

REGULAR MEETING
October 17, 2011

A regular meeting of the Town Board of the Town of Busti was held on October 17, 2011 at 6:45 p.m., at the Town Administration Building, 121 Chautauqua Avenue, Lakewood, New York with the following members present:

Supervisor Kathleen A. Sullivan
Councilman Jesse M. Robbins
Councilwoman Marsha L. Hern
Councilman Richard A. Sanders
Councilman Kenneth J. Lawton

Supervisor Sullivan called the meeting to order with the salute to the flag and a moment of silence was observed.

Present at the meeting were: Angelo & Diane Terrano, John Francisco, Tim Young, Lorie Robbins, Lakewood-Busti Police Chief John Bentley, Busti-Lakewood Recreation Director Diana Peterson, Loren & Gloria Parker, Attorney Joel H. Seachrist, Highway Superintendent Melvin J. Peterson and Post Journal Reporter Dennis Phillips.

Loren Parker addressed the board requesting that the town enforce the local laws regarding junk cars owned by Lee Fischer. Other concerns on houses owned by Mr. Fischer were referred to Building & Code Enforcement Officer Melanie Eddy.

Busti-Lakewood Recreation Director stated she has purchased a partition 6' 8" for the community building.

Tim Young stated the Busti Hamlet Development will be hosting a Veteran's Day Service in Busti on Friday, November 11, 2011 at 10:30 a.m.

Lakewood-Busti Police Chief John Bentley stated 8,111 incidents to date and reported on assistance by his department to other agencies.

Highway Superintendent reported on wind/storm damage that happened over the weekend and other highway activities.

Supervisor Sullivan officer the following motion which was duly seconded by Councilman Sanders:

RESOLVED, that the public hearing for the 2012 Budget be held on Monday November 7, 2011 at 7:10 p.m.

Upon roll call vote, all aye.

Supervisor Sullivan offered the following motion which was duly seconded by Councilman Lawton:

RESOLVED, that a public hearing be held on November 7, 2011 at 7:05 p.m. on

Local law No. 5 “A Local Law to Override the Tax Levy Limit Established in General Municipal Law 3-C”.

Upon roll call vote, all aye.

Supervisor Sullivan moved the following motion which was duly seconded by Councilman Robbins:

RESOLVED, that Darlene Nygren be appointed part-time Deputy Clerk at \$14.00 an hour for 25 hours per week.

Upon roll call vote, all aye.

Supervisor Sullivan noted the Fall Planning & Zoning Conference on Wednesday, November 16th at Chautauqua Meeting & Expo Center, Mayville, New York and moved that any zoning or planning board member be authorized to attend which was seconded by Councilwoman Hern.

All aye.

Councilman Lawton commented on the negotiation of water supply contract with the Jamestown Board of Public Utilities and moved that Supervisor Sullivan be authorized to sign the agreement if the Jamestown Board of Public Utilities accepts language regarding an opt-out provision as recommended by the town attorney, which was duly seconded by Councilwoman Hern:

Upon roll call vote, all aye.

Supervisor Sullivan offered the following motion which was duly seconded by Councilman Sanders:

RESOLVED, that Supervisor Sullivan be authorized and directed to pay the presented General Fund, Highway Fund, Joint Recreation Fund and the Hazeltine Public Library for Abstract No. 16 from warrant #726 to and including warrant #767 in the amount of \$20,442.54.

Upon roll call vote, all aye.

Councilman Lawton moved the adoption of Local Law No. 4 of 2011 which was duly seconded by Councilman Robbins:

WHEREAS, the Town of Busti has proposed Local Law No. 4 of 2011, which would permit the construction of small wind turbines in certain zoning districts, and

WHEREAS, the proposed law has been subject to environmental review pursuant to Article 8 of the New York State Environmental Conservation Law (State Environmental Quality Review Act), including the preparation and review of a long Environmental Assessment Form, and

WHEREAS, Part 617 of the implementing regulations pertaining to the State Environmental Quality Review Act requires this Board to determine and give notice of the environmental impact of the proposed local law, and

WHEREAS, the Board has determined that the proposed law will not have a significant environmental impact,

NOW THEREFORE BE IT RESOLVED, that the Town Board hereby issues a Notice of Determination of Non-Significance, also known as a Negative Declaration, for the proposed Local Law No. 4 of 2011 and authorizes the Supervisor to complete Part III of the EAF accordingly.

