

MINUTES of the Regular Meeting of the Pembroke Town Board held on December 12, 2007 at the Pembroke Town Hall, 1145 Main Road, Corfu, NY.

PRESENT: Edward L. Beideck, Supervisor
E. James Mallory, Councilman
Peter Sformo, Councilman
Gary DeWind, Councilman
Edward Arnold, Jr., Councilman

OTHERS PRESENT: Andrea Davis, Town Clerk; Stephen Stocking, Highway Superintendent; Deborah Conti, Assessor; Richard Reeves, Zoning Enforcement Officer; James Tuttle; Thomas Schneider, Vice Chairman ZBA; & Nicole Begin, Deputy Town Clerk.

Deborah Conti gave the invocation.
Supervisor Beideck led the Pledge to the Flag.

The meeting was called to order at 7:00 P.M.

On **MOTION** of Councilman Mallory, seconded by Councilman Arnold, to approve the Minutes of the 11/09/07 Workshop; and the 11/14/07 Regular Meeting,
ALL AYES – MOTION CARRIED.

DEPARTMENT REPORTS

ASSESSOR

Deborah Conti reported that she has been getting the mailing ready for the new year; about 299 Senior Star renewals and approx. 89 Ag exemptions will be sent. Each envelope contains a notice that applications will be accepted on a daily basis from 9:00 A.M. to 4:00 P.M. except Wednesday which will be from 6:00 – 8:00 P.M.

PLANNING BOARD

There was no November meeting.

ZONING BOARD OF APPEALS

There was no November meeting.

ZONING AND CODES

Zoning and Codes monthly report for November has been submitted and filed.

The status of the burned out building on Route 5 was reported on. A copy of the letter sent to Mr. Shrock was read. The Sauka matter on Genesee Street has been turned over to Mark Boylan.

ZONING ENFORCEMENT OFFICER

Zoning Enforcement Officer's monthly report for November has been submitted and filed.

There was another fire at 9040 Alleghany Road. Councilman Sformo was informed of the probable cause; he will follow up with Mr. Bremiller.

JUSTICES

The Justices' monthly reports for November have been submitted and filed.

Supervisor Beideck reviewed the reports for the Board.

HIGHWAY

- The Highway equipment is working well.
- A price of approx. \$20,000 has been received regarding the electronic sign for the corner.

TOWN CLERK

- Town Clerk's monthly report for November has been submitted and filed.
- The moving of trash day to the second Saturday has been included in our Newsletter, will be advertised in the Daily News and the Penny Saver, and notice has been put on the website.
- A letter has been received from the Office of the State Comptroller acknowledging receipt of the Order Establishing Water District #3.

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SUPERVISOR'S REPORT

The Supervisor's monthly report for November has been submitted and filed.

Supervisor Beideck reported on the following:

- A Public Hearing regarding Wind Energy and Incentive Zoning was held on December 5th and the

subjects were discussed further with Mark Boylan at the December Workshop. The Board has decided to go ahead with the Local Laws.

- Faye Strollo will be retiring at the end of the year. It has been the practice of the Town Board to allow accumulated sick time hours for fulltime employees to use those funds for future health insurance monies.
- Eric Vonkramer and Deborah Kovach are not asking for reappointment to the ZBA, therefore, their positions as well as Anna Wells' vacant position, will need to be filled. Thomas Schneider, Vice Chairman, has requested the Chairman position.
- GEDEC has requested a letter of intent from the Company that will be going into the Commerce Park.
- Laura Landers will be speaking about GASBY at the GAM Meeting.
- The Town of Pembroke Year End Meeting will be held December 27th at 7:00 P.M.
- The Annual Report from the Historical Department has been received.
- We have asked our Insurance Rep. to obtain bids and it appears that our rates may be going down.

COMMITTEE REPORTS

Audit, Finance, Insurance, Investment, & Purchasing

There was no report.

Building & Ground

There was no report.

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Highway/Assessment/Court

There was no report.

Planning, Zoning, Code Enforcement

Councilman Arnold said that a letter has been received from Thomas Schneider requesting appointment as Chairman to the ZBA; interviews will be scheduled for the other vacant positions.

Intermunicipal

There was no report.

Public Services, Water, Sewer, Refuse/Recycling

Councilman De Wind stated that our proposed sewer district is in its infancy and we think we can do it. We have started to talk to the Truck Stop owners/managers regarding their thoughts on the matter. Water District #3 is moving right along.

We spoke with the Grant Writers regarding Small Cities. The Board would like to have the line go from North Pembroke Road down Indian Falls Road to Route 77 and back to the bridge. There are approximately 70 owners and 12 vacant homes. The Indian Falls Road Residents have submitted a petition as well as ten (10) of the homeowners on Phelps near North Pembroke Road.

Youth Recreation

There was no report.

Human Resources/Benefits

There was no report.

Parks/Land Acquisition

Councilman Arnold discussed the grant monies we received and the possible issue of the gas wells located on the property. Mark Boylan will be contacted for clarification.

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Economic & Community Development

There was no report.

