

**TOWN OF CAMBRIA TOWN BOARD**

**September 10, 2009**

The regular meeting of the Town of Cambria Town Board was held on the 10<sup>th</sup> day of September 2009 at 8:00 pm at the Town Hall, 4160 Upper Mountain Road, Town of Cambria, New York

**BOARD MEMBERS PRESENT:**

Wright H. Ellis, Supervisor  
Robert E. Blackman, Councilman  
George J. Bush, Councilman  
Debra L. Kroening, Councilwoman  
Joseph Ohol, Councilman

**ALSO PRESENT:**

Jon T. MacSwan, Highway Superintendent  
Lou Ann Murawski, Town Clerk  
Paula N. Jones, Deputy Town Clerk  
Sally Marotta-Reed, Recreation Department  
Robert Roberson, Attorney  
Robert Klavoon, Wendel Duchscherer  
5 interested individuals

Following salute to the flag, Supervisor Ellis called the meeting to order.

Supervisor Ellis took a moment to commend Town of Cambria resident, Robert C. Schreader, II, for his courageous actions while serving in his position as a Niagara County Deputy Sheriff. Recently, there was a serious accident where Deputy Schreader was one of the first to arrive on the scene. Through Deputy Schreader's actions and assistance, an injured woman was rescued from her vehicle shortly before the vehicle burst into flames. Deputy Schreader commented he was "*in the right place, at the right time*". Supervisor Ellis commented that Deputy Schreader was **prepared** when he found himself "*in the right place, at the right time*". Supervisor Ellis praised Deputy Schreader for his bravery, indicating his actions speak well of our public safety teams and we are very grateful we have them serving the community.

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Board members took action upon the following matters:

**APPROVAL OF MINUTES**

**Upon a motion duly made by Councilman Bush and seconded by Councilman Ohol, it was resolved to approve the Minutes of the August 13, 2009 Town Board meeting.**

**Ayes: Blackman, Bush, Ellis, Kroening, Ohol                    -Motion Carried-**

**APPROVAL OF VOUCHERS**

Having been reviewed by the Town Board, the following claims were presented for payment:

Cemetery Fund	Claims 14	\$ 2,256.00
Drainage Fund	Claims 20	\$ 475.80
General Fund	Claims 396-430	\$ 58,150.00
Highway Fund	Claims 179-197	\$ 14,366.45
Recreation Fund	Claims 61-65	\$ 8,185.24
Refuse Fund	Claim 9	\$ 29,756.80
Sewer Operating	Claims 42-45	\$ 168.25
Trust Agency	Claims 40	\$ 228.49
Water Operating	Claims 173-186	\$ 15,793.46

**Upon a motion duly made by Councilman Bush and seconded by Councilwoman Kroening, it was resolved to approve the abstract of audited vouchers as presented, excluding voucher #409 from the General Fund.**

**Ayes: Blackman, Bush, Ellis, Kroening, Ohol                    -Motion Carried-**

**DRAINAGE MATERIAL PROCUREMENT**

**Upon a motion duly made by Councilwoman Kroening and seconded by Councilman Blackman, it was resolved to approve Claim #409 from the General Fund in the amount of \$6,008.46 under the terms of the Town of Cambria Procurement Policy as the purchase was made in accordance with NYS bid pricing; no other proposals were required.**

**Ayes: Blackman, Bush, Ellis, Kroening, Ohol                    -Motion Carried-**







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**ADDITIONAL MATTERS**

Councilman Ohol indicated he was contacted by a member of the audience following last month's meeting concerning the legality of the Supervisor and Deputy Supervisor voting on a matter which grants them authorization to act in the event of an emergency situation.

Attorney Roberson responded the Supervisor and Deputy Supervisor would be entitled to vote on the matter as they do not get any personal benefit from the adoption of the resolution, it relates to the positions they hold as Supervisor and Deputy Supervisor.

**ADJOURNMENT**

As there was no further business, the meeting was adjourned by motion made by Councilman Ohol and seconded by Councilwoman Kroening. Time: 8:40 PM.

Respectfully submitted,

Lou Ann Murawski  
Town Clerk

Paula N. Jones  
Deputy Town Clerk II

**LOCAL LAW NO. 1, 2009**

**TOWN OF CAMBRIA  
LOCAL LAW NO. 1 OF THE YEAR, 2009**

**A Local Law to Regulate Wind Energy Systems  
within the Town of Cambria, New York**

Be it enacted by the Town Board of the Town of Cambria as follows:

Section 1 – Definitions. The following new definitions shall apply to the Local Law:

**COMMERCIAL WIND ENERGY SYSTEM** – A wind energy system that meets at least one of the following criteria:

1. Has a rated capacity greater than 250 kilowatts;
2. A total height of greater than 100 feet;
3. Is intended to solely supply electrical power into a power grid for sale.

**METEOROLOGICAL (MET) TOWER** – A tower used to measure meteorological data, such as temperature, wind speed, and wind direction prior to locating a wind energy system.

**NON-COMMERCIAL WIND ENERGY SYSTEM** – A wind energy system that meets at least one of the following criteria:

1. Has a rated capacity of not more than 250 kilowatts;
2. A total height of not greater than 100 feet;
3. Is intended primarily for use of electricity on site.

**SENSITIVE RESOURCES** – Places that the Town has identified as being especially sensitive to the potential environmental impacts resulting from the erection and operation of wind energy systems, such as residential buildings, schools, churches, daycare centers, public parks, recreational areas, habitat areas, the escarpment, and significant historic, cultural, or archaeological areas.

**TOWER** – The support structure, including guyed, monopole, and lattice types, upon which a wind turbine or other mechanical device used to harness wind is mounted.

**TOWER HEIGHT** – The distance measured between the surface of the tower foundation and the uppermost fixed portion of the tower, excluding the length of any blade.

**TOTAL HEIGHT (also MAXIMUM OVERALL HEIGHT)** – The height of the Wind Energy System

measured from the ground elevation to the top of the tip of the blade in the most upright vertical position.

**WIND ENERGY SYSTEM** – Any equipment that converts wind energy into usable electrical energy. Wind energy systems may include wind chargers, wind turbines, or windmills and consist of any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities, or other component used in the system that convert, store, or transfer energy.

## Section 2 – Commercial Wind Energy Systems

Commercial Wind Energy Systems shall be included under uses that may be considered as “Uses Permitted as Special Exceptions” in accordance with provisions outlined in Article XI, Section 1100 of the Town of Cambria Zoning Ordinance in the Agricultural and Residence District (AR), General Business District (B-2), and Industrial District (I-1), and shall be subject to the following regulations:

