

# Young / Sommer LLC

JEFFREY S. BAKER  
DAVID C. BRENNAN  
JOSEPH F. CASTIGLIONE  
JAMES A. MUSCATO II  
J. MICHAEL NAUGHTON  
ROBERT A. PANASCI  
ALLYSON M. PHILLIPS  
DEAN S. SOMMER  
KEVIN M. YOUNG

LAURA K. BOMYEA  
E. HYDE CLARKE  
JESSICA ANSERT KLAMI  
KRISTINA M. MAGNE  
KRISTIN LAVIOLETTE PRATT

COUNSELORS AT LAW

EXECUTIVE WOODS, FIVE PALISADES DRIVE, ALBANY, NY 12205

Phone: 518-438-9907 • Fax: 518-438-9914

[www.youngsommer.com](http://www.youngsommer.com)

SENIOR COUNSEL  
MICHAEL J. MOORE  
KENNETH S. RITZENBERG  
DOUGLASH H. WARD

OF COUNSEL  
SUE H.R. ADLER  
ROGER FLORIO  
LAUREN L. HUNT  
ELIZABETH M. MORSS  
SCOTT P. OLSON  
STEPHEN C. PRUDENTE  
KRISTIN CARTER ROWE

PARALEGALS  
ALLYSSA T. MOODY  
AMY S. YOUNG

Writer's Telephone Extension: 251  
[rpanasci@youngsommer.com](mailto:rpanasci@youngsommer.com)

March 28, 2018

## VIA HAND DELIVERY

Hopkinton Town Board  
7 Church Street  
Hopkinton, NY 12965

RE: Proposed Revisions to Town of Hopkinton Wind Energy Facilities Law

Members of the Town Board:

On behalf of Atlantic Wind LLC ("Atlantic Wind"), we respectfully submit the following comments to the Town of Hopkinton Town Board ("Town Board") for consideration at the Public Hearing on March 28, 2018 regarding proposed Local Law No. 2 of 2018 revising the Town of Hopkinton Wind Energy Facilities Law the (the proposed "local law"). These comments are in addition to the comments that were provided to the Town Board by Atlantic Wind on August 21, 2017 concerning the proposed Local Law No. 2 of 2017 and are in addition to comments previously submitted to the Wind Advisory Board ("WAB"). The comments set forth herein are addressed to the proposed local law that was posted on the Town's website on or about March 7, 2018 which contains revisions from the original draft of the local law based upon the work shop session held by the Town Board on February 27, 2018<sup>1</sup>. We respectfully request that the Town Board consider the comments previously submitted and the comments set forth herein.

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<sup>1</sup>A copy of the local law discussed during the February 27, 2018 workshop session was not available to the members of the public. In addition, an email from Board Member Pullano to the Town Board that was discussed and relied upon by the Town Board was not available to the public during the February 27, 2018 workshop session.

Atlantic Wind is proposing to construct a 100 megawatt wind powered electric generating project within the Town ("Project"). Along with the project development which is a consistent with New York State's policies promoting renewable energy development and mandates to achieve 50% electricity generation from renewables by 2030, Atlantic Wind has proposed significant benefits to the Town and its residents. These benefits include the following:

- Annual Payments to the Town, County and School Districts.

Atlantic Wind is committed to paying an estimated \$750,000 in payments (which is increased annually) for 30 years for the Project. In addition, Atlantic Wind will annually pay its fair share of special district taxes, such as the fire district.

- Annual Payments to Permanent Residents within 3,000 feet of a Turbine.