PUBLIC PARTICIPATION

There was no public participation

RESOLUTIONS

On **MOTION** of Councilman Arnold, seconded by Councilman De Wind, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Mallory, AYE; Councilman Sformo, AYE; Councilman De Wind, AYE; Supervisor Beideck, AYE.
ALL AYES - MOTION CARRIED

RESOLUTION #116 of 2007 – RESOLUTION AUTHORIZING ADOPTION BY THE TOWN BOARD OF THE TOWN OF PEMBROKE OF THE WIND ENERGY LAW

WHEREAS, a resolution was duly adopted by the Town Board of the Town of Pembroke for a public hearing to be held by said Governing Body on December 5, 2007 at 7:05pm at the Corfu Fire Hall to hear all interested parties on a proposed Town of Pembroke Wind Energy Law, and

WHEREAS, notice of said public hearing was duly advertised in the Batavia Daily News, the official newspaper of said Town, on November 19, 2007, and

WHEREAS, said public hearing was duly held on December 5, 2007 at 7:05pm at the Corfu Fire Hall and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said Wind Energy Law, or any part thereof, and

WHEREAS, pursuant to part 617 of the implementing regulations pertaining to article 8 State Environmental Quality Review Act (SEQRA) it has been determined by the Town Board of said Town that adoption of said proposed Wind Energy Law would not have a significant effect upon the environment and could be processed by other applicable governmental agencies without further regard to SEQRA, and

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WHEREAS, the Genesee County Department of Planning recommended approval of the proposed Wind Energy Law on November 8, 2007, pursuant to section 239-m of the General Municipal Law, and

WHEREAS, the Town Board of the Town of Pembroke, after due deliberation, finds it in the best interest of said Town to adopt said Wind Energy Law; **NOW, THEREFORE, BE IT**

RESOLVED, that the Town Board of the Town of Pembroke hereby adopts said Wind Energy Law, a copy of which is attached hereto and made a part of this resolution, and **BE IT FURTHER**

RESOLVED, that the Town Clerk be and she hereby is directed to enter said Wind Energy Law in the minutes of this meeting, this Law shall take effect immediately

On **MOTION** of Councilman Arnold, seconded by Councilman De Wind, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Mallory, AYE; Councilman Sformo, AYE; Councilman De Wind, AYE; Supervisor Beideck, AYE.
ALL AYES - MOTION CARRIED

RESOLUTION #117 of 2007 – RESOLUTION AUTHORIZING ADOPTION BY THE TOWN BOARD OF THE TOWN OF PEMBROKE OF THE INCENTIVE ZONING LAW

WHEREAS, a resolution was duly adopted by the Town Board of the Town of Pembroke for a public hearing to be held by said Governing Body on December 5, 2007 at 7:05pm at the Corfu Fire Hall to hear all interested parties on a proposed Town of Pembroke Incentive Zoning Law, and

WHEREAS, notice of said public hearing was duly advertised in the Batavia Daily News, the official newspaper of said Town, on November 19, 2007, and

WHEREAS, said public hearing was duly held on December 5, 2007 at 7:05pm at the Corfu Fire Hall and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said Incentive Zoning Law, or any part thereof, and

WHEREAS, pursuant to part 617 of the implementing regulations pertaining to article 8 State Environmental Quality Review Act (SEQRA) it has been determined by the Town

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Board of said Town that adoption of said proposed Incentive Zoning Law would not have a significant effect upon the environment and could be processed by other applicable governmental agencies without further regard to SEQRA, and

WHEREAS, the Genesee County Department of Planning recommended approval of the proposed Incentive Zoning Law on November 8, 2007, pursuant to section 239-m of the General Municipal Law, and

WHEREAS, the Town Board of the Town of Pembroke, after due deliberation, finds it in the best interest of said Town to adopt said Incentive Zoning Law; **NOW, THEREFORE, BE IT**

RESOLVED, that the Town Board of the Town of Pembroke hereby adopts said Incentive Zoning Law, a copy of which is attached hereto and made a part of this resolution, and **BE IT FURTHER**

RESOLVED, that the Town Clerk be and she hereby is directed to enter said Incentive Zoning Law in the minutes of this meeting, this Law shall take effect immediately

On **MOTION** of Councilman Sformo, seconded by Councilman De Wind, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Mallory, AYE; Councilman Sformo, AYE; Councilman De Wind, AYE; Supervisor Beideck, AYE.
ALL AYES - MOTION CARRIED

RESOLUTION #118 of 2007 – Faye Strollo Sick Time

WHEREAS Faye Strollo will be retiring from fulltime employment with the Town of Pembroke on December 31, 2007; and

WHEREAS Faye Strollo has accumulated 1124 hours of unused sick time; and

WHEREAS it is the practice of the Town of Pembroke to allow retirees who have unused sick time to utilize these monies for future health insurance payments; and

WHEREAS the 1124 hours @ \$13.70 an hour amounts to \$15,398.80; **NOW, THEREFORE, BE IT**

RESOLVED that \$15,398.80 be transferred from sales tax to the benefits savings account to be utilized by Faye Strollo for health insurance payments for her until it is exhausted.

