

Local Law 1 of 2008
Windmill Local Law

This local law will amend the ordinances of the Town Of Brant to regulate and restrict the height, size, location and other features of windmills, as hereinafter defined and will after reasonable consideration of the character of the Town of Brant and its peculiar suitability for particular uses, conserve and enhance natural resources and land values and protect the existing properties and environment.

Therefore the ordinances of the Town of Brant are hereby amended to add a new section to Chapter 61 that will read as:

1. WINDMILL - RESIDENTIAL AND/OR COMMERCIAL - a windmill capable of producing no more than 10KW nameplate power that provides electrical or mechanical power to an individual residence, operating farm or single commercial enterprise. The windmill and can be either the primary or a secondary source of energy. Sale or credit of excess electricity to the utility grid is permitted as a tertiary use.

2. WINDMILL - UTILITY SCALE - a windmill or series of windmills in a facility, whose primary purpose is to generate electricity that is fed into a power grid for sale.

3. WINDMILL HEIGHT - the total height of the structure including blades.

4. EXEMPT WINDMILL - Any device that is not used for the generation of electricity, or that shall only be capable by nameplate designation of generating 10kw or less of electricity, shall not be covered by this chapter but shall remain subject to all other building and zoning codes which may be applicable.

5. SEVERABILITY CLAUSE - If any section, paragraph, subdivision or provision of this Local Law shall be held invalid, such invalidity shall apply only to the section, paragraph, subdivision or provision adjudged invalid, and the rest of this local law shall remain valid and effective.

6. EFFECTIVE DATE - ALL Provisions of this local law take effect upon filing by the Town Clerk with the New York Secretary of State.

I. Residential and/or Commercial Windmills.

A. Application Process

- (1) Special Use Permit
A special use permit shall be required. Therefore, the pertinent provisions of the BRANT Town Zoning Law applying to special use permits will apply except that such permit once issued will be in effect for a period commensurate with the useful life of the windmill provided all conditions attached to the permit are being met.
- (2) SEQRA
Applicant shall submit the SEQRA long form for evaluation of environmental concerns.

B Placement

- (1) Setbacks, Ice and Blade Throw.

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Setbacks from adjacent property lines, rights-of-way, easements, public ways or power line (not to include individual residential feed lines) shall be 100 ft. or the maximum structure height, whichever is greater

- (2) Districts Allowed In:
R-R, R-1, R-2, C, I, A
- (3) Noise Level Limit
Individual wind turbine towers shall be located with relation to property lines so that the level of noise produced during wind turbine operation shall not exceed 50 db(A) measured at the boundaries of all of the closest parcels that are owned by non-site owners and that abut either the site parcel(s) or any other parcels adjacent to the site parcel held in common by the owner of the site parcel as those boundaries exist at the time of the special use permit application.
- (4) Guy Wires and/or Anchors.
All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point ten (10) feet above the ground. Setbacks for any windmill tower from any property line shall be a distance of fifty (50) feet from any anchor point for guy wires or cables.
- (5) Lighting.
No windmill tower shall be lighted artificially unless such lighting is required by a state or federal agency. Use of nighttime, and overcast daytime condition stroboscopic lighting or other tower facility lighting requirements for the Federal Aviation Administration shall be subject to on-site field testing before the Planning Board, as a prerequisite to that board's approval, with consideration of existing residential or Commercial uses within 2000 feet of each tower for which such strobe lighting is proposed.
- (6) Location on Lot.
Windmill location is not restricted to rear or side yards. The Planning Board shall address location on lot during site plan review.
- (7) Definition of Lot.
An applicant can enlarge the boundaries of the "lot" as that term is used in this chapter by obtaining a waiver from any adjacent lot owner of any of the setback or noise or other issues measured from a lot line, provided that the waiver shall run with the land. In that event the lot line will be extended to include the lot covered by the waiver.

C. Specifications.

- (1) Maximum Height Limit.
Maximum height limit shall be no greater than 150 feet.
- (2) KW Limit
10KW nameplate capacity
- (3) Color.
Windmill color will be white or as otherwise determined by the planning board unless an agency of the state or federal government mandates something different.
- (4) Structure, Solid tube.
- (5) Type.