- A. The placement, construction, and major modification of all commercial wind energy systems within the boundaries of the Town of Cambria shall be permitted only by Special Use Permit granted by the Zoning Board of Appeals (in accordance with provisions of the Town of Cambria Zoning Ordinance), site plan approval granted by the Planning Board, and in accordance with this Article. The process of obtaining a Special Use Permit shall be as follows:
  - (1) Submittal of a Special Use Permit application and supplemental materials to the Town.
  - (2) Review of the Special Use Permit application by the Planning Board and subsequent SEQR review with the Town of Cambria Planning Board designated as Lead Agency. (The Planning Board may request that the Zoning Board of Appeals hold their public hearing prior to making a SEQR Determination in order to obtain input).
  - (3) Recommendation from the Planning Board to the Zoning Board of Appeals on the Special Use Permit application.
  - (4) Review of the Special Use Permit application and subsequent action taken by the Zoning Board of Appeals.
  - (5) If a Special Use Permit is granted by the Zoning Board of Appeals, the Planning Board will take action on the site plan application.
  - (6) Following issuance of a Special Use Permit and subsequent site plan approval, a Building Permit must be obtained from the Building Inspector for each wind energy facility to be constructed.
- B. Applications under this section shall be made as follows:
  - (1) Applicants for a Special Use Permit to place, construct, or modify commercial wind energy systems within the Town of Cambria shall submit a completed commercial wind energy application to the Town accompanied by 20 copies of the project plans and supporting materials to include the following information:
    - (a) Name and address of the applicant and design engineer.
    - (b) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.
    - (c) Visual Environmental Assessment Form (visual EAF), landscaping plan, and visual assessment report, including appropriate models and photography assessing the visibility from key viewpoints identified in the Visual EAF (or by the Town of Cambria), existing tree lines, and proposed elevations. The Visual EAF shall include a detailed or photographic simulation showing the site fully developed with all proposed commercial wind energy system components and accessory structures.
    - (d) A site plan drawn in sufficient detail to show the following:
      - [1.] Locations and dimensions of all commercial wind energy system components proposed on the site, including tower height, total height measured to the top of the tip of the blade in the most upright vertical position, nacelle, length of blades, diameter of blade rotation, ground clearance, electrical wires, substations, junction boxes, maintenance buildings, and other necessary components.
      - [2.] Above ground utility lines on site within 1,500 feet of the base of any commercial wind energy system.
      - [3.] Property lot lines and the location and dimensions of all existing structures and their uses on site within 1,500 feet of the base of any commercial wind energy system.
      - [4.] Zoning district boundaries and identification of zoning districts within 1,500 feet

of the base of any commercial wind energy system.

- [5.] Locations, dimensions, and ownership of all transportation routes on site and within 1,500 feet of the base of any commercial wind energy system.
  - [6.] Dimensional representation of the various structural components of the commercial wind energy system, including the base and footing.
  - [7.] Existing topography and natural features on the site.
  - [8.] Proposed plan for grading and removal of natural vegetation.
  - [9.] Proposed plan for restoration after construction according to NYS Agriculture and Markets and NYS Department of Environmental Conservation guidelines.
  - [10.] Wind characteristics and dominant wind direction from which 50% or more of the energy contained in the wind flows.
  - [11.] Plan for ingress and egress to the proposed project site including:
    - [a.] A description of the access route from the nearest State, County, and/or Town-maintained roads to include:
      - (i.) Road surface material stating the type and amount of surface cover.
      - (ii.) Width and length of access route.
      - (iii.) Dust control procedures.
    - [b.] Proposed improvements to State, County, and/or Town roads along with proposed new access drives.
    - [c.] A road maintenance schedule or program.
    - [d.] Review railroad accessibility for deliveries.
  - [12.] Detailed construction plan including, but not limited to, a construction schedule, hours of operation, designation of heavy haul routes, a list of material equipment and loads to be transported, identification of temporary facilities intended to be constructed, and contact representative in the field with name and phone number.
  - [13.] Tree removal: All groves of trees shall be located on the site plan at time of application. No grove or woodlots of trees shall be removed without approval of the Planning Board.
- (e) Commercial wind energy system information: Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each commercial wind energy system model, tower, and electrical transmission equipment.
- (f) Commercial wind energy system drawings: Photographs or detailed renderings of each commercial wind energy system model including the tower, foundation, nacelle, and blades.
- (g) Noise report: A noise report shall be furnished that shall include the following (see Section 2 C (10) for specific requirements):
- [1.] A description and map of the project's noise-producing features, including the range of noise levels expected and the tonal and frequency characteristics expected. The noise report shall include low frequency, infrasound, pure tone, and repetitive/impulsive sound.
  - [2.] A description and map of the noise sensitive environment, including identifying any sensitive receptors within two (2) miles of the base of any proposed commercial wind energy system.
  - [3.] A survey and report prepared by a qualified engineer that analyzes the pre-existing ambient noise regime (including seasonal variation), including but not limited to, separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut-in), turbulence measurements, distance from the commercial wind energy systems, location of sensitive receptors relative to wind direction, and analyses at affected sensitive receptors located within two (2) miles of the base of any proposed commercial wind energy system.
  - [4.] A description and map showing the potential noise impacts, including estimates of expected noise impacts upon construction and operation workers, and estimates of expected noise levels at sensitive receptor locations.
  - [5.] A description and map identifying the cumulative noise impacts of the commercial wind energy systems.
  - [6.] A description of the project's proposed noise-control features, including specific measures proposed to protect workers and specific measures proposed to mitigate noise impacts for sensitive receptors.

- [7.] Identification of any potential problem areas.
  - [8.] Manufacturer's noise design and field testing data, both audible dB(A) and low frequency (deep bass vibration), for all proposed commercial wind energy system components.
  - [9.] A report that outlines issues and considerations for individuals that use hearing aids.
- (h) A geotechnical report shall be furnished that shall, at a minimum, include the following:
- [1.] Soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing.
  - [2.] Foundation design criteria for all proposed commercial wind energy system structures.
  - [3.] Slope stability analysis.
  - [4.] Grading criteria for ground preparation, cuts and fills, and soil compaction.
- (i) Ice throw calculations: A report from a New York State Professional Engineer that calculates the maximum distance that ice from the blades of a commercial wind energy system could be thrown. The basis of the calculation and all assumptions must be disclosed. In addition, all sensitive resources in the area that may be impacted by potential ice throw shall be identified.
- (j) Blade throw calculations: A report from a New York State Professional Engineer that calculates the maximum distance that pieces of the blades of a commercial wind energy system could be thrown. The basis of the calculation and all assumptions must be disclosed. In addition, all sensitive resources in the area that may be impacted by potential blade throw shall be identified.
- (k) Catastrophic tower failure: A report from the commercial wind energy system manufacturer stating the wind speed and conditions that the tower is designed to withstand (including all assumptions).
- (l) FAA notification: A copy of written notification to the Federal Aviation Administration (FAA).
- (m) Utility notification: Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.
- (n) Utility loading verification: A report from the applicant stating the electricity loading requirements of the commercial wind energy system on the utility system and the capacity of the utility grid to which interconnection is proposed, as well as documentation from the utility company verifying that the existing grid is capable of handling the additional electricity loading requirements of the project.
- (o) Notification to microwave communications link operators: An application that includes any commercial wind energy system proposed to be located within 2 miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link.
- (p) Floodplain: An application that includes any commercial wind energy system that is located within a 100-year floodplain area, as such flood hazard areas are shown on the floodplain maps, shall be accompanied by a detailed report that shall address the potential for wind erosion, water erosion, sedimentation, and flooding, and that shall propose mitigation measures for such impacts.
- (q) Shadow flicker study: The applicant shall adhere to the following:
- [1.] The applicant shall conduct a study identifying the locations of sensitive receptors that may be impacted by shadow flicker produced by a commercial wind energy system. The study should also identify the daily and annual expected durations of shadow flicker, potential impacts of shadow flicker, and measures taken to eliminate or mitigate shadow flicker.
- (r) Certification by a registered New York State Professional Engineer that the tower's design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Construction Code.
- (s) Other information: Such additional information as may be reasonably requested by the Town Engineer or Planning Board.
- C. Special Use Permits issued for commercial wind energy systems shall be subject to the following conditions.
- (1) Zoning Districts
- (a) Commercial wind energy systems may only be considered for a Special Use Permit within the Agricultural and Residence District (AR), General Business District (B-2), or the Industrial District (I-1).
  - (b) Commercial wind energy systems are not permitted in the Residence

District (R-1), Light Retail Business District (B-1), Escarpment District (ED), Medium Density Residential Use District (MD), Planned Development District (P-D), or Recreational – Campground District (R-C).