Atlantic Wind has offered each Town resident living within 3,000 feet of a turbine location the ability to enter into a good neighbor agreement. The payments include a \$2,000 signing bonus, a \$5,000 payment within 30 days of the commencement of construction and once the Project is operational, an annual payment of \$2,000. The agreement does not include a confidentiality clause, therefore, the residents are free to discuss the terms of the agreement. Atlantic Wind does not have the right to terminate the agreement for any reason. The reasons for Atlantic Wind's termination are limited to: (1) the Project is decommissioned; (2) no turbine is located within 3,000 feet of the residence; or (3) the resident files a lawsuit in court against Atlantic Wind or the Project. The agreement further clarifies that the landowner's filing of a complaint pursuant to any complaint resolution process that will be required as part of Atlantic's approval for the Wind Project shall not be grounds for terminating this Agreement.

- Annual Payment to Cover Electrical Bills.

For Town residents that do not have an agreement with Atlantic Wind, Atlantic Wind is proposing an Electric Bill Offset Program that would be pay 75% of the annual residential electric bills for 30 years after the commercial operation date, up to \$1,200 per year.

I. Proposed Wind Overlay Zone

The proposed local law has a map of a proposed wind overlay zone which only includes land north of NY 72.<sup>2</sup> This is a substantial change from the local law that was proposed in 2017. The only suggested "reason" made during the February 27 workshop session for this change is the so-called "petition" submitted in opposition to the inclusion of the area south of NY 72. However, the "petition" does not support the modification and no other rationale has been offered by the Town Board to support this change.

Ms. Wood intimated that the Town received petitions and/or post cards alleging that a "majority" of the Town residences living south of NY 72 in the proposed overlay zone opposed

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<sup>2</sup> As noted below, the use of an Official Map to "zone" out areas of the Town is not an allowable use of an Official Town Map.

the inclusion of the overlay zone. As a result of the "information" provided by Ms. Wood, the Town Board decided that it should amend the overlay map and exclude all land south of NY 72. Moreover, the analysis by Ms. Wood is flawed. The Town Board is referred to the letter from Frank Potenzano, Chair of North Country for a Brighter Future, for an explanation of the issues with the "petition." The "petition" is a misrepresentation of the facts. After an initial review (and without confirming the authenticity of the signatures), only 40% of the names on the list actually live within the proposed wind overlay zone. If the Town Board is going to rely on this information, it must ensure the information is valid. At the very least, the Town Board, not Ms. Wood, needs to review the information that Ms. Wood is relying upon and consider the information provided by Atlantic Wind before moving forward.<sup>3</sup>

On February 26, 2018, Atlantic Wind provided approximately 70 post cards to the Town Clerk, Vicki French, with others delivered by mail.<sup>4</sup> Ms. Wood did not advise the Town Board before or during the February 27 workshop session about these post cards that showed, in fact, that the "overwhelming" opposition claim set forth by Ms. Wood<sup>5</sup> which provided the basis for the change in the map, did not exist. In order to ensure a complete record, we respectfully request that the Town Board include the post cards submitted by Atlantic Wind in the record. To date, 180 post cards have been signed Town residents that request the Town Board identify and evaluate all options before voting on the proposed local law. Moreover, the post cards note that the Project could bring many benefits to the Town.

In general, land uses north and south of NY 72 are compatible with wind energy development and there has been no basis in the record or statement by the Town Board why landowners south of 72 should be singled out for disparate treatment and not be able to take advantage of the project benefits. While the area south of NY 72 is more forested than north of NY 72, these areas have already been disturbed by past logging activities, thereby enabling the location of wind turbines farther from non-participating residences, and in previously disturbed lands. This reduces the significance of any potential impacts from forest clearing, or to forested wetlands and forest wildlife habitat that could be associated with the development of wind. In addition, while the area south of NY 72 is closer to the Adirondack Park, that alone will not create any greater potential visual impacts since the wooded character and lack of mountains with open peaks in this area will likely minimize any increased in visual impacts. Atlantic Wind does not propose any wind turbines or project components within the Adirondack Park, regardless of the boundaries of the Town's wind overlay zone. Moreover, it is premature to prohibit development south of NY 72. The Project is at the pre-application stage of the Article 10 process and the full characterization of potential impacts, minimization and mitigation measures has not yet been provided to the Siting Board or parties participating in the proceeding. It is short-sighted for the Town Board to arbitrarily designate portions of the Town south of NY 72 "off-limits" to wind development without understanding what potential impacts are being addressed or whether they could be minimized or mitigated through project design changes.

