

ARTICLE IX

PROVISIONS FOR SPECIAL and CONDITIONAL USES

9-6 Tall Structures, General

Tall Structures are defined as but not limited to: Steeples, Towers, Smoke Chimneys, Wind activated Devices, Wind Energy Facilities such as Large System and Utility-scale Wind Energy Facility, High Rise Buildings, etc., that exceed 70 feet above grade.

9-6.1 Wind Energy Facilities

a. No person shall undertake construction, operation, or expansion activities associated with a Large or Utility Wind Energy Facility without first obtaining a permit from the Town Inspection and Planning Department. Permits for wind energy systems shall be considered for approval under the Conditional Use Permit requirements of this Ordinance.

b. Before applying to the Town of Newport for a permit pertaining to a Wind Energy Facility, the applicant shall submit an application and obtain a permit in accordance with North Carolina General Statutes, Article 21C, Chapter 143 as amended. The requirements herein are in addition to Article 21C of Chapter 143.

c. The applicant shall include a copy of all permit application information, reports studies, and meeting minutes, required in Section 9-6.1b as a part of the wind energy facility application to the Town of Newport.

NOTE

A Small System Wind Energy System (not to exceed 70 feet in height) is considered to be an accessory use and is not regulated under this Section. Small

Systems may be subject to other sections of this ordinance. A Small System is one further described as one where the name plate electrical rating does not exceed 25 kilowatts (kw) per turbine. Only one (1) such unit shall be installed on a parcel of land associated with a house, or other establishment that does not have its primary purpose the production of electricity for, or selling electricity back to, the public grid in order to be to be considered an Accessory Use, Small System.

d. Location of Wind Energy Facilities

1. All Wind Energy Facilities covered under this part shall be allowed only within a land use zone permitting the facility listed in Article VII of this Ordinance.

2. A Tall Structure temporarily erected solely for the purpose of scientific data collection at the proposed site and will not require approval of a Wind Energy System application. A Building Permit shall be require for such structure. Each temporary structure shall comply with the dimensional requirements of this Article and any other applicable ordinances, and if it exceeds 200 feet above grade, shall comply with FAA height requirements. A copy of the FAA determination report as a result of filing FAA Form 7460-1, Notice of proposed Construction or Alteration of an object that may affect a navigable airspace shall be submitted with a Building Permit application for the structure. The temporary structure may not display any advertising signs, may not be illuminated except as required by the FAA or Department of Defense, and must be removed no later than two (2) years of the date of its certificate of completion.

9-6.1(a) Application and Administrative Information

a. Before a Building Permit application may be submitted or approved for a Wind Energy Facility, an

application for a Conditional Use Permit application must be filed with the Town Planning and Inspections Department. The application shall contain all pertinent information required by this Ordinance.

b. Any application submitted hereunder shall contain confirmation of compliance with all federal, state and local statutes, rules and ordinances, and shall contain all other permits, licenses and authentication required to be issued or given by any and other governmental body having jurisdiction thereof. Any application submitted hereunder shall be forwarded to the Commanding Officer, Marine Corps Air Station Cherry Point, in order to provide for review and comment concerning any possible impacts on the operations and mission of Marine Corps Air Station Cherry Point, and no application submitted shall be deemed complete until such time as said review is completed and such written comments are received.

c. The Planning Director or Zoning Administrator shall review the application with the applicant for requirements and information required in this Ordinance. The review and conditional use process shall proceed as provided in Article I, Section 1-14 of this Article once the application is found to be complete.

d Review and consideration of it shall be made by the Planning Board. The Planning Board shall review the application with Staff and the applicant. The Planning Board may hold public information sessions or public hearings and/or seek input from any other source it deems necessary. At the inclusion of its deliberations, the Planning Board shall make a recommendation to the Town Council: (a) that the application be approved; (b) that the application be denied or (c) that the application be approved with modifications.

e. The Planning Board shall recommend denial of the application if it determines that at a minimum, one or more of the following conditions exist:

1. Construction or operation of the proposed wind energy facility would have significant adverse impact on the safety and welfare of the public.
2. Construction or operation of the proposed Wind Energy Facility would depreciate the value of near by property.
3. construction or operation of the Wind Energy Facility would have significant adverse effect on the local environment (e.g. wildlife).
4. If it determines that the Wind Energy Facility can not be constructed or operated in the manner as stated in this section.

f. After receipt and consideration of the recommendations and comments of the Planning Board, the Town Council shall thereafter review the application with regards to compliance with zoning regulations, compatibility with the neighborhood, the health, safety, economic aspect and environmental impact on nearby areas:

1. approve the application or If it determines that at a minimum, one or more of the following conditions exist, the Town Council may; (a) deny the application or (b) approve the application with modifications and/or make any other determination that would be in the best interest of the Town.