(2) Setbacks: The applicant shall adhere to the following setbacks.

(a) From zoning district boundaries:

[1.] Commercial wind energy systems shall be setback a minimum of 750 feet from the boundary of any Residence District (R-1), Medium Density Residential Use District (MD), Planned Development District (P-D), and Escarpment District (ED).

(b) From property lines:

[1.] Commercial wind energy systems shall be setback a minimum 1.5 times their total height from any property line, excluding adjoining lot lines of project participants.

(c) From structures:

[1.] Commercial wind energy systems shall be setback a minimum 1.5 times their total height from any building.

[2.] Commercial wind energy systems shall be setback a minimum of 1,500 feet from any dwelling or approved subdivision lot on an approved plat intended to house a dwelling.

(d) From public roads and highways:

[1.] Commercial wind energy systems shall be setback a minimum 1.5 times their total height from any public road or highway.

[2.] Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from the property line of such right-of-way.

(e) From railroads:

[1.] Commercial wind energy systems shall be setback a minimum 1.5 times their total height from any railroad right-of-way.

(f) From aboveground transmission lines greater than 12 kilovolts:

[1.] Commercial wind energy systems shall be setback a minimum 1.5 times their total height from any aboveground transmission line greater than 12 kilovolts.

(g) Notwithstanding the provisions set forth in these subsections, such setbacks from lot lines do not apply if the application is accompanied by a legally enforceable agreement for a period of 25 years or the life of the permit, whichever is longer, that all adjacent landowners within 1.5 times the height of the wind energy system agree to the elimination of the setback.

(3) Total height (maximum overall height): The total height of any commercial wind energy system shall not exceed 450 feet. The total height shall be measured from the ground elevation to the top of the tip of the blade in the most upright vertical position.

(4) Notification of adjacent property owners:

(a) All applicants are required to notify all property owners within 1,500 feet of the property line of the parcel where the commercial wind energy system is proposed. This notification shall include the size, location, and planned construction date of commercial wind energy systems. Failure to comply with this notification will not constitute a jurisdictional defect.

(5) Signage

(a) Signage limited: No advertising sign or logo shall be placed or painted on any commercial wind energy facility or accessory structures.

(6) Color and finish

(a) Color and finish: Commercial wind energy systems shall be painted a non-obtrusive color (e.g., light environmental color such as white, gray, or beige) that is non-reflective.

(b) Camouflage facilities: The design of commercial wind energy system buildings and related structures shall, to the extent practicable, use materials, colors, textures, screening, and landscaping that comply with the character of the surrounding area.

(7) Lighting

(a) Lighting plan required: The applicant shall submit a lighting plan that describes all lighting that will be required on any commercial wind energy system structure or within the site, including any lighting that may be required by the FAA. Such plan shall include, but is not limited to, the proposed number, type, dimension, and location of lights, light color, whether any such lights will be flashing, and mitigation measures planned to control the light so that it does not spill over onto neighboring

properties.

(8) Requirements of regulatory agencies:

The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the commercial wind energy system project.

(9) Safety and security requirements: The applicant shall adhere to the following safety and security requirements:

- (a) Safety shutdown: Each commercial wind energy system shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind energy system. No commercial wind energy system shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the wind energy system, rotor blades, and turbine components.
  - (b) Grounding: All commercial wind energy systems that may be charged with lightning shall be grounded according to applicable electrical codes.
  - (c) Transmission lines and wiring: All transmission lines and wiring associated with a commercial wind energy systems project shall be buried a minimum of four (4) feet underground. For transmission lines located within properties used for farming operations (crops, livestock, or dairy) the top two (2) feet of backfill material for the trench must be sand. The Planning Board shall have the authority to waive this requirement if sufficient engineering data is submitted by the applicant to demonstrate that underground transmission lines are not feasible or practical. Underground transmission lines located within active farms or agricultural districts shall be in accordance with NYS Agriculture and Markets requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes for the project, on the site plan.
  - (d) Ground clearance: The blade tip of any commercial wind energy system shall, at its lowest point, have ground clearance of not less than 50 feet.
  - (e) Climability: Commercial wind energy system towers shall not be climbable up to 15 feet above ground level.
  - (f) Access doors locked: All access doors to commercial wind energy systems and electrical/ mechanical equipment shall be lockable and shall remain locked at all times when operator personnel are not present.
  - (g) Tower construction: All commercial wind energy system towers shall be of monopole construction (single pole). No lattice structures or guy wire supported structures shall be permitted.
  - (h) Signage: Appropriate warning signage shall be placed on commercial wind energy systems, electrical/mechanical equipment, substations, and other associated facilities. Signage shall also include two twenty-four-hour emergency contact numbers to the owner of the wind energy system in accordance with federal, state, and local regulations.
- (10) Noise requirements: The applicant shall adhere to the following noise requirements:
- (a) Compliance with noise regulations required: A commercial wind energy system permit shall not be granted unless the applicant demonstrates that the proposed project complies with all federal, state, and local noise regulations.
  - (b) Noise study required: The applicant shall submit a noise study based on the requirements set out in the Section 2, B, (g). The Planning Board shall determine the adequacy of the noise study and, if necessary, may require further submissions. The noise study shall consider the following:
    - [1.] Low frequency noise
    - [2.] Infrasound noise
    - [3.] Pure tone
    - [4.] Repetitive/impulsive sound
  - (c) Noise setbacks: The Planning Board may impose a noise setback that exceeds the other setbacks set out in this Section or require additional landscaping or buffering if it deems that such actions are necessary to protect the public health, safety, and welfare of the community.
  - (d) Audible noise standard: The audible noise standard due to commercial wind energy system operations shall not be created that causes the noise level at the property boundary of a proposed commercial wind energy system or at any sensitive receptor

to exceed 45 dB(A) for more than 5 minutes out of any one-hour time period or to exceed 50 dB(A) for any time period.