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On **MOTION** of Councilman Arnold, seconded by Councilman Mallory, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Mallory, AYE; Councilman Sformo, AYE; Councilman De Wind, AYE; Supervisor Beideck, AYE.
ALL AYES - MOTION CARRIED

RESOLUTION #119 of 2007 – David Knupfer/Planning Board Reappointment

WHEREAS David Knupfer's term on the Town of Pembroke Planning Board expires December 31, 2007; and

WHEREAS David Knupfer has requested re-appointment to the Planning Board via a letter dated November 7, 2007; **NOW, THEREFORE, BE IT**

RESOLVED that David Knupfer be re-appointed to a seven (7) year term, expiring December 31, 2014, on the Planning Board.

On **MOTION** of Councilman De Wind, seconded by Councilman Mallory, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Mallory, AYE; Councilman Sformo, AYE; Councilman De Wind, AYE; Supervisor Beideck, AYE.
ALL AYES - MOTION CARRIED

RESOLUTION #120 of 2007 – Deborah Conti/Assoc. of Towns Attendance

WHEREAS Deborah Conti has requested permission to attend the Association of towns 2008 Training Session and Annual Meeting in New York City, February 17 – 20, 2008; and

WHEREAS the cost of this training is budgeted for 2008; and further that the cost will be shared with the Towns of Darien, Bethany and Attica; and

WHEREAS Deborah Conti will act as the Town of Pembroke Proxy to vote for the Town of Pembroke at the

Annual Meeting; **NOW, THEREFORE, BE IT**

RESOLVED that the Pembroke Town Board approves the request of Deborah Conti to attend the Association of Towns Annual Meeting and Training Session February 17 – 20, 2008.

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On **MOTION** of Councilman Mallory, seconded by Councilman Arnold, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Mallory, AYE; Councilman Sformo, AYE; Councilman De Wind, AYE; Supervisor Beideck, AYE.
ALL AYES - MOTION CARRIED

RESOLUTION #121 of 2007 – Year End Meeting

WHEREAS the Pembroke Town Board needs to approve year end invoices, a Special Meeting will be held for the purpose of approving any year end invoices for payment and to take up any other unfinished business and authorize payment of any outstanding bills; **NOW, THEREFORE, BE IT**

RESOLVED that the Pembroke Town Board sets December 27, 2007 at 7:00 P.M. as the date and time for the Year End meeting.

On **MOTION** of Councilman Arnold, seconded by Councilman De Wind, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Mallory, AYE; Councilman Sformo, AYE; Councilman De Wind, AYE; Supervisor Beideck, AYE.
ALL AYES - MOTION CARRIED

RESOLUTION #122 of 2007 – Organizational Meeting

WHEREAS the Town Board needs to have an Organizational Meeting for 2008, The Town Board has selected January 2, 2008 at 8:00 A.M. as the Special Meeting date to organize and conduct any business of the Town that is appropriate at that time.

On **MOTION** of Councilman Mallory, seconded by Councilman Arnold, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Mallory, AYE; Councilman Sformo, AYE; Councilman De Wind, AYE; Supervisor Beideck, AYE.
ALL AYES - MOTION CARRIED

RESOLUTION #123 of 2007- 2009/10 Snow & Ice Agreement

RESOLVED that the Pembroke Town Board authorizes the Supervisor to sign the “Agreement to Extend Indexed Lump Sum Municipal Snow and Ice Agreement with the State of New York DOT” for the 2009/10 contract year.

On **MOTION** of Councilman Arnold, seconded by Councilman De Wind, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Mallory, AYE; Councilman Sformo, AYE; Councilman De Wind, AYE; Supervisor Beideck, AYE.
ALL AYES - MOTION CARRIED

RESOLUTION #124 of 2007 - Citations

WHEREAS Andrea Kruger, Donald Chittenden, Eric VonKramer, and Deborah Kovach will be leaving employment with the Town of Pembroke; and

WHEREAS The Pembroke Town Board would like recognize their dedication and service to the residents of the Town; **NOW, THEREFORE, BE IT**

RESOLVED that citations be prepared for Andrea Kruger, Donald Chittenden, Eric VonKramer, and Deborah Kovach expressing our appreciation for their years of service to the Town of Pembroke.

On **MOTION** of Councilman Arnold, seconded by Councilman Sformo, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Mallory, AYE; Councilman Sformo, AYE; Councilman De Wind, AYE; Supervisor Beideck, AYE.
ALL AYES - MOTION CARRIED

RESOLUTION #125 of 2007– Transfers

RESOLVED, that the Supervisor be authorized to make the following transfers:

FROM:	A 7510.44	School	\$ 450.00
TO:	A 7510.41	Annual	\$ 450.00
FROM:	A 1989.4	Chargebacks	\$ 3,681.00
TO:	A 11220.1	Supervisor Clerk	\$ 3,681.00
FROM:	A 1110.411	Steno	\$ 30.00
TO:	A 1110.14	Pt. Clerk	\$ 30.00
FROM:	DA 5142.4		\$ 3,736.33
TO:	DA 5130.4		\$ 3,736.33

FROM:	A 1420.41		\$ 623.00
TO:	A 1440.4		\$ 623.00

FROM:	A 1680.1	\$ 143.45
TO:	A 1670.4	\$ 73.47
TO:	A 1680.2	\$ 69.98

On **MOTION** of Councilman Mallory, seconded by Councilman Arnold, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Mallory, AYE; Councilman Sformo, AYE; Councilman De Wind, AYE; Supervisor Beideck, AYE.
ALL AYES - MOTION CARRIED

RESOLUTION #126 of 2007 – Abstract #12 of 2007

RESOLVED, that the Supervisor be authorized to pay all claims of Abstract #12 of 2007 General and Highway:

GEN A	V 506 – 509	Prior Pay	\$184,237.33
	V 510 – 540		21,186.00
PART TOWN	V 541 – 548		\$ 900.60
HIGHWAY DA	V 197 – 215		\$ 13,162.34
HIGHWAY DB	V 216 – 218		<u>\$ 1,543.07</u>
		Total Abstract	<u>\$221,029.34</u>

On **MOTION** of Councilman Arnold, seconded by Councilman De Wind, to adjourn the meeting at 7:55 P.M.
ALL AYES – CARRIED.