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<sup>3</sup> We have not completed a thorough analysis of the petition and, respectfully request that Ms. Wood have Ms. French complete the analysis to confirm the Town residences that live within the overlay zone that signed the "petition."

<sup>4</sup> At the March 19 Town Board meeting, Ms. Wood admitted that she received the post cards from Ms. French but did not bring them to the February 27 workshop session.

<sup>5</sup> At the March 19, 2018 Town Board meeting, Ms. Wood blamed the Town Board members for not seeking to review of the copy of the postcards before the February 27, 2018 workshop session and claimed they were available in her office to review.

In fact, Avangrid has previously attempted to provide information to the Town Board to better inform the Town of potential impacts regarding the location of Project components south of NY 72. On February 6, 2018, Atlantic Wind requested by phone call and Sue Wood agreed to place Atlantic Wind on the February 12, 2018 Town Board meeting agenda to present an analysis of its proposed use of land south of NY 72 at the February 12, 2018 Town Board meeting, however, Ms. Wood did not put Atlantic Wind on the agenda, therefore, Atlantic Wind did not present its analysis prior to the February 27 workshop session. However, by email to the Town Board, dated March 4, 2018, Scott McDonald from Atlantic Wind, provided a typical tree clearing exhibit for the Town Board's consideration. The exhibit is entitled "Representative Disturbance Areas" and is attached hereto to show the limit of disturbance associated with turbine tower locations. The estimated total permanent disturbance area for the 13 turbines proposed south of NY 72 is less than 20 acres. This represents approximately one percent of the leased project area south of NY 72 and is close to equal to the amount cleared by others along sections of Fletcher Road and Sylvan Falls Road adjacent to the project boundary and south of NY 72.

From an impact standpoint, this shows that impacts to forest resources south of NY 72 are far less than what the Town Board and Project opponents have stated. As a result, there is no difference from a zoning or land use standpoint of locating turbines south of NY 72 as there would be locating turbines north of NY 72. Landowners south of NY 72 deserve the same opportunity to receive the benefits associated with using their land for wind development as other landowners in the Town. There has been no reasonable explanation provided by the Town Board to exclude land south of NY 72.

In addition to the above arguments, the Town of Hopkinton does not have a comprehensive zoning law, and does not otherwise regulate land uses or divide the Town into zoning districts based on which land uses are appropriate in which zones. Therefore, the Town Board should not restrict the locations where wind energy facilities can be developed by requiring the creation of wind overlay zones. It is not clear whether or not the creation or official designation of the overlay zone is being considered as part of the proposed local law or if it will be legally established by a separate local law to be introduced at a future meeting. The latest version of the proposed local has a map of a proposed wind overlay zone attached, however, there is nothing in the text of the proposed local law that would have the legal effect of adopting or establishing the overlay.

## II. Information from Belmont Supervisor, Bruce Russell

At the February 27 workshop session, Board Member Pullano referenced an email that she sent to the Town Board before the workshop session concerning "information" from Town of Belmont Supervisor, Bruce Russell. Ms. Pullano referenced an email during the discussion on setbacks and sound levels that claimed Mr. Russell was not happy with the setback and sound levels established by the Belmont's local law for another unrelated wind farm project hosted by the Town of Belmont. On the basis of this contention of the statements made by Mr. Russell, provided by Ms. Pullano, the Town Board decided to accept a larger setback of 2,500 ft and more stringent sound levels than originally proposed. The Town Board relied exclusively on the information from Board Member Pullano to make this revision.