- (e) Operations – low frequency noise: A commercial wind energy system shall not be operated so that impulsive sound below 20 Hz adversely affects a sensitive noise receptor.
  - (f) Noise complaint and investigation process required: The applicant shall submit a noise complaint and investigation process. The Planning Board shall determine the adequacy of the noise complaint and investigation process.
- (11) Fire hazard protection: The applicant shall submit a Fire Control and Prevention Program that is appropriate and adequate for the proposed commercial wind energy systems. The proposed program may include, but is not limited to, the following:
- (a) Fireproof or fire resistant building materials.
  - (b) Buffers or fire retardant landscaping.
  - (c) Availability of water.
  - (d) An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment, or transmission equipment—without regular human occupancy.
  - (e) Provision of training and fire fighting equipment for local fire protection personnel.
- (12) Impact on wildlife species and habitat: The applicant shall adhere to the following regarding the impact on wildlife species and habitat:
- (a) Endangered or threatened species: Development and operation of a commercial wind energy system shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the Town of Cambria Comprehensive Plan and/or other studies and plans based on criteria established by the Federal or State regulatory agencies.
  - (b) Migratory birds: Development and operation of a non-commercial wind energy system shall not have an adverse impact on migratory bird species.
- (13) Interference with residential television, microwave, and radio reception:
- (a) The applicant must submit information that the proposed construction of the commercial wind energy system will not cause interference with microwave transmissions, cellular transmissions, residential television reception, or radio reception of domestic or foreign signals. The applicant shall include specific measures proposed to prevent interference, a complaint procedure, and specific measures proposed to mitigate interference impacts.
- (14) Interference with RADAR, telecommunication, or microwave communication operations
- (a) The applicant must coordinate specifics of the project with the National Telecommunications & Information Administration (NTIA), who then forwards information to several Federal agencies, and submit information to the Town indicating that the proposed construction of the commercial wind energy system will not cause interference with any government RADAR, telecommunication, or microwave operation. The applicant shall include specific measures proposed to prevent interference, a complaint procedure, and specific measures proposed to mitigate interference impacts.
- (15) Interference with aviation navigational systems: The applicant shall adhere to the following:
- (a) No interference with aviation facilities: No commercial wind energy system shall be installed or operated in a manner that causes interference with the operation of any aviation facility registered with the FAA.
  - (b) Compliance with FAA Regulations: All commercial wind energy system siting shall comply with FAA regulations.
  - (c) Locking mechanisms to limit RADAR interference required: All commercial wind energy systems shall include a locking mechanism which prevents the blades from rotating when not producing power in order to limit airport RADAR interference or “clutter”. This provision does not apply while the wind energy system is “free-wheeling” during start-up and shutdown. The Planning Board may modify or eliminate the requirement for a locking mechanism if sufficient evidence is presented that no significant airport RADAR interference or “clutter” will be caused by the commercial wind energy system.
- (16) Erosion control: The applicant shall adhere to the following:
- (a) Erosion Control Plan required: Before the Town of Cambria shall issue a grading or Building Permit for the commercial wind energy system, the applicant shall submit an Erosion Control Plan to the Planning Board for its review and approval. The Plan shall minimize the potential adverse impacts on wetlands and Class I and II streams

and the banks and vegetation along those streams and wetlands, and to minimize erosion or sedimentation.

- (b) SPDES compliance: If the proposed project disturbs over 1 acre, the applicant must comply with the New York State Department of Environmental Conservation (NYSDEC) SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-08-01 or latest revision). A copy of the Notice of Intent (N.O.I.) and Stormwater Pollution Prevention Plan (SWPPP), as required by the General Permit, must be filed with the Town of Cambria prior to construction. Per the General Permit, construction cannot begin until the required time period for NYSDEC review has passed.

(17) Shadow flicker: The applicant shall adhere to the following:

- (a) The applicant shall design the project to eliminate or minimize shadow flicker onto sensitive receptors. Shadow flicker created by a commercial wind energy system upon an identified sensitive receptor shall not exceed 30 hours per year. Sensitive receptors that will be impacted by greater than 30 hours per year will require mitigation, as determined by the Planning Board.

(18) Certification: The applicant shall provide the following certifications:

- (a) Certification of structural components: The foundation, tower, and compatibility of the commercial wind energy system tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer registered in New York State. The engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the Uniform Construction Code that have been adopted in New York State.
- (b) Certification of post construction: After completion of the commercial wind energy system, the applicant shall provide a post-construction certification from a licensed professional engineer registered in the State of New York that the project complies with applicable codes and industry practices and has been completed according to the design plans.
- (c) Certification of electrical system: The electrical system shall be certified in writing by an electrical engineer registered in New York State. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the Electric Code that have been adopted by New York State.
- (d) Certification of rotor overspeed control: The rotor overspeed control system shall be certified in writing by a mechanical engineer registered in New York State. The engineer shall certify compliance with good engineering practices.
- (e) Certification of project: Certificate of Completion must be supplied by the applicant and approved by the Town of Cambria Code Enforcement Officer.

D. Findings:

- (1) Findings necessary to grant a commercial wind energy system permit: In order to grant a commercial wind energy system permit, the Town of Cambria shall review the application, all filings by any other party, and conduct a public hearing. A commercial wind energy system permit shall not be granted unless the Town of Cambria makes the following findings based on substantial evidence:
  - (a) The proposed commercial wind energy system project is consistent with the Comprehensive Plan of the Town of Cambria.
  - (b) The proposed commercial wind energy system will not unreasonably interfere with the orderly land use and development plans of the Town of Cambria.
  - (c) That the benefits to the applicant and the public of the proposed commercial wind energy system project will exceed any burdens.
  - (d) The proposed commercial wind energy system will not be detrimental to the public health, safety, or general welfare of the community.
  - (e) The proposed commercial wind energy system shall comply with all required provisions of this Local Law and the Town of Cambria Zoning Ordinance, unless variances have been properly applied for and granted pursuant to the provisions of the Town of Cambria Zoning Ordinance.

E. Granting of Special Use Permit:

- (1) Following review of the Special Use Permit application, the Planning Board will make a recommendation to the Zoning Board of Appeals. The Zoning Board of Appeals may grant the Special Use Permit, deny the Special Use Permit, or grant the Special Use Permit with written stated conditions. Denial of the Special Use Permit shall be by written decision based upon substantial evidence submitted to the Board.
- (2) Upon issuance of the Special Use Permit, the Planning Board will conduct its review of and act on the site plan application.
- (3) Following site plan approval by the Planning Board, the applicant shall obtain a Building

Permit from the Building Inspector for each commercial wind energy system structure and related buildings.

- (4) The Special Use Permit granted for a commercial wind energy system shall be authorized by the Zoning Board of Appeals initially for one year and in accordance with the provisions of the Town of Cambria Zoning Ordinance. In the discretion of the Zoning Board of Appeals, the Special Use Permit may be reviewed upon its expiration and extended for an additional one year period or for such other period of time not to exceed 5 years which may be established by the Zoning Board of Appeals. Special Use Permits are renewable without the necessity of a public hearing, SEQR review, or additional site plan review as long as no changes are proposed to the project.
  - (5) The Special Use Permit shall not be assignable or transferable.
- F. Monitoring requirements for commercial wind energy systems:
- (1) Right to enter premises for monitoring:
    - (a) Upon reasonable notice, Town of Cambria officials or their designated representatives may enter a lot on which a commercial wind energy system permit has been granted for the purpose of compliance with any permit requirements. Twenty-four hours advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice.
  - (2) Avian/bat impact study plan:
    - (a) The applicant shall submit a plan for monitoring the avian impact of the commercial wind energy system to the Planning Board for its review and approval. Such plan shall document and follow accepted scientific study procedures and other methods as determined by NYSDEC. In addition, the applicant shall agree to submit a report to the Planning Board according to the requirements of the applicable regulatory agencies that identifies all dead birds found within 500 feet of each commercial wind energy system.
  - (3) Periodic reporting required:
    - (a) The applicant shall agree to submit periodic monitoring reports to the Planning Board. The report shall contain data on the operations and environmental impacts, and shall be in the form prescribed by the Planning Board.
  - (4) Power production report required:
    - (a) The applicant shall agree to submit a power production report to the Planning Board when requested. The power production report shall cover the preceding calendar quarter and shall be in the form prescribed by the Planning Board and shall include actual power production in kilowatt hours for each commercial wind energy system.
  - (5) Inspections:
    - (a) Unless waived by the Planning Board, commercial wind energy systems shall be inspected annually by a New York State Licensed Professional Engineer that has been approved by the Town or at any other time upon a determination by the Town's Code Enforcement Office that the commercial wind energy system tower may have sustained structural damage, and a copy of the inspection report shall be submitted to the Town Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
  - (6) General complaint process:
    - (a) During construction, the Town of Cambria Code Enforcement Officer can issue a stop order at any time for any violations of the permit.
    - (b) Post construction: After construction is complete, the permit holder shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements. Upon receipt of complaint from the Town of Cambria Code Enforcement Officer, the permit holder/contact person shall have 7 working days to reply to the Town in writing.
- G. Application fees and costs:
- (1) Application fee:
    - (a) The applicant of a commercial wind energy system shall submit an application fee to the Town of Cambria in accordance with the Schedule of Fees as may be adopted by the Town Board from time to time.
    - (b) The applicant shall pay all costs associated with the Town of Cambria's review and processing of the application, including any professional consultant fees, to assist in the review of the application. The applicant shall also pay all costs associated with the SEQR review if an Environmental Impact Statement is to be prepared (in accordance with 6 NYCRR Part 617.13). The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board.