WHEREAS, a resolution was duly adopted by the Town Board of the Town of Busti for a public hearing to be held by said Board on August 15, 2011 at the Town Hall, 121 Chautauqua Avenue, Lakewood, to hear all interested parties on a proposed Local Law to permit the construction of small wind energy systems (wind turbines) in certain zoning districts, and

WHEREAS, notice of said public hearing was duly published in the *Jamestown Post-Journal* and posted in the Town Clerk's office, and

WHEREAS, said public hearing was duly held on August 15, 2011 at the said time and place and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said proposed Local Law, or any part thereof, and

WHEREAS, the County Planning Department by letter dated August 5, 2011, sent in response to a referral made pursuant to Section 239-m of the General Municipal Law, has advised that the proposed Local Law is of local option, and

WHEREAS, the Board has determined that the adoption of the local law is a Type I action for purposes of the State Environmental Quality Review Act, has prepared an Environmental Assessment Form, and has duly adopted a Negative Declaration finding that the proposed Local Law will not have significant adverse environmental impacts, and

WHEREAS, the Town Board, after due deliberation, finds it in the best interests of the Town to adopt said Local Law,

NOW, THEREFORE, the Town Board of the Town of Busti hereby adopts said Local Law as Local Law No. 4 of 2011, a copy of which is attached hereto and made a part hereof, and the Town Clerk hereby is directed to enter said Local Law in the minutes of this meeting and in the Local Law Book of the Town of Busti, and to give due notice of the adoption of the Local Law to the Secretary of State.

Upon roll call vote, all aye.

**LOCAL LAW NO. 4 FOR THE YEAR 2011
SMALL WIND TURBINES**

Be it enacted by the Town of Board of the Town of Busti, County of Chautauqua and State of New York, as follows:

SECTION 1. AUTHORITY.

The Town Board of the Town of Busti adopts this Local Law under the authority granted by:

1. Article IX of the New York State Constitution, §2(c)(6) and (10);
2. New York Statute of Local Governments, §10(1), (6), and (7);
3. New York Municipal Home Rule Law, §10(1)(1) and (ii) and §10(1)(a)(6), (11), (12), and (14);
4. The super session authority of New York Municipal Home Rule Law, §10(2)(d)(3);
5. New York Town Law, Article 16 (Zoning);
6. New York Town Law §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention), (11)(Peace, good order and safety), (15)(Promotion of public welfare), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines); and
7. New York Town Law §64(17-a)(protection of aesthetic interests) and (23)(General Powers).

SECTION 2. SMALL WIND TURBINES LAW.

Local Law No. 3 of 2011, entitled the “SMALL WIND TURBINES LAW”, is hereby adopted to add a new Section 91-809 to the Zoning Code of the Town of Busti, which shall read in its entirety as follows:

Section 91-809. Small Wind Turbines

1. **Purpose.** It is the purpose of this subsection to promote the safe, effective and efficient use of Small Wind Energy Systems installed to reduce the on-site consumption of utility-supplied electricity, while providing reasonable controls to protect public health and safety without significantly increasing the cost or decreasing the efficiency of a wind energy system.

The Town of Busti recognizes that privately-owned small wind turbines are non-polluting, help reduce reliance on fossil fuels, help reduce public utility electrical demand and contribute to the efficiency of the utility grid.

The Town of Busti further recognizes that small wind turbines are substantively different from commercial wind farms and from commercial cellular or radio towers as they are designed to supply electrical power for the owner and are not typically revenue-generating ventures. The much larger-scale wind turbines and wind farms intended to sell energy directly to power companies or retail users are not permitted uses under the Town of Busti Zoning Code.

2. **Findings.** The Town of Busti finds that wind energy is an abundant, renewable, and non-polluting energy resource and that its conversion to electricity will reduce our dependence on nonrenewable energy resources and decrease the air and water pollution that results from the use of conventional energy sources. Distributed small wind energy systems will also enhance the reliability and power quality of the power grid, reduce peak power demands, and help diversify the local energy supply portfolio. Small wind systems also make the electricity supply market more competitive by promoting customer choice.

A number of laws and programs encourage the use of small-scale renewable energy systems including rebates, net metering, tax credits, and other incentives. However, many existing local zoning laws fail to permit such systems or contain restrictions, which, while not intended to discourage the installation of small wind turbines, can substantially increase the time and costs required to obtain necessary construction permits.

Therefore, we find that it is necessary to standardize and streamline the proper issuance of building permits for Small Wind Energy Systems so that this clean, renewable energy resource can be used in a cost-effective and timely manner.

3. **Permits.**

A. No Small Wind Energy System shall be constructed, modified, or operated in the Town of Busti except by obtaining a permit therefore as provided in this subsection.

B. If the applicant for a Small Wind Energy System can demonstrate that the proposed system meets all the requirements set out in Subsections 6 and 7 hereof, the Code Enforcement Officer may issue a Small Wind Energy Facility Permit for the system.