However, the email from Ms. Pullano does not reflect the information provided to her from Supervisor Russell. By email dated, March 13, 2018, Mr. Russell wrote to the Town Board and corrected the record by disputing Ms. Pullano's misstatements of the conversation between them. Mr. Russell indicated that he never suggested that the setback should be 2,500 feet or that the sound levels should be 30 dBA at night and 40 to 45 dBA during the day. Therefore, the Town Board's reliance on the email from Ms. Pullano as a basis to modify the local law is misplaced and must be rejected.

### III. Specific Comments/ Suggested Revisions to Local Law Posted to Town Website

In the event the Town Board continues with the public hearing scheduled for this evening, we offer the following comments based on our review of the proposed local law. We respectfully request that the Town Board consider these comments and include them in the official record of proceedings.

- §5 – Definitions
  - Residence- The definition of “residence” is any “dwelling suitable for habitation” but then includes “any dwelling not attached to public utilities, does not have running water or is hooked to a sewer or septic system”. The definition is internally inconsistent. With the exception of Amish residences, there is no reason why the Town would treat an uninhabitable building as a dwelling or residence under its Wind Energy Facilities Law and exclude it from the definition of dwelling under other local regulation. The Town Board should revise the definition of “residence” to include exclude structures that are not connected to public utilities, do not have running water, and are not hooked up to a sewer or septic system. The revisions would make the definition more consistent with how Town's with zoning define “residence”.
- §11 Application for Wind Energy Conversation Systems
  - Section (A)(15)(d). Noise Analysis. The current language requiring a “noise analysis by an INCE board certified acoustical consultant” should be revised. A full member of the INCE possesses the necessary qualifications to perform a noise analysis required by the Wind Law. The certification requirement is not necessary and would not add anything to the noise assessment that is otherwise required by the law. Therefore, we continue to maintain the proposed local law should be revised to require that the analysis be performed by “a full member of the INCE” and eliminate the certification requirement.
- §12 – Application Review Process
  - Subsections E and J. The local law provides “[u]pon submission of a complete application, including the grant of any application waiver by the Town Wind Advisory Board”, however, the Town Board retains the power to issue variances in §8 of the local law – not the Wind Advisory Board. The Town Board revised §

8 in response to comments received from the St. Lawrence County Planning Board to clarify that the Town Board will be the board issuing variances. Subsection J states that the Wind Advisory Board will approve or deny the applications..." The Wind Advisory Board does not have the legal authority to approve or deny such an application. To make these sections consistent, the Town Board should revise §12 to eliminate the reference to the Wind Advisory Board and replace it with the Town Board.

- §13– Standards for WECS

- Subsection A. The local law would require transmission lines from the tower to any building or structure to be underground to the maximum extent practicable. We propose that this section be revised to allow an exception "where the underlying fee owner of the land requests otherwise". The idea is to give the Town Board flexibility to entertain requests from landowners on a case-by-case basis so it could determine if a landowner's preferred alternative is appropriate and can be accommodated. The Town Board saw fit to incorporate the same revision to Section I relevant to top soil that his stockpiled and disturbed during construction. We believe a similar revision in Subsection A would be appropriate and useful for the landowner and Town Board.
- Subsection E. In the proposed local law would require that turbine blades be painted "in a single, a non-reflective matte finished color or camouflage scheme". We propose a revision to the language to provide this shall be required "to the greatest extent practicable".
- Subsection M. We propose this section should be revised to require adherence to the New York Department of Agriculture and Markets guidelines "to the greatest extent practicable" and include language that would give the individual farmer the ability to negotiate preferred mitigation or restoration measures that would benefit their farm or farmland. It is noted the local law includes language in Subsection 21(C) to require compliance with these guidelines "to the greatest extent possible". To ensure consistency among these various provisions, we propose that both subsections should be harmonized by requiring compliance with the New York Department of Agriculture and Markets guidelines "to the greatest extent practicable".
- Subsection O. We propose that the construction hours should be extended to 6 AM to 9 PM and that a revision should be made to allow certain work at turbine sites and the immediately surrounding area outside designated hours under certain circumstances. Limitations on activities for which a derivation from construction hours would be permitted, and the procedures for providing notice, could be included as specific conditions in a WECS permit. It is respectfully asserted, these proposed revisions would benefit the Town's residents by allowing construction to proceed without undue interruption, thereby, lessening the overall duration of

temporary disturbance. It would also facilitate the developer's ability to maintain construction schedules, ensure the safety of its contractors and workers and adapt those schedules to changes in weather conditions.