9-6.1(b) Minimum Setback Requirements

a. Large System setback from the property line of all non participating property and height restriction.

1. Setback: 1300 feet
2. Height: Maximum height of 199 feet.

b. Utility-scale System Setback from the non participating property line.

Utility- scale Wind Energy Systems shall be setback from non participating property lines at least 2,500 feet and have a maximum height above highest adjacent grade of 550 feet.

NOTE

1. Setback shall be measured from its outermost extension (whether blade tip, nacelle/turbine housing, or tower/pole edge) that is nearest the subject property line adjacent to private property, public or private right of way. There is no minimum setback from the Croatan National Forrest.

2. No portion of any wind turbine blade shall be closer than 25 feet from any part of the ground that surrounds any wind energy facility.

c. NC Building Code Requirements:

All Structures within the Facility shall be designed and constructed to comply with the Building Code(s) to include certification of compliance with a minimum wind design of 130 miles per hour.

9-6.1(c) **Local Environmental Issues, not otherwise covered by the DENR permit requirements:**

a. Noise and Shadow Flicker. The applicant shall provide a shadow flicker and blade glint report for each proposed wind energy facility. The report shall:

1. Evaluate the worst case scenarios of wind irregularity of sunshine and wind directions and speeds.
2. map and describe the zones where shadow flicker and blade glint will likely be present within one-mile radius beyond the project boundary.
3. Calculate the locations of shadow flicker caused by the proposed project and the

expected durations of the flicker at these zones.

4. Calculate the total number of hours per year of flicker at all locations.

5. Identify problem zones within a one-mile radius beyond the project boundary where shadow flicker will interfere in any way with existing or future residences, structures and roadways and describe proposed measures to mitigate these problems.

b. Construction, performance and operation requirements.

1. Based on the findings of the report, the wind energy facility shall be designed so that shadow flicker or blade glint will not fall on any non participating property.

2. If shadow flicker or blade glint that falls on a portion of a property is acceptable only under the following circumstances:

i. The flicker or glint does not exceed 120 seconds per day for any 7 consecutive days.

3. Shadow flicker or blade glint that falls on a roadway is acceptable only under the following circumstances:

i. Traffic volumes are less than 500 vehicles per day on the roadway and

ii. The flicker or glint does not fall onto an intersection of public roads.

4. If shadow flicker or blade glint exceeds any of the conditions listed in this Section, the source wind energy facility shall be shut down until the flicker or glint problem is remedied . Each such occurrence shall be a

separate violation of this ordinance and the penalties shall be cumulative.

5. Noise No Large System or Utility-scale wind energy facility or its generators, equipment, or apparatus shall produce noise above forty-five (45db(a)) decibels more than five (5) times within seven(7) consecutive days as measured at any property line of non-participating land owners, the applicant and/or owner shall shut down the wind energy facility within one (1) business day of being informed to do so by the Town Planning Director or designee. The facility shall remain shut down until it can be demonstrated to the satisfaction of the Planing Director or designee that the facility can be operated so as to not exceed forty-five (45dba) decibels as measured at any non participating property line.

9-6.1(d) Real Property Value Protection Requirement.

a. The Wind Energy Facility Owner (Applicant) shall assure The Town of Newport that there will be no loss in real property value near their Wind Facility.

b. To legally support this claim, the Applicant shall hereby consent to this Real Property Value Protection Agreement ("Agreement"). This Agreement provides assurance to nonparticipating real property owners near the Wind Facility (not lessors to the Applicant), that they have some protections from real property values losses due to the Wind Facility.

c. Applicant shall agree to guarantee the property values of all real property partially or fully within two (2) miles of the Wind Energy Facility will not adversely affect property values by the Wind Energy Facility. The two (2) mile shall be within the Newport Zoning and Planning Jurisdiction. Any real property owner(s) included in that area who believe that their property may have been devalued due to the wind facility, may elect to exercise the following option:

d. Applicant and the property owner shall each select a licensed appraiser, and both shall be paid for by the Applicant. Each appraiser shall provide a detailed written explanation of the reduction in value to the real property ("Diminution Value"), if any, caused by the proximity to the wind turbines. This shall be determined by calculating the difference between the current fair market value of the real property (assuming no Wind Facility was proposed or constructed), and the fair market value at the time of exercising this option:

1. If the higher of the Diminution Valuations submitted is equal to or less than twenty five percent (25%) more than the other, the two values shall be averaged ("Average Diminution Value": ADV).

2. If one of the Diminution Valuations submitted is more than twenty five percent (25%)higher than the other, then the two appraisers will select a third licensed appraiser who shall present to Applicant and property owner a written appraisal report as to the Diminution Value for the real property. The parties agree that the resulting average of the two highest Diminution Valuations shall constitute the ADV.