C. The Town of Busti Planning Board shall have sole discretion to review, consider, and issue a permit for all other proposed Small Wind Energy Systems that cannot meet the development and construction standards hereof. The Planning Board may, after a public hearing, so long as the waiver request is detailed in the public notice, grant a waiver from the strict application of the provisions of this subsection if, in the opinion of the Planning Board, the grant of said waiver is in the best interests of the Town. The Planning Board may consider as reasonable factors in evaluating the request, the impact of the waiver on the neighborhood, including the potential detriment to nearby properties, the benefit to the applicant, feasible alternatives, and the scope of the request. The Planning Board may attach such conditions as it deems appropriate to waiver approvals as it deems necessary to minimize the impact of the waiver.

4. **Where Permitted.** Small Wind Energy Systems shall be a permitted use in the Conservation-Residential (CR), Conservation-Agricultural (CA), CAMP, Industrial (I), and Light Manufacturing & Research & Development (LMR) Districts, subject to the

requirements set out below:

5. Application for Permit. An application for a Small Wind Energy System shall be submitted to the Town of Busti Code Enforcement Office on the form provided by it and shall include:

A. Name, address and telephone number of the applicant. If the applicant will be represented by an agent, the name, address and telephone number of the agent, as well as an original signature of the applicant authorizing the agent to represent the applicant.

B. Name, address and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner:

(1) Confirming that the property owner is familiar with the proposed applications; and

(2) Authorizing the submission of the application.

C. Address of each proposed tower site, including tax map section, block and lot number.

D. Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.

E. A plot plan drawn to scale to the extent possible and in sufficient detail to show the proposed location of the Small Wind Energy System in relation to all structures, property lines, and public roads within a 500 foot radius of the system, including a circle drawn around the proposed location depicting the setback requirements set out below.

F. A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electric Code of the Town of Busti and the New York State Building Code.

6. Developmental Standards.

A. Tower height. Tower height shall not exceed 120 feet and shall be exempt from any other height restrictions of this Zoning Code. To prevent wind turbulence harmful to the Small Wind Energy System, the minimum height of the lowest part of any horizontal or vertical axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a radius of 250 feet. The Planning Board may modify this requirement if the applicant demonstrates that a lower height or smaller radius will not jeopardize the safety of the wind turbine

structure.

B. Setbacks. The following standards shall apply to Small Wind Energy Systems:

(1) A Small Wind Energy System shall be set back from the property line of abutting property a distance of no less than 1.5 times the total system height.

(2) No part of the wind system structure, including guy wire anchors, may extend closer than 10 feet to the property boundaries of the installation site.

(3) A small wind energy system shall be set back from the nearest public road a distance no less than 1.5 times the total system height, or 100 feet, whichever is greater.

(4) There shall be no habitable structures on the applicant's property within the fall zone.

C. Number of Systems. No lot under 5 acres in size shall contain more than one Small Wind Energy System.

D. Noise. Small wind energy systems shall not exceed 50 DBA, as measured at the closest neighboring inhabited dwelling at the time of installation, except during short-term events such as severe wind storms and utility outages.

E. Compliance with New York State Uniform Building Code. The application for a Small Wind Energy System shall be accompanied by standard drawings of the wind turbine structure, including the tower, base and footings. An engineering analysis of the tower showing compliance with the New York State Uniform Building Code and certified by a licensed professional engineer shall also be submitted. This requirement may be satisfied by documentation presented by the manufacturer.

F. Compliance with National Electric Code. The application for a Small Wind Energy System shall be accompanied by a line drawing of the electrical components on a plot plan in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This requirement may be satisfied by documentation supplied by the manufacturer.

G. Compliance with FAA regulations. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports. The allowed height shall be reduced to comply with all applicable federal aviation requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.

H. Utility notification. No Small Wind Energy System shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

I. Liability Insurance. Prior to the construction of any Small Wind Energy System, and on an annual basis thereafter, the owner shall provide proof in the form of a duplicate insurance policy or a certificate issued by an insurance company that liability insurance has been obtained to cover damage or injury which might result from the use of the system or any part thereof.

7. Construction Standards.

A. Exterior lighting on any structure associated with the Small Wind Energy System shall not be allowed, except that which is specifically required by the Federal Aviation Administration.

B. The system's tower and blades shall be a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and shall incorporate non-reflective surfaces to minimize any visual disruption.

C. All on-site electrical wires associated with the system shall be installed, underground, except for tie-ins to a public utility company and public utility company transmission poles, towers and lines.