- o Section Q. The proposed local law provides as follows:

No WECS shall make abnormal noises caused by mechanical malfunction or maintenance deficiencies whether or not said WECS is within the required distance of five times the height of the proposed WECS from residences above the level allowed in Section 17 (§17). The WECS must be taken off line within eight hours of notification by the Town Supervisor or other person designated by the Town Board. The WEC shall not be reactivated until the problem has been resolved.

The local law makes the measurement for "abnormal noises" the "residence" instead of "non-participating property line" as provided in Section 17. However, the phrases "abnormal noise", "mechanical malfunction" and "maintenance deficiencies" are not defined in the local law and there are no set standards, established criteria, or procedure under this section by which the Town Supervisor, or "other person" designated by the Town Board would make a determination that a WECS must be taken off line. This regulation is too vague and does not provide adequate substantive or procedural due process for a landowner or applicant who is not able to determine the specific condition that must be avoided or corrected to prevent enforcement action from being taken. This section should be eliminated in its entirety.

- §14 – Insurance Requirements

- o It is not clear how the proposed coverage requirements were determined or why the Town of Hopkinton should be added as an additional insured.

- §17 – Noise Standards and Noise Compliance Monitoring

Subsection A. The proposed revisions are overly burdensome and have no rational nexus to the stated purpose of the local law. The proposed "total sound pressure level" limitations presented in the proposed revisions go beyond established standards that have been determined to prevent sleep disturbance, and minimize annoyance and complaints. This is evidenced by the science-based, peer-reviewed health and sound literature presented to the Town Board and Wind Advisory Board and related North Ridge Wind Farm Q&A public presentations by internationally recognized health and sound experts Christopher Ollson, PH.D., CPRA and Robert D. O'Neil, CCM. As written, the proposed revisions require adherence to a maximum "forty [40] Leq A-weighted decibels ['dBA'] at ten [10] minutes intervals at the nearest non-participating property line, school, hospital, place of worship or building existing at the time of the application". This limitation is not realistic or necessary to address any legitimate concern associated with wind energy development.

Moreover, not even the Town's sound consultant, James P. Cowan, agrees with the "standard" set forth in this Subsection thus, confirming the arbitrary nature of this standard. In his response to the 2017 version of the proposed local law, Mr. Cowan stated that "...45 dBA is a more practical limit to address issues and to enforce."

The proposed limitation is not being proposed as part of any larger plan to regulate noise from other commercial uses or sources of sound throughout the Town. As noted by the St. Lawrence County Planning Board, there are a number of land uses throughout the Town that would exceed these thresholds, including but not limited to forestry (per USFS: 63 to 84.2 dBA), mining and mineral processing operations (per CDC 72 to 111 dBA), and farm operations (per Penn State Extension: 74 to 97 dBA). There is no compelling rationale to justify this disparate treatment.

It is respectfully asserted a requirement of 45 dBA (Project sound) measured 25 feet from the exterior of a residence would be more appropriate. This standard is in accord with guidelines established by the World Health Organization (WHO) and the National Association of Regulatory Utility Commissioners (NARUC) to prevent sleep disturbance, and minimize annoyance and complaints.

