grade.
- c. Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

Supervisor Tanya Yerdon - we didn't mention the Town Code Enforcement Officer earlier in the decommissioning. Our Code Enforcement Officer is not going to have the expertise for it.

Highway Superintendent Paul Pratt - can we go back to
§ 9. WEF Post-Construction Substantive Requirements.

3. WEF Construction Related Damage.

- a. The owner of any permitted WEF shall, to the extent practicable, repair or replace all real or personal property, public or private, damaged during the WEF construction. The applicant shall reimburse the NY DOT and/or Town (as appropriate) for any and all repairs and reconstruction to roads that are necessary due to the construction or decommissioning of the WEF. A qualified independent third party or other qualified person, agreed to by the NY DOT and/or Town (as appropriate) and the applicant, shall be hired to pre-inspect the roadways to be used during construction and/or decommissioning. This third party shall be hired to evaluate, document, and rate the roads condition prior to construction or decommissioning of the WEF, and again 30 days after the WEF is completed or removed. Any road damage during construction that is done by the applicant and/or one or more of its subcontractors that is identified by this third party shall be repaired or reconstructed to the satisfaction of NY DOT and/or Town (as appropriate) at the applicant's expense, prior to the final inspection. In addition, the applicant shall pay for all costs related to this third party pre- inspection work prior to receipt of the final inspection.
- b. The surety for removal of a decommissioned WEF shall not be released until the Town Board is satisfied that any road damage that is identified by this third party during and after decommissioning that is done by the applicant and/or one or more of its contractors or subcontractors has been repaired or reconstructed to the satisfaction of the NY DOT and/or Town at the applicant's expense. In addition, the applicant shall pay for all costs related to work of this third party's inspection prior to receipt of the release of the surety.

That part is fine but like they talked a year and a half ago, there's probably areas and culverts that can't withstand the traffic that they are going to put there during construction, so that means culverts would have to be changed and so on improvements would have to be made in order for construction to go through, there's nothing in here that says anything about who's going to pay for that. It says Any road damage during construction that is done by the applicant and/or one or more of its subcontractors that is identified by this third party shall be repaired or reconstructed to the satisfaction of NY DOT and/or Town (as appropriate) at the applicant's expense, but it doesn't say anything about making improvements so they can go on with the construction, when we were first talking about this Avangrid's representative said it wasn't a problem that they would take care of it. Supervisor Tanya Yerdon state but it should be in here. Jim Muscato - doesn't want to interrupt but they still say that, it's still a commitment

that Avangrid would make, we would still anticipate a road agreement with the Town that would take care of this. There was discussion regarding the timing, etc. as to who would do the work. Jim Muscato - everything Mr. Pratt is saying is correct, this maybe an example where just to put too many details into the local law might hamstring you later on, but in the agreement we're general in agreement on their approach. CM M. Tompkins - we don't mention the County but mention the NY DOT and Town. Do we have any State-owned bridges, Paul stated no, Matt - so we probable don't need the NY DOT in there at all, as they don't own anything in Redfield?

Supervisor Tanya Yerdon - back on #8 WEF Decommissioning - if the Building Codes official condemns any part of it, this needs to be reworded because our Building Codes official does not have the criteria needed. CM M. Tompkins - it definitely warrants rewording because there are portions of a WEF that he certainly has the authority to condemn. On decommissioning we are talking about the overall WEF is that to include transmission lines or would that be a separate topic. Supervisor Tanya Yerdon - believes it's a separate topic, but she will ask. CM M. Tompkins because in our definitions for Wind Energy Facility it includes transmission lines, so that becomes important because that decommissioning number is a lot larger.

Supervisor Tanya Yerdon -

§ 11. Variance and Project Oversight Board (VPOB). The Variance and Project Oversight Board (VPOB) is hereby established and granted the power to vary or modify the strict application of the requirements contained in this Law pursuant to the provisions for granting a variance as stated in this law, together with the other powers and duties enumerated in this Section. In no event shall the Variance and Project Oversight Board (VPOB) have the authority to issue a use variance to permit the location of a WECS in an area outside of the Wind Overlay District as established under this Law or in any area where a WECS is prohibited by local zoning regulations. The VPOB shall keep with the spirit and intent of this local law in their determinations and shall specify, in its findings, the reasoning behind such determinations.

1. Variance and Project Oversight Board:

- a. Creation of Variance and Project oversight Board (VPOB)
 - i. The VPOB shall consist of five members appointed by the Town Board upon Receipt of an application for a Wind Energy Facility Permit. The members shall be appointed to five-year terms, with the initial appointments being staggered for one to five-year terms and on vacancy filled each subsequent year.
 - ii. Board members must be Non-Participants. Any member becoming a Participant must immediately resign from the board. The Town Board shall fill the resulting vacancy within 60 days, and the new member appointed shall complete the resigning member's term.
 - iii. Town Board members are disqualified from serving on the VPOB.
 - iv. Members must meet all applicable ethics/conflict of interest requirements.