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- All types of windmills should be allowed.
- (6) Design and Specifications.
Detailed design and specifications will be required during site plan review.
 - (7) Bird Migration Study.
No bird migration study shall be required for residential or commercial windmills unless the environmental review undertaken pursuant to SEQRA shall show that such study is appropriate under the circumstances
 - (8) Ice Buildup Sensors.
Ice buildup sensors are not required for residential and/or commercial windmills.
 - (9) Connecting Cables.
All power transmission/distribution lines from the windmill electricity generation facilities shall be underground from the windmill electric generation facilities to the collection station where possible. The Planning Board may, but is not required to, make such placement mandatory as a part of the special use permit process.
 - (10) Blade to Ground Distance.
The lowest portion of the blade may not be closer than (30) feet to the ground.

D Notice and Safety Consideration.

- (1) Fencing.
Access to the tower shall be limited by secured entry to the tower base.
- (2) Limit Tip Speed.
No windmill shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and turbine components.

E Operating Considerations.

- (1) Removal if Not Operational.
Any windmill which has been out of active and continuous service for a period of one (1) year, shall be removed from the premises to a place of safe and legal disposal. Any and all structures, guy cables, guy anchors and/or enclosures accessory to such windmill shall also be removed. The site shall be restored to as natural a condition as possible. Such removal shall be completed within (18) eighteen months of the cessation of active and continuous use of such windmill.
- (2) Landscaping.
Upon completion of installation the site shall be returned as close as possible to its pre-installation condition.
- (3) Buildings and Grounds Maintenance.
Any damaged or unused parts shall be removed from the premises within thirty (30) days or kept in a fenced designated storage area or legally disposed of: All maintenance equipment and spare parts, etc shall also be kept fenced in a designated storage area. Oil shall be disposed of legally.
- (4) Ownership Changes
If the ownership of a windmill operating under a special use permit changes, the special use permit shall remain in force. All conditions of the special use permit, including bonding, letters of credit or continuing certification requirements of the

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original owner will continue to be obligations of succeeding owners. However, the change in ownership shall be registered with the Code Enforcement Officer.

(5) Windmill Modifications

Any and all modifications, additions, deletions or changes to windmills that operate under a special use permit whether structural or not, shall be made by special use permit, except that such special use permit shall not be required for repairs which become necessarily in the normal course of use of such windmill or become necessary as a result of natural forces, such as wind or ice.

F Certifications.

(1) Inspection Report.

An inspection report prepared by the turbine supplier/manufacturer licensed in the State of New York or a New York State Licensed Professional Engineer will be required at the time of installation. The inspection report will report on the satisfactory installation and operation of the structure and the electronics. The report shall show that all applicable manufacturers, New York State and U.S. standards for the construction, operation and maintenance of the proposed windmill have been met or are being complied with. Windmills shall be built, operated and maintained to applicable industry standards of the Institute of Electrical and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI).

The report will be issued to the applicant and the Town of Brant. The report must be delivered to the Code Enforcement Officer before the Windmills put into service. An additional report may be required by the Code Enforcement officer at anytime after the installation if in the opinion of the Code Enforcement officer such report is required to assure the safe operation of the Windmill.

(2) Insurance – Liability.

Prior to issuance of a building permit, the application shall provide the Town proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, of liability insurance, of a level to be determined by the Town Board in consultation with the Town's insurer, to cover damage or injury which might result from the installation, operation, maintenance or decommissioning of the windmill or any part of the transmission/distribution system associated therewith.

(3) Performance Bond (Removal)

(a) The owner of a windmill, after such application has been approved and before a building permit is issued, shall submit a letter of credit or other acceptable surety sufficient to assure the removal of the windmill if the use of the windmill is discontinued pursuant to the requirements of subdivision c.) below.

(b) If transmission/ distribution service from a windmill is to be discontinued for a period exceeding six (6) months the owner of such windmill shall notify the Code Enforcement Officer within thirty (30) days of the date such discontinuance commenced.

(c) Any windmill which has been out of active and continuous service for a period of one (1) year shall be removed from the premises to a place of safe and legal disposal. Any and all structures, guy cables, guy anchors and/or

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enclosures accessory to such windmill shall also be removed. The site shall be restored to as natural a condition as possible. Such removal shall be completed within (18) eighteen months of the cessation of active and continuous use of such windmill.