The requirement to measure sound levels at non-participating property lines, instead of the non-participating residence, is also unduly burdensome. Construction of the turbines will take place primarily on remote wooded areas and/or in the middle of farm fields, generally away from residences. If the purpose of the sound limit is to prevent sleep disturbance, and minimize annoyance and complaints (which is the basis for the limits in the scientific literature provided to the Board) then there is no rational reason to measure sound levels at the property boundary line. We propose that this section should be revised to instead require the measurement of sound levels "25 feet from a structure" which is a more appropriate and rational point of reference to measure sound levels.

In addition, the requirement of independent certification is not possible before construction since there would not be any existing turbines whose sound levels could be measured; the modeling provided in the application would be more appropriate to show compliance before construction.

Finally, a revision should be made to provide, if the ambient noise level measured at 25 feet from the nearest such structure exceeds the standard, the standard shall be equal to the ambient noise level plus 5 dBA. The current draft of the local law provides for the point of measurement at the nearest property line or structure, however this is inconsistent with Subsection C (discussed below) ANSI standards (which all say 25 feet from the exterior of a qualifying structure). Second, the law currently provides the standard shall be equal to the ambient plus 3 dBA, however, this is too small a margin to provide a functional standard for regulating and/or enforcing noise pressure levels associated with a wind energy facility.



Therefore, the standard should be revised to 5 dBA measured at 25 feet from the nearest qualifying residence.

- Subsection C. As noted above, the point of measurement for ambient sound levels should be 25 feet from the exterior of a qualifying structure consistent with ANSI standards.
  - Subsection E. We propose that this section be eliminated in entirety and replaced with a requirement that the Applicant conduct post-construction compliance testing in accordance with an approved protocol that can be tailored to each individual project. The post-construction compliance testing protocol could include the specific details, including proposed monitoring locations and monitoring duration that are proposed to be incorporated as part of the local law and any additional specifications that may be required as a result of the Article 10 process.
- §18 Setbacks
    - Subsection E(A) – (G). The proposed local law would require a setback of five times the total height of a WECS from non-participating property lines, public roads, wind overlay boundary, non-WECS building, farm or commercial structure or any above-ground utilities, registered historical site and APA boundary. This equates to a 2,500 ft setback for a WECS of maximum allowable height of 500 ft. The justification for this setback was a theoretical parabolic trajectory calculation presented by WAB member John Niles (Alternate) at the November 28, 2016 WAB meeting. The calculation was communicated as being prepared by an engineer at his request to address blade and ice throw setback concerns. The calculated horizontal projectile distance was stated as 2,592 ft. however, the only variables inputted in the calculation were blade tip speed (180 mph), trajectory angle (40°), and above ground height (500 ft).

At the WAB's request, Avangrid provided comments at the January 9, 2017 meeting at which time it was noted theoretical parabolic trajectory calculation presented by WAB member John Niles at the November 28<sup>th</sup> meeting originated from the ballistic trajectory 2-D calculator by Stephen R. Schmitt found at the "convertalot" website<sup>6</sup>. Of significance is the qualifying text stating that the calculation assumes no atmosphere—the only force acting on the projectile is the acceleration due to gravity. As such, variables neglected in this theoretical and simplistic calculation include aerodynamic drag, ice mass and shape, blade position, position of ice fragment, mass rotation during flight, and wind speed and wind direction. Further considerations neglected by the WAB include resulting reduced rotor RPM, wind plant operational protocols, historical operational experience, the many scientific journals and peer-reviewed reports specific to

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<sup>6</sup> Available at: [http://www.convertalot.com/ballistic\\_trajectory\\_calculator.html](http://www.convertalot.com/ballistic_trajectory_calculator.html)

turbine blade ice throw and its complexity, and a risk/probability of occurrence assessment, prudent in any safety analysis.