Respectfully submitted,

Andrea M. Davis, Town Clerk

THESE MINUTES ARE A DRAFT ONLY OF THE TOWN BOARD MEETING OF DECEMBER 12, 2007 AND ARE SUBJECT TO CHANGE AND/OR REVISION PRIOR TO APPROVAL BY THE TOWN BOARD.

LOCAL LAW NO. 4 OF THE YEAR 2007
 OF THE
 TOWN OF PEMBROKE

1. The Zoning Law of the Town of Pembroke known as Local Law No. 1 of 1991, as thereafter amended by Local Law No. 3 of 1992, Local Law No. 2 of 1993, Local Law No. 1 of 1995, Local Law No. 2 of 1995, Local Law No. 2 of 1996, Local Law No. 1 of 1997, Local Law

No. 1 of 2000, Local Law No. 4 of 2000, Local Law No. 1 of 2002, Local Law No. 1 of 2003, Local Law No. 2 of 2003, Local Law No. 1 of 2005, Local Law No. 2 of 2005, Local Law No. 3 of 2005, Local Law No. 2 of 2006, Local Law No. 4 of 2006, Local Law No. 2 of 2007 is hereby further amended by Local Law No. 4 of 2007 as follows:

SECTION WIND ENERGY SYSTEMS

The purpose of this section is to preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of a wind energy system and to allow for the orderly development of land, protect property values, aesthetic conditions. This Section does not repeal, annul, impair, or interfere with any existing ordinance or local law.

It is unlawful for any person to construct, install, maintain, modify, or operate a wind energy system that is not in compliance with this Section or with any condition contained in a Special Use or Zoning Permit issued pursuant to this Zoning Ordinance/Law.

Definitions (To be added to definitions section of the Town of Pembroke Zoning Ordinance/Law):

Commercial Wind Energy System – A wind energy system that is operated primarily (51% or more) to put energy into the electric grid, and/or has a nameplate capacity of more than 50 kilowatts (kW), and/or a total height of more than 175 feet, and/or a blade length of more than 30 feet.

Electromagnetic Interference (EMI) – The interference to communication systems created by the scattering of electromagnetic signals.

Non-commercial Wind Energy System – A wind energy system that is operated primarily (51% or more) for on-site (may be more than one parcel) consumption, and has a nameplate capacity of 50 kW or less, and a total height of 175 feet or less, and a blade length of 30 feet or less.

Shadow Flicker – The alternating pattern of sun and shade caused by wind tower blades casting a shadow.

Total Height – The vertical distance from ground level to the tip of a wind turbine blade when the tip is at its highest point.

Wind Energy System – Equipment that converts and then stores or transfers energy from the wind into usable forms of energy and include any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, maintenance or control facilities, or other component used in the system. A wind energy system can consist of one or more wind towers.

Wind Tower – The monopole, freestanding, or guyed structure that supports a wind turbine generator.

A. PERMIT REQUIREMENTS

1. Special Use Permit A Special Use Permit is required for Commercial and Non-commercial Wind Energy Systems and for any wind energy system, or a component thereof, except for Non-commercial Wind Energy Systems located in County-adopted, State-certified Agricultural Districts for primary on-farm use.

2. Zoning Permit A Zoning Permit and Site Plan Review are required for the installation of a wind tower that is part of any wind energy system.

3. Expiration A permit issued pursuant to this Zoning Ordinance/Law expires if:

- a. The wind energy system is not installed and functioning within 2 year from the date the permit is issued; or
- b. The wind energy system is out of service or otherwise unused for a continuous 12-month period.

4. Fees

- a. The application for a Special Use Permit for a Commercial or Non-commercial Wind Energy System, except for Non-commercial Wind Energy Systems located in County-adopted, State-certified Agricultural Districts must be accompanied by the fee required for a Special Use Permit.
- b. The application for a Zoning Permit for each tower in a Commercial Wind Energy System must be accompanied by the fee required or a Zoning Permit for an accessory use.
- c. The application for a Zoning Permit for each tower in a Non-commercial Wind Energy System must be accompanied by the fee required or a Zoning Permit for a principal use.

5. Financial Assurance The owner of a wind energy system, other than a Non-commercial Wind Energy System, must provide a performance bond, completion bond, or other financial assurance that guarantees the performance of the restoration of the land developed for the wind energy system.