- b. Duties of the Variance and Project Oversight Board (VBOP)
 - i. Grant variances under the criteria provided in this law.
 - ii. Administer permit fees and use of escrow funds.
 - iii. Solicit, evaluate, retain, administer, manage, and terminate all professional, advisory and/or consultant of any nature required to evaluate, supervise, process, analyze, advocate for or provide any other service deemed necessary to support any and all aspects of a Wind Energy Facility project in the Town of Redfield. The Town Board must approve all contracts that exceed six months in term and/or exceed \$ 1,000 value.
 - iv. Supervise enforcement of the provisions of this law and any permit issued hereunder.
 - v. Monitor safety precautions and any other operations or administration of a Wind Energy Facility. Specific examples of areas to monitor include ongoing evaluation of environmental impact, ongoing evaluation of geological impact, project construction, roads and traffic, and sound compliance.
 - vi. Investigate complaints, and if violations of this law or the permit are found, issue Orders to Remedy and for failure to remedy recommend prosecution under §13 of this Local Law or permit revocation under §10 of this local law, or both.
 - vii. Administer decommissioning program.
 - viii. Evaluate and recommend to the Town Board any insurance requirements and risk mitigation actions.
 - ix. Evaluate project ownership changes in order to make recommendations to the Town Board.
 - x. Maintain ongoing assessment and make appropriate recommendations to the Town Board on the Wind Energy Facility's impact on the town to include, but not be limited to, health related issues, changes in the existing condition of the aquifer, and any other broad impact issues.
 - xi. Provide any and all other support to the Town Board on the status of the Wind Energy Facility.
 - xii. Develop and present an annual report to the Town Board on the status of the Wind Energy Facility.

2. Upon specific request from the applicant, the VPOB shall have the power to grant a variance after taking into consideration the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the VPOB shall consider:

- a. Whether an undesirable change would be produced in the character of the neighborhood or the granting of the variance would create a detriment to nearby properties.
- b. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than a variance.
- c. Whether the requested variance is substantial.

- d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
 - e. Whether the alleged difficulty was self-created, which shall be relevant to the decision of the VPOB but shall not necessarily preclude the granting of the variance.
3. All actions of the VPOB shall be made by a majority vote of such Board at a meeting thereof held pursuant to the provisions of the Open Meetings Law contained in the New York Public Officers' law. It is recognized that certain actions to be taken by the VPOB pursuant to **§11** of this law may require that such Board meet on an immediate or emergency basis, and in such cases, it is deemed reasonable for such Board to meet upon call of its chairman and notification provided to each member of such Board either verbally, electronically or in writing, with the same such notice provided to the news media.

CM M. Tompkins - are those the standard warrants for a variance, they just look a little different than ones he's dealt with in the past, there's generally standard warrants which these kind of sound like but they look a little different, Tanya will find out. Rob Brenner - they're about the same as the State area variances, very similar.

§ 13. Enforcement; Penalties and remedies for violations.

1. The Town Board shall appoint such Town staff or outside consultants as it may from time to time determine are necessary to enforce this Local Law.
2. Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this Local Law or, operates such facility in noncompliance with the terms and conditions of any permit issued pursuant to this Local Law, or any order of the VPOB, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$1,000.00 or to imprisonment for a period of not more than 6 months, or to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue, and in the event such violation involves
3. Special Proceeding: The designated enforcement officer may, with the consent of the Town Board, institute an action or proceeding available at law to prevent, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a Wind Energy Facility, Small Wind Energy Facility, or Wind Measurement Tower in the Town. This shall be in addition to other remedies and penalties herein provided or available at law. In case of any violation or threatened violation of any of the provisions of this local law, including the terms and conditions imposed by any permit issued pursuant to this local law, in addition to other remedies and penalties herein provided, the Town may 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.

§ 14. Miscellaneous.

1. **WEF Tax Exemption.** The Town reserves the right to opt out of the Tax Exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by ¶ 8 of that law, or by any other provision of law. Further, the Town reserves the right to assess any and all parts of the WEF at their full current market value. That value will be determined by the documented construction cost, less any applicable depreciation.

2. Fiscal Responsibility

- a. The Town Board may, at its discretion, request the most recent annual audited financial report of the permittee prepared by a duly licensed Certified Public Accountant, during the review process. If such report does not exist, the Town Board may, in its sole discretion, require a suitable alternative to demonstrate the financial responsibility of the applicant and its ability to comply with the requirements of this Local Law.
- b. No transfer of any WEF, or permit, or the sale of more than 30% of the stock of such entity (not counting sale of shares on a public exchange) shall occur without written acceptance by such entity of the obligations of the permittee under this Local Law and the terms of the permit. Any such transfer shall not eliminate the liability of any entity for any act occurring during its ownership or status as permittee.

Supervisor Tanya Yerdon - we will do the research and have this updated with all the changes made tonight.

Resolution 18-40

Motion was made by Carla Bauer seconded by Elaine Yerdon to authorize Town Clerk Susan Hough to advertise a special meeting on Tuesday, April 17, 2018 at 7:00pm to discuss the proposed Wind Energy Law and any other business that may come before the board.

ADOPTED Ayes 5 T. Yerdon, E. Yerdon, E. Webb, C. Bauer, M. Tompkins
 Nays 0

Jim Muscato - is this still open for discussion and comments. Supervisor Tanya Yerdon - yes, we will schedule a public hearing hopefully at the next meeting. Tanya handed out a new proposed building fee schedule from the Code Enforcement Officer.

Motion was made by Carla Bauer seconded by Matthew Tompkins to adjourn the meeting at 9:21pm.

ADOPTED Ayes 5 T. Yerdon, E. Yerdon, E. Webb, C. Bauer, M. Tompkins
 Nays 0

The next Town of Redfield Town Board meeting will be held Tuesday, April 10, 2018 at 7:30pm.

March 27, 2018

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Susan Hough, Town Clerk

** Note** Meeting Scheduled for April 17, 2018 was cancelled due to wind storm damage**