- (c) At the time of the Special Use Permit renewal, the applicant of a commercial wind energy system shall submit an application fee to the Town of Cambria in accordance with the Schedule of Fees as may be adopted by the Town Board from time to time.
- H. Transfer of commercial wind energy systems
  - (1) Ownership of a commercial wind energy system(s) shall not be transferred or sold without the approval of the Town, which approval shall be granted upon:
    - (a) The receipt of the ability of the successor to meet all requirements of this law.
    - (b) The written acceptance of the transferee of the obligations of the transferor under this law.
  - (2) No transfer or sale shall eliminate the liability of an applicant or any other party under this law.
- I. Payment in Lieu of Taxes or Host Community Agreement:
  - (1) Prior to a Building Permit being issued, the Town Board may decide to negotiate a Payment in Lieu of Taxes or Host Community Agreement with the applicant.
- J. Proof of insurance:
  - (1) Prior to the issuance of a Building Permit, the applicant shall provide the Town Clerk with proof of insurance in a sufficient dollar amount to be determined by the Town Board and in form acceptable to the Town Board to cover potential personal and property damage associated with construction and operation of a commercial wind energy system.
  - (2) Insurance shall be carried for the life of the project, through decommissioning and site restoration.
- K. The Town of Cambria reserves the right to, by Local Law, provide that no exemption pursuant to the provision of the New York State Real Property Tax Law (RPTL) Section 487 shall be applicable within its jurisdiction.
- L. Unsafe and inoperable commercial wind energy systems:
  - (1) Removal and site restoration: Unsafe commercial wind energy systems, inoperable commercial wind energy systems, and commercial wind energy systems for which the permit has expired shall be removed by the owner. All safety hazards created by the installation and operation of the commercial wind energy system shall be eliminated and the site shall be restored to its natural condition.
  - (2) Public nuisance: Every unsafe commercial wind energy system and every inoperable commercial wind energy system is hereby declared a public nuisance, subject to abatement by repair, rehabilitation, demolition, or removal. An inoperable commercial wind energy system shall not be considered a public nuisance, provided that the owner can demonstrate that modernization, rebuilding, or repairs are in progress or planned and will be completed within no more than 6 months.
  - (3) Inoperable, defined: A commercial wind energy system shall be deemed inoperable if it has not generated power within the preceding 6 months.
- M. Decommissioning and site restoration plan and bond:
  - (1) The applicant shall submit a decommissioning and site restoration plan, including cost estimate, to the Planning Board for its review and approval prior to the issuance of any Special Use Permit. The restoration plan shall identify the specific properties it applies to and shall indicate removal of all buildings, structures, wind energy systems, transmission lines and wires, access roads and/or driveways, foundations to 4 feet below finished grade, road repair costs, if any, and all regarding and revegetation necessary to return the subject property to the condition existing prior to establishment of the commercial wind energy systems project. The restoration shall reflect the site specific character, including topography, vegetation, drainage, and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the decommissioning and site restoration plan. The decommissioning and site restoration plan shall include information regarding the anticipated life of the project.
  - (2) As a condition of Special Use Permit approval, the applicant shall execute and file with the Town Clerk a bond or other form of security acceptable to the Town Board and Town Attorney, in an amount sufficient to ensure the faithful performance of the removal of all commercial wind energy system components and the restoration of the site subsequent to such removal, in accordance with the approved decommissioning and site restoration plan.
  - (3) The sufficiency of such bond shall be confirmed at least every 5 years by an analysis and report of the cost of removal and site restoration. The applicant shall pay the cost of such report. If said analysis and report determines that the amount of the bond in force is insufficient to cover the removal and site restoration costs, the bond shall be increased to the amount necessary to cover such costs. The report and increased amount of the bond shall be filed with the Town Clerk.
  - (4) All bond requirements shall be fully funded before a Building Permit is issued.

- (5) The decommissioning and site restoration bond shall be in effect for the entire duration of the Special Use Permit.
- (6) The applicant and his/her successors or assigns in interest shall maintain the required bond funds for the duration of the Special Use Permit.

N. Public improvement bond

- (1) As a condition of Special Use Permit approval, the applicant shall execute and file with the Town Clerk a public improvement bond in an amount as determined by the Town Board and Highway Superintendent sufficient to ensure remediation of damage to public roads caused by traffic associated with the construction of the commercial wind energy system. The public improvement bond shall be of a form acceptable to the Town Board and Town Attorney.
- (2) In the event that any post-construction maintenance or replacement of components that could affect Town roads is necessary, the applicant shall notify the Town and a new bond shall be posted.

O. Amendments to Special Use Permit:

- (1) Any changes or alterations post-construction to the commercial wind energy system shall be done only by amendment to the Special Use Permit and subject to all requirements of this Local Law.

### Section 3 – Non-Commercial Wind Energy Systems

Non-Commercial Wind Energy Systems shall be included under uses that may be considered as “Uses Permitted as Special Exceptions” in accordance with the provisions outlined in Article XI, Section 1100 of the Town of Cambria Zoning Ordinance in the Agricultural and Residence District (AR), Residence District (R-1), Light Retail Business District (B-1), General Business District (B-2), Industrial District (I-1), and Recreational – Campground District (R-C) and shall be subject to the following regulations:

A. The placement, construction, and major modification of all non-commercial wind energy systems within the boundaries of the Town of Cambria shall be permitted only by Special Use Permit granted by the Zoning Board of Appeals (in accordance with the provisions of the Town of Cambria Zoning Ordinance), site plan approval granted by the Planning Board, and in accordance with this Article. The process of obtaining a Special Use Permit shall be as follows:

- (1) Submittal of a Special Use Permit application and supplemental materials to the Town.
- (2) Review of the Special Use Permit application by the Planning Board and subsequent SEQR review with the Town of Cambria Planning Board designated as Lead Agency.
- (3) Recommendation from the Planning Board to the Zoning Board of Appeals on the Special Use Permit application.
- (4) Review of the Special Use Permit application and subsequent action taken by the Zoning Board of Appeals.
- (5) If a Special Use Permit is granted by the Zoning Board of Appeals, the Planning Board will take action on the site plan.
- (6) Following issuance of a Special Use Permit and subsequent site plan approval, a Building Permit must be obtained from the Building Inspector for each wind energy facility to be constructed.

B. Applications under this section shall be made as follows:

- (1) Applicants for a Special Use Permit to place, construct, or modify non-commercial wind energy systems within the Town of Cambria shall submit a completed non-commercial wind energy application to the Town accompanied by 20 copies of the project plans and supporting materials to include the following information:
  - (a) Name and address of the applicant and design engineer.
  - (b) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.
  - (c) A site plan drawn in sufficient detail to show the following:
    - [1.] Locations and dimensions of all non-commercial wind energy system components proposed on the site, including tower height, total height measured to the top of the tip of the blade in the vertical position, nacelle, length of blades, diameter of blade rotation, ground clearance, electrical wires, substations, junction boxes, maintenance buildings, and other necessary components.
    - [2.] Above ground utility lines on site within 500 feet of any proposed non-commercial wind energy system.
    - [3.] Property lot lines and the location and dimensions of all existing structures and uses on site within 500 feet of any proposed non-commercial wind energy

system.