B. RESTORATION REQUIREMENTS

1. A wind energy system that is out of service for a continuous 12-month period or any wind energy system found to be unsafe by the Building Code Enforcement Officer and not repaired by the owner to meet federal, state and local safety standards within six months will be deemed to have been abandoned. The Zoning Enforcement Officer may issue a Notice of Abandonment in form of a letter to the owner of a wind energy system that is deemed to have been abandoned. The Zoning Enforcement Officer will withdraw the Notice of Abandonment if the owner provides information within 30 days from the date of the Notice that causes the Zoning Enforcement Officer to determine that the wind energy system has not been abandoned.

2. The owner of a wind energy system must provide the Zoning Enforcement Officer with a written Notice of Termination of Operations if the operation of a wind energy system is terminated.

3. Within 3 months of receipt of Notice of Abandonment or within 6 months of providing Notice of Termination of Operations, the owner of a wind energy system must:

- a. Remove all wind turbines, above ground improvements, and outdoor storage;
- b. Remove all foundations, pads, and underground electrical wires to a depth of 4 feet below the surface of the ground; and
- c. Remove all hazardous material as defined by NYSDEC from the property and dispose of the hazardous material in accordance with federal and state law.
- d. All disturbed areas will be decompacted and the topsoil will be replaced to original depth reestablishing original contours where possible.

C. SPECIAL USE PERMIT OR ZONING PERMIT REQUIREMENTS

In addition to those criteria set forth under other Sections of this Zoning Ordinance/Law, the Town shall consider the following factors when setting conditions upon Special Use Permits or Zoning Permits issued for all wind energy systems and may hire a professional engineer or consultant to assist in the review of an application at the applicant's expense:

1. Proposed ingress and egress
2. Proximity to transmission lines to link the system to the electric power grid
3. Number of wind towers and their locations
4. Nature of land use on adjacent and nearby properties
5. Location of other wind energy systems in the surrounding area
6. Surrounding topography
7. Proximity to residential structure, residential zoning districts, or areas identified for future residential use
8. Design characteristics that may reduce or eliminate visual obtrusiveness
9. Possible adverse effect on migratory birds, and other animals and wildlife
10. Possible adverse effects on stray voltage, interference with broadcast signals, shadow effect, and noise
11. Impact on the orderly development, property values, and aesthetic conditions
12. Possible adverse effects on groundwater quality or quantity
13. Recommendations of the Town Board
14. Any other factors that are relevant to the proposed system

D. STANDARDS

1. Location

a. A wind energy system may only be located in areas that are zoned Agricultural-Residential (AG-R) and Industrial (I) (Or an overly district as created by the Town).

b. A wind tower may not be located within one-quarter mile (1,320 ft.) of any State Forest, public park, or any other area that has been set aside for the sole purpose of preserving a unique wildlife habitat or natural formation recognized by a State, Federal, or local government designation; or within 1,000 feet of a State-identified wetland.

c. A wind tower may not be located within 2,500 feet from Important Bird Areas as identified by New York Audubon.

2. Set Backs Each wind tower in a wind energy system must be set back (as measured from the center of the base of the tower):

a. From the property line of the parcel on which the wind tower is located by a minimum distance equal to twice the total height of the wind tower, unless waived in writing by the abutting landowner.

b. From any residence or building that is on any parcel by a minimum distance of 1,000 feet, unless waived in writing by the owner of such structure.

c. From any public building that is on any parcel by a minimum distance of 1,000 feet.

d. From the right-of-way of any public road by a minimum distance of 1,000 feet or twice its total height, whichever is greater.

E. SPACING AND DENSITY A wind tower must be separated from any other wind tower by a minimum distance equal to twice the height of the wind tower and by a sufficient distance so that the wind tower does not interfere with the other wind tower.

F. STRUCTURE A wind tower must be of a monopole construction to the extent practicable. If monopole construction is not practicable, a wind tower must be of freestanding construction to the extent practicable. If monopole or freestanding construction is not practicable, a wind tower may be guyed.

G. HEIGHT The total height of a wind energy system must be 175 feet or less. Other maximum building/structure height restrictions within other sections of this Zoning Ordinance/Law are not applicable. Wind energy systems higher than 175 feet may be allowed through incentive zoning provisions described in Article_____ of this Law/Ordinance pending Town Board approval.

H. CLEARANCE The vertical distance from ground level to the tip of a wind turbine blade when the blade is at its lowest point must be at least 30 feet.

I. ACCESS AND SAFETY

1. Security A wind tower, including any climbing aids must be secured against unauthorized access by means of a locked barrier. A security fence may be required.

2. Climbing Aids Monopole wind towers shall have all climbing aids and any platforms locked and wholly inside the tower.

3. Operational Safety Wind towers shall have 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.

4. Lightning All wind towers shall provide a continuous electrical path to the ground to protect the tower from lightning.

5. Access Roads All wind energy systems shall use existing roads to provide access to the facility site, or if new roads are needed, minimize the amount of land used for new roads and locate them so as to minimize adverse environmental impacts.

J. ELECTRICAL WIRES

1. Location All electrical wires associated with a wind energy system must be located underground and must be located in a manner that does not interfere with reasonably expected farm practices.

2. Transmission Lines. All wind energy systems shall combine transmission lines and points of connection to local distribution lines.

3. Substations. All wind energy systems shall connect the facility to existing substations, or if new substations are needed, minimize the number of new substations.