3. In either case, the property owner may elect to receive payment from the Wind Facility Owner of the ADV. Applicant is required to make this payment within sixty (60) days of receiving said written election from property owner, to have such payment made.

e. *Other conditions:*

1. If a property owner wants to exercise this option, they must do so within ten (10) years of the Wind Facility receiving final approval from the town.

2. A property owner may elect to exercise this option only once.

3. The applicant and the property owner may accept mutually agreeable modifications of this Agreement. If the property owner accepts some payment for property value loss, based on an alternative method, then that is considered an exercise of this option.

4. This Agreement applies to the property owner of record at the date and time of adoption of this amendment, is not transferable to subsequent property owners.

5. The property owner of record as of October 1, 2013, must reasonably maintain the property from that time, until they choose to elect this option.

6. The property owner must permit access to the property by the appraisers, as needed to perform the appraisals.

7. The property owner must inform the appraisers of all known defects of the property as may be required by law, as well as all consequential modifications or changes to the property subsequent to October 1, 2013.

8. This Agreement will be guaranteed by the Applicant (and all its successors and assigns), for ten (10) years following the Wind Energy Facility receiving final approval from the Town, by providing a bond (or other surety), in an amount determined to be acceptable by the Town.

9. Payment by the Applicant (per e. 1.) not made within sixty (60) days will accrue an interest penalty. This will be twelve (12) percent annually, from the date of the written election from property owner.

10 For any litigation regarding this matter, all reasonable legal fees and court costs will be paid by the Applicant.

9-6.1 (e) Security and Safety of large System or Utility-scale Wind Energy Facilities.

a. All wind energy facilities shall be located, fenced or otherwise secured so as to prevent unauthorized access.

b. Wind energy facilities shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

c. The facilities shall be made accessible to the Newport Fire and Rescue Squad by providing an entry key box or other suitable emergency entry system on a 24-7 basis. The emergency entry system shall be approved by the Newport Fire Official.

d. Whenever construction or maintenance is being conducted at the facility, the owner/operator shall assure that properly trained and equipped personnel are on site to perform rescue and emergency aid to anyone working within the facility.

e. In order for the Newport Fire and Rescue squad to provide emergency aid for rescue and/or fire, the owner/operator shall offer semi-annual training to the Fire and Rescue Squad, and if there is any "special" equipment needed for the Fire and Rescue Squad to use at the facility, the owner/operator of the Wind Energy Facility shall provide at no cost to the Town such equipment and training for its use.

9-6.1(e) Reservation of Authority to Inspect Large System or Utility-scale Wind Energy Facilities.

a. In order to verify that the holder of a permit for a Wind Energy Facility and any and all lessees, renters, and/or licensees of it, have placed and constructed such facility in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification, and maintenance of such facilities, including all towers,

buildings, and other structures constructed or located on the site.

b. The Newport Planner or his designee may impose a civil penalty, in accordance with the Town's Civil Penalty Ordinance, for any violation of the Conditional Use permit or any requirement of this Ordinance in addition of any other remedy prescribed by law. Each day of a continuing violation shall constitute a separate violation

9-7 Wireless Telecommunications Services (WTS) Development Requirements.

Wireless Telecommunication Services Development shall be subject to the requirements of Section 9-7.

9-7.1 Board of Adjustment Review/Approval.

Except as otherwise provided for as permitted uses in other sections of this Ordinance, WTS Development shall be subject to Board of Adjustment Review/Approval. Site plans shall be submitted in accordance with Board of Adjustment rules.

9-7.2 Development Standard

As a general rule, there is no height limit for WTS towers unless the construction falls within the federal Aviation Administration (FAA) CFR Title 14 Part 77 Obstructions to Navigation rules which are briefly stated herein.

a. In the following circumstances there shall be filed with the FAA, Form 7460-1, Notice of Proposed Construction or Alteration at least 45 days prior to the proposed construction or alteration and prior to filing for a Building Permit or Special Use Permit with the Town. The applicant should refer to the full FAA CFR Title 14 Part 77 for any other requirements prior to the application submittal:

1. Any proposed construction or alteration that is more than 200 ft. above ground level (AGL) at its site:

2. Any construction or alteration that exceeds an imaginary surface extending outward and upward at any of the following slopes:

(a) 100 to 1 for a horizontal distance of 20,000 ft. from the nearest point of the nearest runway of each airport in paragraph b. of this section with its longest runway more than 3,200 ft. in actual length, excluding heliports.

(b) 50 to 1 for a horizontal distance of 10,000 ft. from the nearest point of the nearest runway of each airport described in paragraph b. of this section with its longest runway no more than 3,200 ft. in actual length, excluding heliports.