In its comments to the WAB, Avangrid offered the following to support reasonable setbacks:

- The Global Wind Energy Council reported ~314,000 turbines operating worldwide in 2015. We are unaware of any reported injury caused by ice being thrown by a turbine.
- An independent expert panel for the Massachusetts Department of Public Health concluded that ice is unlikely to land further from the turbine than its tip height.
- Studies show that the up to 90% of the ice shed occurs within the turbine blade rotor radius.
- Studies show the risk/probability of occurrence of ice landing at a specific location drops dramatically as distance increases beyond the rotor radius. Dependent on conditions could be as lower than the chance of being struck by lightning.
- Avangrid has ~725 turbines operating in the cold weather environments at projects from Illinois through to the northeastern states. No incidents to health & safety have been reported.
- Maple Ridge Wind Farm- North Country Operational Experience:
  - ~80% of the 195 turbines (397 ft total height) are located within 2500 ft of a year-round or seasonal dwellings
  - ~50% are located within 1500 ft
  - ~30% are located within 1000 ft of the ~50 mile public road network
  - Over the 10+ years of operation, no incidents to health & safety have been reported.

The proposed setback of five-times the total height of a WECS goes well beyond the limits established in other towns that have operating wind farms. As the St. Lawrence County Planning Board recently pointed out, the proposed setbacks would eliminate nearly all locations in the proposed Wind Energy Overlay District from wind energy development. Considering this fact, and those presented above, there is no rational basis to deny the proposed setbacks are patently unreasonable and arbitrary and capricious. If the setbacks are intended to address safety concerns associated with blade throw or turbine collapse, it is respectfully asserted that a setback of 1.3 times the total height of a WECS is sufficient.

- §19 WEF Real Property Value Protection Agreement
  - This Section should be removed in its entirety. As noted in comments received from the St. Lawrence County Planning Board, there is no definitive correlation between property devaluation and wind tower proximity. Therefore, the Town would have no rational or legal basis to adopt a provision requiring a wind energy developer to guarantee real property values within one-mile of a WECS.
  
- §21 Abatement
  - Subsection A. It is recognized, despite a wind turbines long life expectancy (in excess of 25 years) there will come a time when an individual turbine may need to be decommissioned or the entire project will be decommissioned. Decommissioning includes dismantling and removing wind turbines and project components on property owned or leased by the applicant. We propose that the local law should be revised to provide that a wind turbine that is non-operational for more than two (2) years will require decommissioning, unless otherwise approved by a designated Town body/ official. The current law requires decommissioning where a wind turbine is inoperative one (1) year. While it does provide a mechanism whereby the applicant may demonstrate to the Town that it has been making good faith efforts to restore the WECS to an operable condition, it provides further that “nothing in the local law shall limit the Town’s ability to order remediation after a public hearing”. The law does not state what board would hold the public hearing or make the ultimate determination as to whether the WECs must be decommissioned. Furthermore, it contains no any standards or criteria that must be considered by the ultimate-decision maker. It is respectfully submitted, this provision is too vague and lacks important procedural safeguards, and therefore should be revised.
  
  - Subsection B. We propose that this section should be eliminated in its entirety because it is an impermissible request by a municipality. It is similar to asking a restaurant or gas station for its monthly receipts to confirm that it has been open for the last month. Such a requirement has no rational basis.
  
  - Subsection E. Financial Security. It is noted that the proposed local law would require an initial deposit of \$150,000, but it is not clear how this amount was determined. Also, it contemplates the deposit will be made into an escrow account (i.e., “the fund”) but the section has been revised to allow other methods of financial assurance (not limited to escrow agreements). These provisions should be clarified.

We appreciate your consideration of these comments and suggested revisions. If you should have any questions or comments, please feel free to contact me.

Sincerely yours,



Robert A. Panasci

# North Ridge Buildable Area: Local Law No. 2 of 2018

Proposed 5x500 ft Maximum Total Turbine Height (2500 ft) Applied to Public Roads and Town, WOZ, State Land & ADK Boundaries

## Legend

- ADK
- County Land
- Feature 1
- Feature 2
- Hopkinton Project Area Boundary
- Hopkinton WOZ Boundary
- State Land
- Tax Parcels
- Town Land

Google earth

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