K. LIGHTING A wind tower and turbine may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e. Mercy Flight), or the Planning Board. If lighting is required, the lighting must comply with FAA minimum requirements and, whenever possible, be at the lowest intensity allowed. If more than one lighting alternative is available, the Town reserves the right to choose the leaser obtrusive lighting option available.

L. BUILDINGS AND OUTDOOR STORAGE Any ancillary buildings and any outside storage associated with a wind energy system must, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility into the natural setting and existing environment (i.e. in an agricultural settings accessory buildings could be designed to look like barns). Appropriate landscaping or architecture shall be provided to screen accessory structures from road and adjacent residences.

M. AESTHETICS

1. Appearance, Color, and Finish The exterior surface of any visible components of a wind energy system must be a non-reflective, neutral color. Wind towers that are located

within view, or within one mile of each other must be of uniform design, including tower type, color, number of blades, and direction of blades rotation.

2. Visual Impact Assessment The applicant shall complete a Visual Environmental Assessment Form (Visual EAF – SEQR), as well as a visual impact assessment of any proposed wind energy systems or any proposed modifications to existing wind energy systems. The visual impact assessment shall include:

a. “Before and after photos or computer simulations from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. A balloon test may also be requested by the Planning Board.

b. Alternative tower designs.

c. Assessment of visual impact from abutting properties and streets of the tower base, guy wires, accessory buildings and any other element of the wind energy system identified by the Planning Board.

d. Commercial Wind Energy System applications shall provide a viewshed map of the proposed wind energy system with a radius of seven (7) miles from any portion of the wind energy system.

e. Commercial Wind Energy System applications shall provide an inventory of all aesthetic resources in the viewshed defined item d.

3. Visual Impacts Offset Plan The applicant may be required to prepare and implement a visual impacts offset plan to mitigate negative impacts on aesthetics of a proposed wind energy system. Such a plan would show how the applicant would protect or make improvements to the aesthetics of another part of the Town to offset the negative impacts on aesthetics within the viewshed.

N. SIGNS No wind tower, turbine, building, or other structure associated with a wind energy system may be used to advertise or promote any product or service. A weather resistant sign plate no greater than 2 sq. ft. in size containing the current owner or operator, emergency phone number, and current address of such owner/operator shall be located on the exterior surface of the tower or of the fence surrounding each tower and viewable by a Zoning Enforcement Officer. No other work or graphic representation, other than appropriate warning signs, may be placed on a wind turbine, tower, building, or other structure associated with a wind energy system so as to be visible from any public road.

O. AGRICULTURAL MITIGATION The following shall apply to construction areas for wind energy systems located in County-adopted, State-certified Agricultural Districts. The applicant is required to coordinate with the New York State Department of Agriculture and Markets (Ag. and Markets) to develop an appropriate schedule for milestone inspections to assure that the goals are being met. When required by the Town, the applicant shall hire an Environmental Monitor to oversee the construction and

restoration in agricultural fields. The person or company hired as an Environmental Monitor shall be approved by the Town and paid by the applicant.

1. Siting

- a. Minimize impacts to normal farming operations by allocating structures along field edges where possible.
- b. Locate access roads, which cross agricultural fields, along ridge tops where possible to eliminate the need for cut and fill and reduce the risk of creating drainage problems.
- c. Avoiding dividing larger fields into smaller fields, which have more difficulty to farm, by locating access roads along the edge of agricultural fields where possible.
- d. All existing drainage and erosion control structures such as diversion, ditches, and tile lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be required to, as close original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.

2. Construction

- a. The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.
- b. Where necessary, culverts and waterbars shall be installed to maintain natural drainage patterns.
- c. All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas such as tower sites and lay-down areas. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the Environmental Monitor.
- d. Topsoil from work areas (tower sites, parking areas, "open-cut" electric cable trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least 50 feet of temporary workspace is needed along "open-cut" electric cable trenches for proper topsoil segregation. Topsoil stockpile areas shall be clearly designate in the field and on the on-site "work set" of construction drawings. Stockpiles will be located far enough from access roads and work areas to eliminate the possibility of vehicles inadvertently compacting this soil.
- e. In cropland, hayland and improved pasture a minimum depth of 48 inches of cover will be required for all buried electric wires. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of 36 inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero to 48 inches, the electric wires shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use whichever is less. At no time will the depth of cover be less than 24 inches below the soil surface.

f. All excess subsoil and rock shall be removed from the site. On site disposal of such material may be allowed if approved by the landowner and, when applicable, the Environmental Monitor, with appropriate consideration given to any possible agricultural or environmental impacts.*

g. In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.

h. All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil.*

i. Travel of all heavy equipment (including concrete trucks and erection cranes) will be limited to designated access roads and gravel crane pads at all times.

j. Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.*

*Any permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.

3. Restoration

a. Restoration scheduling will be consistent with the seasonal limitations identified by Ag. and Markets and will be incorporated into the project's Agricultural District Notice of Intent (if applicable) as well as the Stormwater Management Plan (General Permit).

b. Following construction, all disturbed agricultural areas will be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks four (4) inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to the original depth and the original contours will be reestablished where possible. All rocks four (4) inches and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1st, unless approved on a site-specific basis by the landowner in consultation with Ag. and Markets. All parties involved should be cognizant that areas restored after October 1st may not obtain sufficient growth to prevent erosion over the winter months. If areas are to be restored after October 1st, some provision should be made to restore any eroded areas in the springtime, to establish proper growth.

c. All access roads will be regraded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.

d. All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.

e. All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.

f. Following restoration, all construction debris will be removed from the site.