- [4.] Zoning district boundaries and identification of zoning districts within 500 feet of the base of any commercial wind energy system.
- [5.] Locations, dimensions, and ownership of all transportation routes on site and within 500 feet of the base of any non-commercial wind energy system.
- [6.] Dimensional representation of the various structural components of the non-commercial wind energy system construction including the base and footing.
- [7.] Manufacturer's specifications for any proposed non-commercial wind energy system, which should include:

- [a.] Wind energy system information: Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of the non-commercial wind energy system.

- [b.] Wind energy system drawings: Photographs or detailed drawings of each non-commercial wind energy system model, including the tower and foundation.

- [c.] Noise report.

- [d.] Foundation requirements.

- (d) Electrical line drawing: A line drawing of the electrical components of the non-commercial wind energy system in sufficient detail to allow for a determination that the manner of installation conforms to the Electrical Code adopted by New York State.
- (e) Floodplain: An application for any non-commercial wind energy system proposed within a 100-year floodplain area, as such flood hazard areas are shown on the floodplain maps, shall be accompanied by a detailed report that shall address the potential for wind erosion, water erosion, sedimentation, and flooding, and that shall propose mitigation measures for such impacts.
- (f) Other Information: Such additional information as may be reasonably requested by the Town Engineer or Planning Board.

C. Special Use Permits issued for non-commercial wind energy systems shall be subject to the following conditions.

(1) Zoning Districts

- (a) Non-commercial wind energy systems may only be considered for a Special Use Permit within the Agricultural and Residence District (AR), Residence District (R-1), Light Retail Business District (B-1), General Business District (B-2), Industrial District (I-1), or Recreational – Campground District (R-C).
- (b) Non-commercial wind energy systems are not permitted in the Escarpment District (ED), Medium Density Residential Use District (MD), or Planned Development District (P-D).

(2) Setbacks: The applicant shall adhere to the following setbacks:

(a) From zoning district boundaries:

- [1.] Non-commercial wind energy systems shall be setback a minimum of 500 feet from the boundary of any Escarpment District (ED), Medium Density Residential Use District (MD), or Planned Development District (P-D).

(b) From property lines:

- [1.] Non-commercial wind energy systems shall be setback a minimum 1.5 times their total height from any property line.

(c) From structures:

- [1.] Non-commercial wind energy systems shall be setback a minimum 1.5 times their total height from any building.

(d) From public roads and highways:

- [1.] Non-commercial wind energy systems shall be setback a minimum 1.5 times their total height from any public road or highway.

- [2.] Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from the centerline of such right-of-way.

(e) From railroads:

- [1.] Non-commercial wind energy systems shall be setback a minimum 1.5 times their total height from any railroad right-of-way.

(f) From aboveground transmission lines greater than 12 kilovolts:

[1.] Non-commercial wind energy systems shall be setback a minimum 1.5 times their total height from any aboveground transmission line greater than 12 kilovolts.

- (3) Placement of non-commercial wind energy systems:
  - (a) Non-commercial wind energy systems shall be located in the rear yard, unless otherwise directed by the Planning Board.
- (4) Only 1 non-commercial wind energy system per legal lot shall be allowed. The system shall be primarily used to reduce the on-site consumption of electricity and at no times shall electricity be distributed across property lines (except when distributed back to the grid).
- (5) Total height (maximum overall height): The total height of any non-commercial wind energy system tower shall not exceed 100 feet. The total height shall be measured from the ground elevation to the top of the tip of the blade in the most upright vertical position.
- (6) Notification of adjacent property owners:
  - (a) All applicants are required to notify all property owners adjacent to the parcel where the non-commercial wind energy system is proposed. This notification shall include the size, location, and planned construction date of non-commercial wind energy systems. Failure to comply with this notification will not constitute a jurisdictional defect.
- (7) Signage:
  - (a) Signage limited: No advertising sign or logo shall be placed or painted on any non-commercial wind energy system. A non-commercial wind energy system permit may allow the placement of the manufacturer's logo on a system generator housing in an unobtrusive manner.
- (8) Color and finish:
  - (a) Color and finish: Non-commercial wind energy systems shall be painted a non-obtrusive color (e.g., light environmental color such as white, gray, or beige) that is non-reflective.
- (9) Lighting:
  - (a) Exterior lighting on any non-commercial wind energy system shall not be allowed except that which is specifically required by the Federal Aviation Administration (FAA).
- (10) Requirements of regulatory agencies:
  - (a) The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the non-commercial wind energy system.
  - (b) The applicant is required to submit a long Environmental Assessment Form (EAF) with the Town of Cambria Planning Board designated as Lead Agency for the SEQR process.
- (11) Safety and security requirements: The applicant shall adhere to the following safety and security requirements.
  - (a) Safety shutdown: Each non-commercial wind energy system shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. A manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the non-commercial wind energy system. No non-commercial wind energy system shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding, and excessive pressure on the tower structure, rotor blades, and wind energy system components.
  - (b) Grounding: All non-commercial wind energy systems that may be charged with lightning shall be grounded according to applicable electrical codes.
  - (c) Transmission lines and wiring: All transmission lines and wiring associated with the non-commercial wind energy system shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers, or lines.
  - (d) Ground clearance: The blade tip of any non-commercial wind energy system shall, at its lowest point, have ground clearance of not less than 30 feet.
  - (e) Climability: Non-commercial wind energy systems shall not be climbable up to 15 feet above ground level.
  - (f) Anchor points for guy wires: Anchor points for any guy wires for a non-commercial wind energy system shall be located within the property that the wind energy system is located on and not on or across any above ground electric transmission or

distribution lines. The point of attachment for the guy wires shall be enclosed by a fence 6 feet high or sheathed in bright orange or yellow covering to 8 feet above the ground. The minimum setback for the guy wire anchors shall be 10 feet from the property boundary.

- (g) Signage: Appropriate warning signage shall be placed on non-commercial wind energy systems and electrical equipment. Signage shall also include one twenty-four-hour emergency contact number of the owner of the wind energy system as well as signage warning of electrical shock or high voltage and harm from revolving machinery.
- (12) Noise requirements: The applicant shall adhere to the following noise requirements:
- (a) Audible noise standard: The audible noise standard due to non-commercial wind energy system operations shall not be created which causes the noise level at the boundary of the proposed project site to exceed 45 dB(A) for more than 5 minutes out of any one-hour time period or to exceed 50 dB(A) for any time period.
  - (b) Operations – low frequency noise: A non-commercial wind energy system shall not be operated so that impulsive sound below 20 Hz adversely affects any sensitive noise receptor.
- (13) Impact on wildlife species and habitat: The applicant shall adhere to the following regarding the impact on wildlife species and habitat:
- (a) Endangered or threatened species: Development and operation of a non-commercial wind energy system shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the Town of Cambria Comprehensive Plan and/or the studies and plans of the regional planning commissions based on criteria established by the federal or state regulatory agencies.
  - (b) Migratory birds: Development and operation of a non-commercial wind energy system shall not have an adverse impact on migratory bird species.
- (14) Interference with residential television, microwave, and radio reception.
- (a) The non-commercial wind energy system shall be operated such that no electromagnetic interference is caused. If it is demonstrated that a non-commercial wind energy system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- (15) Interference with aviation navigational systems: The applicant shall adhere to the following:
- (a) Compliance with FAA Regulations: All non-commercial wind energy systems shall comply with FAA Regulations.
  - (b) No interference with aviation facilities: No non-commercial wind energy system shall be installed or operated in a manner that causes interference with the operation of any aviation facility registered with the FAA.
- (16) Interconnection and electrical distribution facilities: The applicant shall adhere to the following:
- (a) Facility standards: All interconnection facilities shall be constructed to the specifications of the utility.
  - (b) Interconnection standards: Interconnection shall conform to procedures and standards established by the Federal Regulatory Commission and the New York State Public Service Commission, as applicable.
- (17) Certification: The applicant is required to provide the following certifications:
- (a) Certification of structural components: The foundation, tower, and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer registered in New York State. The engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the Uniform Construction Code that have been adopted in New York State.
  - (b) Certification of electrical system: The electrical system shall be certified in writing by an electrical engineer registered in New York State. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the Electrical Code that have been adopted by New York State.
  - (c) Certification of rotor overspeed control: The rotor overspeed control system shall be certified in writing by a mechanical engineer registered in New York State. The engineer shall certify compliance with good engineering practices.
- (18) General complaint process:

- (a) During construction: The Town of Cambria Code Enforcement Officer can issue a stop order at any time for any violations of the permit.
  - (b) Post construction: After construction is complete, the permit holder shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements. Upon receipt of complaint from the Town of Cambria Code Enforcement Officer, the permit holder/contact person shall have 7 working days to reply to the Town in writing.
- (19) Final Inspection: The Code Enforcement Officer, in conjunction with the Town Engineer, shall insure compliance with all manufacturer's specifications and the New York State Uniform Construction Code.

**D. Findings:**

- (1) Findings necessary to grant a non-commercial wind energy system permit: In order to grant a non-commercial wind energy system permit, the Town of Cambria shall review the application, all filings by any other party, and conduct a public hearing. A non-commercial wind energy system permit shall not be granted unless the Town of Cambria makes the following findings based on substantial evidence:
- (a) The proposed non-commercial wind energy system project is consistent with the Comprehensive Plan of Town of Cambria.
  - (b) The proposed non-commercial wind energy system will not unreasonably interfere with the orderly land use and development plans of the Town of Cambria.
  - (c) The proposed non-commercial wind energy system will not be detrimental to the public health, safety, and general welfare of the community.
  - (d) The proposed non-commercial wind energy system shall comply with all required provisions of this Local Law and the Town of Cambria Zoning Ordinance, unless variances have been properly applied for and granted pursuant to Article XII, Section 1202 of the Town of Cambria Zoning Ordinance.

**E. Granting of Special Use Permit:**

- (1) Following review of the Special Use Permit application, the Planning Board will make a recommendation to the Zoning Board of Appeals. The Zoning Board of Appeals may grant the Special Use Permit, deny the Special Use Permit, or grant the Special Use Permit with written stated conditions. Denial of the Special Use Permit shall be by written decision based upon substantial evidence submitted to the Board.
- (2) Upon issuance of the Special Use Permit, the Planning Board will conduct its review of and act on the site plan application.
- (3) Following site plan approval by the Planning Board, the applicant shall obtain a Building Permit from the Building Inspector for each non-commercial wind energy system structure and related buildings.
- (4) The Special Use Permit shall not be assignable or transferable.

**F. Application fees and costs:**

- (1) Application fee:
  - (a) The applicant of a non-commercial wind energy system shall submit an application fee to the Town of Cambria in accordance with the Schedule of Fees as may be adopted by the Town Board from time to time.
  - (b) The applicant shall also pay all costs associated with the SEQR review if an Environmental Impact Statement is to be prepared (in accordance with 6 NYCRR Part 617.13). The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board.

**G. Proof of insurance**

- (1) Prior to the issuance of a Building Permit, the applicant shall provide the Town Clerk with proof of insurance to cover potential personal and property damage associated with the construction and operation of a non-commercial wind energy system.
- (2) Insurance shall be carried for the life of the wind energy system.

**H. Unsafe and inoperable non-commercial wind energy systems and site reclamation:**

- (1) Removal and site restoration: Unsafe non-commercial wind energy systems, inoperable non-commercial wind energy systems, and non-commercial wind energy systems for which the permit has expired shall be removed by the owner. All safety hazards created by the installation and operation of the non-commercial wind energy system shall be eliminated and the site shall be restored to its natural condition to the extent feasible and practical.
- (2) Public nuisance: Every unsafe non-commercial wind energy system and every inoperable non-commercial wind energy system is hereby declared a public nuisance which shall be subject to abatement by repair, rehabilitation, demolition, or removal. An inoperable non-commercial wind energy system shall not be considered a public

nuisance, provided that the owner can demonstrate that modernization, rebuilding, or repairs are in progress or planned and will be completed within no more than 6 months.

- (3) Inoperable, defined: A non-commercial wind energy system shall be deemed inoperable if it has not generated power within the preceding six (6) months.

I. Amendments to Special Use Permit:

- (1) Any changes or alterations post-construction to the non-commercial wind energy system shall be done only by amendment to the Special Use Permit and subject to all requirements of this section.

J. Non-commercial wind energy systems used for agricultural operations:

- (1) No Special Use Permit shall be required under this chapter for non-commercial wind energy systems solely used for agricultural operations and located in a state or county agricultural district. The property owner, or designated agent, shall submit the following to the Town of Cambria Planning Board for site plan review prior to installation:

- (a) Completion of a Short Form EAF to document that the project is a Type 2 action under SEQR.
- (b) Information requested in Section 3, B.,(1), (c), [6] and [7] (Manufacturer info).
- (b) A sketch plan showing compliance with the setbacks outlined in Section 3, C., (2) (setbacks).
- (c) Placing wind energy systems within the Escarpment District (ED) is discouraged and should be avoided when practical.
- (d) Compliance with Section 3, C., (3) (placement).
- (e) Compliance with Section 3, C., (5) (height).
- (f) Compliance with Section 3, C., (7) (signage).
- (g) Compliance with Section 3, C., (9) (lighting).
- (h) Compliance with Section 3, C., (10) (requirements of regulatory agencies).
- (i) Compliance with Section 3, C., (11) (safety and security requirements).
- (j) Compliance with Section 3, C., (12) (noise requirements).
- (k) Compliance with Section 3, C., (15) (aviation).
- (l) Compliance with Section 3, C., (16) (interconnection).
- (m) Compliance with Section 3, C., (17) (mechanical/electrical certifications).
- (n) Compliance with Section 3, C., (19) (final inspection).
- (o) For non-commercial wind energy systems used for agricultural operations greater than 100 feet in height, the applicant must provide supporting information that the taller non-commercial wind energy system is needed to offset agricultural energy costs. This information includes but is not limited to an analysis showing how the power/energy usage requirements of the farming operation would be offset by the construction of a larger non-commercial wind energy system.

(2) Application fees and costs:

- (a) The applicant for a non-commercial wind energy system used solely for agricultural operations and located in a state or county agricultural district shall submit an application fee to the Town of Cambria in accordance with the Schedule of Fees for non-commercial wind energy systems.