D. At least one sign shall be posted on the tower at a height of five feet warning of potential electrical shock or high voltage and potential harm from revolving machinery.

E. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.

F. Towers shall be constructed to provide one of the following means of access control or other appropriate method of access:

(1) Tower-climbing apparatus located no closer than 12 feet from the ground;

and

(2) A locked anti-climb device installed on the tower (if tower is a climbable

type).

G. Anchor points for any guy wires for a system tower shall be located within the

property that the 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 sheathed in bright orange or yellow covering from three to eight feet above the ground.

H. All small wind energy systems shall be equipped with manual and automatic overspeed controls. The conformance of rotor and overspeed control design and fabrication with good engineering practices shall be certified by the manufacturer.

8. Abandonment of Use. A Small Wind Energy Systems that is not used for 12 successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any permit shall constitute grounds for the revocation of the permit by the Building Department.

9. Inspection. The Code Enforcement Officer or his designated representative shall have the right at any reasonable time to perform an inspection of a Small Wind Energy System, after conducting the inspection, the Code Enforcement Officer may order the owner to render the system inoperative for reasons related to assuring safety of operations or abating noise. The owner shall not return the system to service until any and all of the reasons which caused the Code Enforcement Officer to issue the order to the owner to make the system inoperative have been corrected. Prior to allowing a system to resume operations, the Code Enforcement Officer may require the owner to have an inspection made and a report issued by a professional engineer licensed in the State of New York, certifying that the system is safe.

10. Fees.

A. In addition to any fee schedule adopted by the Town of Busti Town Board, there shall be non-refundable application fee as follows:

1. Small Wind Energy System: \$100.00 per application.

B. The Town Board may amend these fees, by resolution after a properly noticed public hearing.

11. Enforcement; Penalties and Remedies for Violations.

A. The Town Board may appoint such Town staff or outside consultants as it sees fit to enforce this Section.

B. Any person owning, controlling, or managing any building, structure, or land who shall undertake a wind energy conversion facility in violation of this Section or in noncompliance with the terms and conditions of any permit issued pursuant to this Section, or any order of the code enforcement officer, and any person who

shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$500 or to imprisonment for a period of not more than fifteen days, or subject to both such fine and imprisonment for a First offense, for a Second offense (both within a period of five years), a fine not less than \$500 nor more than \$750, or imprisonment not to exceed six months, or both, and for a Third or more offense (all of which occurred within five years), a fine not less than \$750 nor more than \$ 1,000, or imprisonment not to exceed six months, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amounts set forth herein for each violation and each week said violation continues shall be deemed a separate violation.

C. In case of any violation or threatened violation of any of the provisions of this Section, including the terms and conditions imposed by any permit issued pursuant to this Section, 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.

SECTION 3. DEFINITIONS

The following definitions are hereby added to Section 91-202 of the Town of Busti Zoning Code, in the appropriate alphabetical order:

BEHIND THE METER - A generating system producing electrical power for use on a grid-connected property, but which system may or may not be capable of sending power back into the utility grid.

FALL ZONE – The area, defined as the farthest distance from the tower base, in which a wind turbine tower will collapse in the event of a structural failure. The radius of the area is the same as the total system height.

OFF-GRID - A stand-alone generating system not connected to or in any way dependent on the utility grid.

SMALL WIND ENERGY SYSTEM - A wind energy conversion system (WECS) consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 300 kW, and which is primarily but not exclusively intended to provide electrical power for use on-site (either behind the meter or off-grid).

TURBINE - The parts of a wind system including the rotor, generator and tail.

TOTAL SYSTEM HEIGHT - The height from ground level to the tip of the rotor at its highest point.

WIND TURBINE TOWER - The guyed or freestanding structure that supports a wind turbine generator.

WIND TURBINE TOWER HEIGHT - The height above grade of the fixed portion of the wind turbine tower, excluding the wind turbine and rotor.

SECTION 4. SEVERABILITY.

If any part or provision of this Local Law shall be declared invalid, void, unconstitutional, 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 been enacted.

Section 5. effective date.

This Local Law shall take effect immediately upon having been filed with the Secretary of State of the State of New York.

Upon roll vote:

Supervisor Sullivan, aye
Councilman Robbins, aye
Councilwoman Hern, aye
Councilman Sanders, aye
Councilman Lawton, aye.
Carried.

Councilman Lawton reported on attending the Chautauqua Lake Commission meeting and will be meeting once a month with the other municipalities around the lake and bringing recommendations back to the board.

Upon motion duly made by Supervisor Sullivan the meeting adjourned at 7:30 p.m.

Diane M. VanDewark, Town Clerk