4. Two Year Monitoring and Remediation.

a. The applicant will provide a monitoring and remediation period of no less than two (2) years immediately following the completion of initial restoration. The two (2) year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration. The Applicant will provide to the Town all reports, testing and data necessary to document compliance with subsections (a) through (e) herein.

b. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified through on-site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operators and Ag. and Markets.

c. Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amount of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the applicant.

d. When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the applicant as well as other appropriate parties, will help to determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at, or shortly after, the completion of construction, the signing of a release form prior to the end of the remediation periods will not obviate the applicant's responsibility to fully redress all project impacts.

e. Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm field/soil unit. Where representative subsoil density of the affected area exceeds the representative subsoil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relative low soil moisture to ensure the desired mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.

P. NOISE Audible noise due to the operation of any part of a wind energy system shall not exceed 50 decibels (dBA) for any period of time, when measured at any residence, school, hospital, church, public park, public library or place of public assembly.

Q. INSURANCE Prior to issuance of a building permit, the applicant shall provide the Town proof of a level of insurance to be determined by the Town Board in consultation with the Town's insurer and Attorney, to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility.

R. SHADOW FLICKER

1. Shadow Flicker Maps. Commercial Wind Energy System applications shall prepare maps showing projected annual hours of shadow flicker impact for all sensitive areas/locations within the project area including, but not limited to, any residence, school, hospital, church or public library.

2. Shadow Flicker Duration Shadow Flicker for all sensitive areas/locations within the project area shall be limited to 30 hours per year and shall not exceed 30 minutes per day.

S. ELECTROMAGNETIC INTERFERENCE (EMI). Commercial Wind Energy Systems shall be properly sited, filtered and /or shielded in order to avoid any interference with electromagnetic communications, such as radio, telephone or television signals caused by any wind energy system or the applicant shall mitigate any such interference.

T. WATER RESOURCES Commercial Wind Energy Systems shall be properly sited and constructed in order to avoid any permanent or temporary negative effect upon the area's groundwater and surface water resources, or the applicant shall mitigate any such impacts. Such effects include, but are not limited to, the use of water resources, changes in water quality, alteration of the natural flow system, and the alteration of interactions between the groundwater and surface water.

SEVERABILITY The provisions of this section are severable, and the invalidity of any section, subdivision, paragraph, or thter part of this Zoning Ordinance/Law shall not affect the validity or effectiveness of the remainder of the Zoning Ordinance/Law.

This Local Law shall become effective upon its filing with the New York Secretary of State.

LOCAL LAW NO. 5 OF THE YEAR 2007
OF THE
TOWN OF PEMBROKE

2. The Zoning Law of the Town of Pembroke known as Local Law No. 1 of 1991, as thereafter amended by Local Law No. 3 of 1992, Local Law No. 2 of 1993, Local Law No. 1 of 1995, Local Law No. 2 of 1995, Local Law No. 2 of 1996, Local Law No. 1 of 1997, Local Law No. 1 of 2000, Local Law No. 4 of 2000, Local Law No. 1 of 2002, Local Law No. 1 of 2003, Local Law No. 2 of 2003, Local Law No. 1 of 2005, Local Law No. 2 of 2005, Local Law No. 3 of 2005, Local Law No. 2 of 2006, Local Law No. 4 of 2006, Local Law No. 2 of 2007, and Local Law No. 4 of 2007 is hereby further amended by Local Law No. 5 of 2007 as follows:

ARTICLE INCENTIVE ZONING

SECTION 1 PURPOSE AND INTENT

The purpose and intent of these provision are to offer incentives to applicants who provide amenities that assist the Town to implement specific physical, cultural and social policies in the Comprehensive Plan as supplemented by the local laws and ordinances adopted by the Town Board.

SECTION 2 DISTRICTS DESIGNATED FOR INCENTIVES

All zoning districts are designated as eligible for zoning incentives. Incentives may be offered to applicants who offer an acceptable amenity to the Town in exchange for the incentive.

SECTION 3 AMENITIES FOR WHICH INCENTIVES MAY BE OFFERED

A. The following amenities may be either on or off the subject application:

- (1) Affordable housing
- (2) Passive and active open space and related improvements
- (3) Parks
- (4) Child-care or elder-care facilities
- (5) Utilities
- (6) Road improvements
- (7) Health or other human-service facilities
- (8) Cultural or historical facilities
- (9) Other facilities or benefits to the residents of the community
- (10) Any combination of amenities and/or cash in lieu of any amenity(ies)

B. These amenities shall be in addition to any mandated requirements pursuant to other provisions of the Zoning Law or Ordinance.