Section 4. Meteorological (met) towers

- A. The placement, construction, and major modification of all meteorological towers within the boundaries of the Town of Cambria shall be permitted only by Special Use Permit granted by the Zoning Board of Appeals (in accordance with the provisions of the Town of Cambria Zoning Ordinance) and in accordance with this Article. The process of obtaining a Special Use Permit shall be as follows:

- (1) Submittal of a Special Use Permit application and supplemental materials to the Town.
- (2) Review of the Special Use Permit application by the Planning Board and subsequent SEQR review with the Town of Cambria Planning Board designated as Lead Agency.
- (3) Recommendation from the Planning Board to the Zoning Board of Appeals on the Special Use Permit application.
- (4) Review of the Special Use Permit application and subsequent action taken by the Zoning Board of Appeals.
- (5) If a Special Use Permit is granted by the Zoning Board of Appeals, the Planning Board

will take action on the site plan.

- (6) Following issuance of a Special Use Permit and site plan approval, a Building Permit must be obtained from the Building Inspector for each met tower to be constructed.

B. Applications under this section shall be made as follows:

- (1) Applicants for a Special Use Permit to place, construct, or modify met towers within the Town of Cambria shall submit 20 copies of each of the following information to the Town:

- (a) Name and address of the applicant and design engineer.
- (b) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.
- (c) A site plan drawn in sufficient detail to show the following:
  - [1.] Locations and dimensions of all met tower components proposed on the site, including tower height, electrical wires, guy wires, substations, junction boxes, and other necessary components.
  - [2.] Above ground utility lines on site within 1,500 feet of the base of any met tower.
  - [3.] Property lot lines and the location and dimensions of all existing structures and uses within 1,500 feet of any proposed met tower.
  - [4.] Zoning district boundaries and identification of zoning districts within 1,500 feet of the base of any commercial wind energy system.
  - [5.] Locations, dimensions, and ownership of all transportation routes on site and within 500 feet of the base of any met tower.
  - [6.] Dimensional representation of the various structural components of the met tower.
  - [7.] Existing topography and natural features of the site.
  - [8.] Proposed plan for grading and removal of vegetation.
- (d) Certification by a registered New York State Professional Engineer that the met tower's design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Construction Code.
- (e) FAA notification: A copy of written notification to the FAA.
- (f) Decommissioning plan: The applicant shall file and execute with the Town Clerk a bond or other form of security acceptable to the Town Board and Town Attorney in an amount sufficient to ensure the faithful performance of the removal of all met towers and associated components.

- (2) Special Use Permits issued for met towers shall be subject to the following conditions.

- (a) Zoning Districts

- [1.] Met towers may only be considered for a Special Use Permit within zoning districts where commercial wind energy systems are permitted.

- (3) Setbacks: The applicant shall adhere to the following setbacks.

- (a) The placement or construction of met towers shall adhere to the setbacks established for commercial wind energy systems in Section 1129 C.(2).
- (b) Notwithstanding the provisions set forth in these subsections, such setbacks from lot lines do not apply if the application is accompanied by a legally enforceable agreement for a period of 25 years or the life of the permit, whichever is longer, that the adjacent landowner agrees to the elimination of the setback.

- (4) Total height (maximum overall height): The total height of any met tower shall not exceed 450 feet.

- (5) Signage

- (a) Signage limited: No advertising sign or logo shall be placed or painted on any met tower or accessory structures.

- (6) Lighting

- (a) Exterior lighting on any met tower shall not be allowed except that which is specifically required by the FAA.

C. Granting of Special Use Permit:

- (1) Following review of the Special Use Permit application, the Planning Board will make a recommendation to the Zoning Board of Appeals. The Zoning Board of Appeals may grant the Special Use Permit, deny the Special Use Permit, or grant the Special Use Permit with written stated conditions. Denial of the Special Use Permit shall be by written decision based upon substantial evidence submitted to the Board.
- (2) Upon issuance of the Special Use Permit, the Planning Board will conduct its review of

and act on the site plan application.

(3) Following site plan approval by the Planning Board, the applicant shall obtain a Building Permit from the Building Inspector for each met tower.

(4) The Special Use Permit shall not be assignable or transferable.

D. Amendments to Special Use Permit:

(1) Any changes or alterations post construction to the met tower shall be done only by amendment to the Special Use Permit and subject to all requirements of this section.

E. Application fees and costs

(1) Application fee:

(a) The applicant of a met tower shall submit an application fee to the Town of Cambria in accordance with the Schedule of Fees as may be adopted by the Town Board from time to time.

(b) The applicant shall also pay all costs associated with the SEQR review if an Environmental Impact Statement is to be prepared (in accordance with 6 NYCRR Part 617.13). The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board.

(c) At the time of the Special Use Permit renewal, the applicant of a commercial wind energy system shall submit an application fee to the Town of Cambria in accordance with the Schedule of Fees as may be adopted by the Town Board from time to time.

F. Proof of insurance:

(1) Prior to the issuance of a Building Permit, the applicant shall provide the Town Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation of a met tower.

(2) Insurance shall be carried for the life of the met tower, through decommissioning and site restoration.

G. Unsafe and inoperable met tower:

(1) Removal and site restoration: Unsafe commercial wind energy systems, inoperable commercial wind energy systems, and commercial wind energy systems for which the permit has expired shall be removed by the owner. All safety hazards created by the installation and operation of the commercial wind energy system shall be eliminated and the site shall be restored to its natural condition.

(2) Public nuisance: Every unsafe commercial wind energy system and every inoperable commercial wind energy system is hereby declared a public nuisance, subject to abatement by repair, rehabilitation, demolition, or removal. An inoperable commercial wind energy system shall not be considered a public nuisance, provided that the owner can demonstrate that modernization, rebuilding, or repairs are in progress or planned and will be completed within no more than 6 months.

(3) Inoperable, defined: A commercial wind energy system shall be deemed inoperable if it has not generated power within the preceding 6 months.

H. Decommissioning and site restoration bond:

(1) The applicant shall submit a decommissioning and site restoration plan, including cost estimate, to the Planning Board for its review and approval prior to the issuance of any Special Use Permit. The restoration plan shall identify the specific properties it applies to and shall indicate removal of all buildings, structures, towers, transmission lines and wires, access roads and/or driveways, foundations to 4 feet below finished grade, road repair costs, if any, and all regarding and revegetation necessary to return the subject property to the condition existing prior to establishment of the commercial wind energy systems project. The restoration shall reflect the site specific character, including topography, vegetation, drainage, and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the decommissioning and site restoration plan. The decommissioning and site restoration plan shall include information regarding the anticipated life of the project.

(2) As a condition of Special Use Permit approval, the applicant shall execute and file with the Town Clerk a bond or other form of security acceptable to the Town Board and Town Attorney, in an amount sufficient to ensure the faithful performance of the removal of all meteorological tower components and the restoration of the site subsequent to such removal, in accordance with the approved decommissioning and site restoration plan.

(3) The sufficiency of such bond shall be confirmed at least every 5 years by an analysis and report of the cost of removal and site restoration. The applicant shall pay the cost of such report. If said analysis and report determines that the amount of the bond in force is insufficient to cover the removal and site restoration costs, the bond shall be increased to the amount necessary to cover such costs. The report and increased amount of the bond shall be filed with the Town Clerk.

(4) All bond requirements shall be fully funded before a Building Permit is issued.

- (5) The decommissioning and site restoration bond shall be in effect for the entire duration of the Special Use Permit.
- (6) The applicant and his/her successors or assigns in interest shall maintain the required bond funds for the duration of the Special Use Permit.

Section 5. If any part or provision of this Local Law shall be declared invalid, void, unconstitutional, or unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not be enacted.

Section 6. This Local Law shall take effect immediately upon filing with the Secretary of State of New York.