- (5) **Lightning Strike/Grounding.**
The applicant shall show that all applicable manufacturers, New York State and US. Standards for the construction, operation and maintenance of the proposed windmill have been or are being complied with.
- (6) **Environmental Contamination by Oil.**
A performance bond will be required to deal with this situation. The owner of a windmill after such application has been approved and before a building permit is issued, shall submit the maximum amount letter of credit or acceptable surety necessary to ensure the cleanup of any contamination according to DEC requirements. An Engineer selected by the Town and the Town Attorney shall judge the Letter of credit or other surety adequate and satisfactory before a building permit is issued.
- (7) **Wind Speed/Wind Load.**
Certification is required by a registered professional engineer or manufacturer's certification that the tower design is sufficient to withstand windload requirements for structures as established by the Building Code of New York State.
- (8) **Bonding/Undertaking**
A surety bond provider or provider of letter of credit shall be required to notify the town cancellation or lapse of the undertaking.
- (9) **Continuing Obligations.**
All requirements set forth above shall remain in force for the life of the special use permit.

II Utility Scale Windmill.

- A. **Application Process.**
 - (1) **Special Use Permit**
A Special use permit shall be required.
 - (2) **Site Plan Review.**
A site plan review is required before a building permit may be issued for an industrial windmill.
 - (3) **SEQRA**
Applicant shall submit the long SEQRA form for the Planning Boards evaluation together with the application. In addition, the applicant shall submit the visual Environmental Assessment Form addendum to the long form environmental assessment
 - (4) **Fund to Reimburse Town Expenses**
Prior to a special use permit for a Utility Scale Windmill being processed under this chapter an applicant shall be required to provide Ten Thousand (10,000.00) dollars to be deposited by the Town into an interest bearing savings account to be used to pay expenses of the Town incurred in processing the application. Such expenses shall include increased expenses of labor for Town employees directly related to processing of the application as well as payment to engineers and or attorneys or

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other consultants or contractors to assist the Town in processing the application. The Town shall notify the applicant that expenses have been incurred and that the Town intends to draw money from the account in reimbursement for such specifically identified expenses. The Applicant shall have 10 days from receipt of such notification to object to the withdrawal. In the event the applicant is so notified and objects to the withdrawal then the Town will meet with the applicant to resolve any dispute. In the event that the dispute cannot be so resolved then processing the application may, but is not required to, be suspended pending a resolution of the dispute. The town may request additional deposits to the account whenever the amount on deposit is below Two-Thousand Five Hundred (\$2500.00) Dollars.

B. Placement

- (1) Setbacks, Ice and Blade Throw From Property Line.
 - a) The minimum setback distance between each production Utility scale wind power electric generation unit (wind turbine tower) from adjacent property lines, rights-of-way, easements, public ways, power lines, other generation units or areas 50 ft plus the maximum structure height. Structure height includes the blades. The property line setback requirement may be reduced by the Planning Board as an incident of special permit review when the Planning Board finds the following:
 - (I) both properties on each side of the property Line in question will have electric generation or transmission facilities constructed on them as part of the project review, or
 - (II) the owner of the property for which the reduced setback is sought executes and presents for recording a development easement satisfactory to the Town in which the reduced setback is consented to, and construction within, and use of the easement area is appropriately restricted.
- (2) Districts Allowed In C, I, A
- (3) Noise Level Limit.

Individual wind turbine towers shall be located with relation to property lines so that the level of noise produced during wind turbine operation shall not exceed 50 db(A), measured at the boundaries of the closest parcels that are owned by non-site owners and that abut either the site parcels or any other parcels adjacent to the site parcel held in common by the owner of the site parcel as those boundaries exist at the time of the special use permit application.
- (4) Guy Wires and/or Anchors.

All guy wires or cables shall be marked with high-visibility orange or yellow sleeves from the ground to a point ten (10) feet above the ground. Setbacks for any windmill tower from any property line shall be a distance of (50) feet from any anchor point for guy wires or cables.
- (5) Lighting.

Towers shall be lit according to State and Federal agency guidelines.
- (6) View Impact.

The Applicant, in consultation with the Planning Board, will prepare a Visual Impact Assessment (VIA) to evaluate the project's impact on scenic resources

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within a 5-mile radius of the project site. The VIA may include any or all of the following as determined in consultation with the Planning Board:

- a) Mapping of scenic resources of statewide significance, as defined by the NYS Department of Environmental Conservation (DEC) Visual Policy and of local significance, as officially listed by the relevant municipality within the study area.
- b) Viewshed mapping and/or cross section analysis to identify areas (including the significant resources identified above) with potential views of the project
- c) Description of the character and quality of the affected landscape.
- d) Photographic situations of what the proposed project will look like from a reasonable number or representative viewpoints within the 5-mile radius study area to be selected in consultation with the Planning Board.
- e) Evaluation of the project's visual impact based on the viewshed mapping and photographic simulations described above.
- f) Recommended visual mitigation measures in accordance with DEC Policy if warranted, based on the results of the impact evaluation described above.