(c) 25 to 1 for a horizontal distance of 5,000 feet from the nearest point of the nearest landing and takeoff area of each heliport described in paragraph b. of this section.

a. Any highway, railroad, or other traverse way for mobile objects, of a height which, if adjusted upward 17 feet from an interstate highway that is part of the national System of Military and Interstate Highways where over crossings are designed for a minimum of 17 feet vehicle distance, 15 feet from any other public roadway, 10 feet or the height of the highest mobile object that would normally transverse the road, whichever is greater, for a private road 23 feet from a railroad, and for a waterway or other traverse way not previously mentioned, any amount equal to the height of the highest mobile object that would normally transverse it, would exceed a standard of paragraph 1. or 2. of this section.

b. Any construction or alteration on any of the

following airports or heliports:

(1) A public use airport listed in the Federal Aviation Administration (FAA) airport/facility Directory;

(2) A military airport under construction, or an airport under construction that will be available for public use;

(3) An airport operated by a Federal agency or the DOD.

(4) An airport or heliport with at least one FAA-approved instrument approach procedure.

c. You do not need to file notice for construction or alteration of:

(1) Any object that will be shielded by existing structures of a permanent and substantial nature or by natural terrain or topographic features of equal or greater height, and will be located in congested area of a city, town, or settlement where the shielded structure will not adversely affect safety in air navigation;

(2) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device meeting FAA-approved siting criteria or an appropriate military service siting criteria on military airports, the location and height of which are fixed by its functional purpose;

(3) Any construction or alteration which is required by any other FAA regulation.

(4) Any antenna structure of 20 feet or less in height, except one that would increase the height of another antenna structure.

d. The Inspections and Planning Department or Board of Adjustment as appropriate, after reviewing

comments from the FAA and the officials of any affected airport, may review and act on the application for the building permit.

e. If any adverse comments are received from a Federal, State or local agency the permit application shall be denied or modified as appropriate to the extent necessary of mitigating the adverse condition.

9-7.2.1 Setbacks

All new developed pursuant to Section 9-7.2 shall observe the following setbacks:

a. All WTS towers shall meet the minimum principal building setback for the district in which located.

b. All accessory equipment structures shall meet the accessory building and structures setback requirements of the district in which located.

c. Where the WTS development adjoins a residential district, the tower and other structures shall honor the setback requirement of the adjacent residential district.

d. For towers that have design collapse points, setbacks shall be required for the collapse zone of the structure.

9-7.2.2 Fencing.

WTS development may be required to have an eight (8) foot fence capable of preventing unauthorized entry.

9-7.2.3 Buffer and Screening

WTS development shall comply with the Buffer and Screening Requirement of Article XII.

9-7.2.4 Lights

No wireless telecommunication tower or antenna shall have affixed or attached to it in any way except during time of repair or installation, any lights, reflectors, flashers, day-time strobes or steady night time light or other illumination devices, except as required by the Federal Aviation Administration and/or the Federal Communications Commission. This restriction against lights shall not apply to towers which have been combined with light standards for illumination of ball fields, parking lots, playgrounds, or other similar public uses.

9-7.2.5 Signs and Advertisement

The use of any portion of a tower for signs or advertising, other than required signs, shall be prohibited.

9-7.2.6 Removal of Abandoned or Damaged Towers

a. Any WTS tower and/or antenna including those existing on the effective date of this Ordinance that is not used for one (1) year shall be deemed abandoned and the property owner shall remove the tower and/or antennae. If the property owner fails to remove the tower, system and/or antenna after the time prescribed, it may be removed by the Town in accordance with the N.C. General Statutes dealing with abandoned structures. The costs of such removal shall be collected as prescribed by the N.C. Statutes dealing with abandoned structures. Damaged towers or towers otherwise deemed by the Building Inspector to be dangerous or hazardous to persons or property shall be immediately repaired or removed.

b. The Board of Adjustment may extend the time for removal where the owner can show cause not to declare the structure abandoned. Such as, if the owner is actively seeking additional customers or systems to be installed at the site.

9-7.3 Exceptions to Board of Adjustment Review/Approval. The following WTS development shall not require Board of Adjustment consideration. Development standards as depicted in 9-7.2 shall apply where appropriate. Review/Approval shall be subject to the administrative review and approval by the Zoning Administrator and staff:

- a. WTS antenna co-located on an existing WTS tower.
- b. WTS antenna located on an existing utility pole, transmission tower, water tank, utility power poles or similar utility structure whether or not they serve a different purpose within all zoning districts.
- c. WTS antenna, towers and/or facilities located in an RO, CD, CH, LI or IW Zoning District.
- d. North Carolina General Statute 160A-383.3 requires reasonable accommodation of amateur radio antenna. The following wireless communication activities are exempt from zoning approval: Amateur radio, Citizens Band (CB), Mars Radio, Civil Air Patrol towers and antennas except those that fall under the requirements of Section 9-7.2 Development Standards.