SECTION 4 INCENTIVES PERMITTED

The following incentives may be granted by the Town Board to the applicant on a specific site:

- A. Decreases in required minimum lot sizes
- B. Changes of use or zoning classifications
- C. Changes in setbacks or height
- D. Reduction to open space
- E. Any other changes in the provisions of the Zoning Law or Ordinance

SECTION 5

CRITERIA AND PROCEDURE FOR APPROVAL

A. Applications for incentives in exchange for amenities shall be submitted to the Town Board in order to preliminarily evaluate the adequacy of amenities to be accepted in exchange for the requested incentive, the following information shall be given by the applicant:

- (1) The requested incentive.
- (2) The proposed amenity.
- (3) The cash value of the proposed amenity.
- (4) A narrative which:
 - (a) Describes the benefit to be provide to the community by the proposed amenity.
 - (b) Gives preliminary indication that there is adequate sewer, water, transportation, waste disposal and fire protection facilities in the zoning district in which the proposal is located to handle the additional demands the incentive and amenity, if it is an on-site amenity, may place on these facilities beyond the demand that would be placed on them as if the district were developed to its fullest potential.
 - (c) Explains how the amenity helps implement the physical, social or cultural policies of the Comprehensive Plan as supplemented by the local laws and ordinances adopted by the Town Board.

B. The Town Board shall review the proposal and inform the applicant whether or not the proposal is worthy of further consideration. If it is deemed worthy of further consideration, the applicant may then submit two (2) sketch plans to the Planning Board.

- (1) The first sketch plan
 - (a) The first sketch plan shall show how the site will be developed, with the amenity, if it is on-site, and the incentive. In addition to meeting the requirements of the Zoning Law or Ordinance for Site Plan Review, the plan shall also show existing development, property owners' names and tax account numbers for all property within 200 feet of the property lines of the proposed project or such other distance as specified by the Town Board.
 - (b) If the incentive will result in a setback or open space reduction, the drawing shall show this reduction in relation to the principal structures on-site and on adjacent properties, as well as property line locations.
- (2) The second sketch plan should meet the requirements of the Zoning Law or Ordinance for Site Plan Review; show existing development, property owner's names and tax account

numbers for all properties within 200 feet of the property lines of the project site or such other distance as specified by the Town Board; but shall only show how the site would be developed exclusive of any amenity or incentive.

- (3) The applicant shall also submit such additional information and plans as may be required by the Planning Board, including such additional information and plans as may be required under other sections of the Zoning Law or Ordinance, which, in its judgment, are necessary in order to perform a thorough evaluation of the proposal.
- C. The Planning Board will review the proposal and report to the Town Board with its evaluation of adequacy with which the amenity(ies)/incentive(s) fit the site and the relation to adjacent uses and structures. The Planning Board's review shall be limited to the planning design and layout considerations involved with the project review or such other issues as may be specifically referred by the Town Board. The Planning Board's report shall be submitted to the Town Board within 70 days from the date of the Planning Board meeting at which the proposal is first placed on the agenda. This time period may be exceeded/suspended upon the consent of the applicant or for good cause by the Town Board.
- D. The Town Board will review the Planning Board's report. The Town Board will notify the applicant as to whether it is willing to further consider the proposal. If the Town Board decides to further consider the proposal, it shall hold public hearing. For Town Board public hearings on incentive zoning requests, the Town Clerk shall give notice of the hearing at least five (5) days prior to the date of the hearing.
- E. All applicable requirements of the State Environmental Quality Review (SEQR) Act shall be complied with as part of the review and hearing process. In addition to other information that may be required as part of the environmental assessment of the proposal, the assessment shall include verification that the zoning district in which the proposal is to be located has adequate sewer, water, transportation, waste disposal and fire protection facilities to:
- (1) First, serve the remaining vacant land in the district as though it were developed to its fullest potential under the district regulations in effect at the time of the amenity/incentive proposal: and
 - (2) Then, serve the on-site amenity and incentive, given the development scenario in subsection E (1) above.
- F. Following the hearing and in addition to compliance with all SEQR requirements, the Town Board shall, before taking action, refer to the proposal for review and comment to other governmental agencies as may be required and may refer the proposal to the Planning Board and other town Boards and officials for review and comment.
- G. In order to approve an amenity/incentive proposal, the Town Board shall determine that the proposed amenity provides sufficient public benefit to provide the requested incentive. In no circumstances, however, shall the Town Board be compelled to approve any amenity/incentive proposal and it may deny any such proposal in its sole and absolute discretion. The Town Board may also impose such conditions upon its approval as it may deem appropriate to promote the health, safety and welfare of the community.

H. Following the approval by the Town Board, the applicant may proceed to apply for any additional permits or approvals as may be required by the Zoning Law or Ordinance or any other law or regulation, including, where appropriate, site plan approval under the Zoning Ordinance/Zoning Law. No such additional permit or approval by any board or agency of the Town shall materially alter any condition imposed by the Town Board under Paragraph G thereof and, in the event that any permit or approval by any agency outside the Town materially alters any such condition, the project may not proceed until any unless the Town Board approves of the modification.

SECTION 6 CASH PAYMENT IN LIEU OF AMENITY

If the Town Board finds that a community benefit is not suitable on site or cannot be reasonably provided, the Town Board may require a cash payment in lieu of the provision of the amenity. These funds shall be placed in a trust fund to be used by the Town Board exclusively for amenities specified prior to the acceptance of the funds. Cash payments shall be made prior to the issuance of a building permit. Cash payments in lieu of amenities are not to be used to pay general and ordinary town expenses.

This Local Law shall become effective upon its filing with the New York Secretary of State.