(7) Broadcast Interference

- a.) No individual tower facility shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the links operation.
- b) No individual tower facility shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna (including residential reception antenna) for radio, televised or wireless phone or other personnel communication systems would likely to produce electromagnetic interference with signal transmission or reception.
- c) The recipient of the special use permit must correct any unforeseen interference to the satisfaction of the Planning Board within sixty (60) days of any complaint.

(8) Location on Lot.

The Planning Board shall address location on lot during site plan review. Location shall be in keeping with all setback requirements except as where such requirements have been waived or varied by the Planning Board.

- (9) Substations and/or Switch yards and connecting Distribution Transmission Lines. Planning Board shall review locations and visual considerations of the substations and/or switch yards and connecting distribution/transmission Lines at time of site plan approval.
- (10) The applicant will be responsible for any road repairs that may be necessarily upon construction completion. The applicant shall document local road conditions in the vicinity of the project prior to construction. Project approval should stipulate that the applicant shall take all reasonable measures to avoid damage to roads or interruption to other traffic during development. Applicant shall be responsible to restore any road damage to the documented pre-construction conditions. The

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Planning Board may, but is not required, to require a bond or letter of credit or other financial assurance that the roads will be so repaired as a condition of the special use permit.

C Specifications.

- (1) Maximum Height Limit.
Maximum height limit shall be no greater than 500 feet.
- (2) Color.
Utility Scale windmills must be of a color approved by the Planning Board unless an agency of the state or federal government mandates something different.
- (3) Structure.
Solid tube.
- (4) Type.
All types of windmills will be allowed.
- (5) Design and Specifications.
Detailed design and specifications and layout of turbine array will be required during site plan review.
- (6) Bird Migration Study.
A bird migration study shall be performed for Utility Scale windmills as may be required by the New York State Department of Environmental Conservation, or the Town as part of the SEQRA review.
- (7) Connecting Cables.
All power transmission distribution lines from the windmill electricity generation facilities shall be underground from the windmill electric generation facility to the collection station. All other circumstances would be reviewed during the site plan process.
- (8) Blade to Ground Distance.
The lowest portion of the blade may not be closer than thirty (30) feet to the ground.

D. Notice and Safety Considerations.

- (1) Fencing.
Access to the towers shall be limited by secured entry to the tower base.
- (2) Limit Tip Speed.
No wind turbines shall be permitted that lack an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the tower structure, rotor blades, and turbine components.

E Operating Considerations

- (1) Removal if Not Operational.
Any windmill which has been out of active and continuous service for a period of one (1) year, shall be removed from the premises to a place of safe and legal disposal. Any and all structures, guy cables, guy anchors and/or enclosures accessory to such windmill shall also be removed. The site shall be restored to its

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pre installation condition as possible. Such removal shall be completed within (18) eighteen months of the cessation of active and continuous use of such windmill.

- (2) Landscaping.
Upon completion of installation the site shall be returned as close as possible to its pre-installation state.
- (3) Building and Grounds Maintenance.
Any damaged or unused parts shall be removed from the premises within thirty (30) days or kept in a fenced designated storage area or legally disposed of. All maintenance equipment and spare parts, etc shall also be kept in a fenced designated storage. Oil shall be legally disposed of.
- (4) Ownership Changes.
If the ownership of a windmill operating under a special use permits changes, the special use permit shall remain in force. All conditions of the special use permit, including bonding, letters of credit or continuing certification requirements of the original owner will continue to be obligations of succeeding owners. The change in ownership shall be registered with the Code Enforcement Officer at least 30 days prior to the change becoming effective.
- (5) Windmill Modifications.
Any and all modifications, additions, deletions or changes to windmills that operate under a special use permit, whether structural or not, shall be made by modification to the special use permit, except that such modification shall not be required for repairs which become necessary in the normal course of use of such windmill or become necessary as a result of natural forces, such as wind or ice.

F. Certifications.

- (1) Routine Inspection Report.
The applicant shall show that all applicable manufacturers, New York State and US. standards for the construction, operation and maintenance of the proposed windmill have been met or are being complied with. Windmills shall be built, operated and maintained to applicable industry standards of the Institute of Electrical and Electronic Engineers (EBEE) and the American National Standards Institute (ANSI). An inspection report prepared by a New York State licensed Professional Engineer will be required at the time of installation and every Five (5) years thereafter. The inspection reports required at the time of installation and thereafter will be for the structure and the electronics and will be issued by the engineer to the Code Enforcement Officer.
- (2) Insurance – Liability.
Prior to issuance of a building permit, the applicant shall provide the Town proof in the form of a duplicate insurance policy or a certificate issued by an insurance company, of liability insurance, of a level to be determined by the Town Board in consultation with the Town’s insurer, to cover damage or injury which might result from installation, operation, maintenance and or decommissioning of the windmill or any part of the generation and transmission facility.

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- (3) Performance Bond (Removal)
- (a) The owner of a windmill after such application has been approved and before a building permit is issued, shall submit a letter of credit or other acceptable surety sufficient to ensure the removal if the use of the windmill is discontinued. The requirements of subdivision c) below shall apply. An Engineer selected by the Town and the Town Attorney shall judge this letter of credit or other surety adequate and satisfactory before a building permit is issued. Said letter of credit shall be forfeited if removal is not completed by the deadline specified in subdivision c.) below.
 - (b) if transmission/distribution service from the windmill is discontinued for a period exceeding six (6) months, the owner of such windmill shall notify the Code Enforcement Officer within (18) eighteen days following the expiration of the (6) six month discontinuance period.
 - (c) Any windmill which has been out of active and continuous service for a period of one (1) year shall be removed from the premises to a place of safe and legal disposal. Any and all structures, guy cables, guy anchors and/or enclosures accessory to such windmill shall also be removed. The site shall be restored to as natural a condition as possible. Such removal shall be completed within (18) eighteen months of the cessation of active and continuous use of such windmill. Any foundation left must be at least 3' below surface land or facilities shall be left at the discretion of the land owner.
- (5) Lightning Strike/Grounding.
The applicant shall show that all applicable manufacturers, New York State and U.S. standards for the construction, operation and maintenance of the proposed windmills to minimize the impact of lightning strikes have been or are being complied with.
- (6) Environmental Contamination by Oil.
The owner of the windmills after such application has been approved and before a building permit is issued, shall submit the maximum amount letter of credit or acceptable surety necessary to ensure the cleanup of any contamination according to DEC requirements. An Engineer selected by the Town and Town Attorney shall judge the letter of credit or other surety adequate and satisfactory before a building permit is issued.
- (7) Wind Speed Load.
Certification is required by a New York State licensed Professional Engineer or manufacturer's certification that the tower design is sufficient to withstand wind load requirements for structures as established by the Building Code of New York State.
- (8) Continuing Obligations.
All requirements specified above shall remain in force for the life of the special use permit.

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III. Enforcement. This local law shall be enforced by the Code Enforcement Officer of the Town of BRANT or such enforcement officer duly empowered by the Town of BRANT.

IV Penalties.

- a.) Any person who shall violate any of the provisions of this local law shall be guilty of an offense and subject to a mandatory fine of Two Hundred Fifty Dollars (\$250 00) for each offense. Every such person shall be deemed guilty of a separate offense for each week such violation, disobedience, omission, neglect or refusal shall continue.
- b.) In addition to the above provided penalties, the Board may also maintain an action or proceeding in the name of the Town in a court or competent jurisdiction to compel compliance with or restrain by injunction the violation of any article of this local law.
- c.) In addition to any other sanctions and or penalties the Board shall specifically have the right, at the Board's discretion, to require that the facility be taken out of service pending a correction of the violation if such violation places the health safety or welfare of the Town and or it's residents or visitors at risk.

VI. Separability. Each separate provision of this local law shall be deemed independent of all other provisions herein, and if any provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable.

VII. Effective. This law shall be effective upon filing with the Secretary of State

V. Fees

- (A) Application fee
A \$10.00 application shall be charged for each residential or commercial windmill application.
A \$1000.00 application fee shall be charged for each Utility Scale windmill or group of windmills proposed as a single project. Applicant for a utility scale windmill shall also pay any and all costs of the Town incurred to review each application
- (B) Annual Fee.
Each year, at the Organizational Meeting, or at such other times as the Town Board shall determine, an annual fee shall be set for each residential and/or commercial windmill under section II of this local Law.
- (C) Farm Use exemption.
The owner of a farm, as defined in the Zoning Ordinance of the Town of Brant, shall be exempt from annual fees for a windmill or windmills, if the electrical or mechanical power is used solely for farm use and operation.