

TOWN OF AURORA
TOWN BOARD WORK SESSION

June 22, 2010

The following members of the Aurora Town Board met on Tuesday, June 22, 2010 at 7:00 p.m. in the auditorium at 300 Glead Avenue, East Aurora, NY, for the purpose of holding a work session:

Present:	Jolene M. Jeffe	Supervisor
	Jeffrey T. Harris	Councilman
	Susan Friess	Councilwoman
	James F. Collins	Councilman
	James J. Bach	Councilman
Others Present:	Ronald Bennett	Town Attorney
	Bryan Smith	Town Engineer
	William Kramer	Code Enforcement Officer
	David Gunner	Highway Superintendent

Supervisor Jeffe opened the work session at 7:00 p.m. with the recitation of the Pledge of Allegiance to the Flag. The Town Board met to discuss the following:

1. Saved by Grace Ministry, Inc. – Dr. John Sterba, President and CEO of Save by Grace Ministry, Inc., 226 Center Road, East Aurora, NY, is requesting “*governmental authorization*” for 1) unrestricted travel during travel bans or martial law; 2) the ability to access and purchase, without taxation, gasoline from the Town’s pumps at the highway garage at anytime; and 3) permission to have emergency lights, sirens and signage on their personal vehicles. Councilwoman Friess stated she does not want to start something like this. Councilman Harris stated he had a lot of questions, but feels the same way Councilwoman Friess does, noting that if you allow it for one you have to allow it for others. This will be tabled.
2. Leaf Vacuum – Highway Superintendent Gunner is requesting to purchase a leaf vacuum. Bids were received on May 14, 2010. Mr. Gunner is recommending awarding the bid to the third lowest bidder, stating that this bid meets the bid specifications. Supervisor Jeffe stated that several of the bidders wrote that the specs were proprietary. Mr. Gunner stated that he did not think the specifications were proprietary and that he could have specified a direct drive unit, but the pickup would be on the passenger side of the truck towing the unit. The unit he recommends picks up on the driver’s side which he believes is safer. The Town Attorney stated that based on the analysis from Mr. Gunner, the bid from ODB meets the specifications and is acceptable. The Board also discussed the budget transfer suggested by Mr. Gunner that would be necessary to pay for the leaf vacuum. This will be placed on the June 28, 2010 meeting agenda.
3. Inventory Surplus– There are several computer monitors, hard drives, printers, and keyboards that are no longer of use to the town and can be disposed of. The list consists of (2) KBS monitors, (2) 20GB hard drives and (4) keyboards that are broken and unserviceable. The senior center has a 1995 Sony television that no longer works and a Wurlitzer organ needing costly repairs that can to be disposed of. The highway and parks departments have snow blowers, toolboxes, lawn aerators, a generator, fuel tank, and other miscellaneous items that are no longer needed or no longer work. This will be places on the June 28, 2010 meeting agenda.
4. Sign for Legacy Polo Grounds – The Town of Aurora Zoning Board of Appeals (ZBA) received a request for variances for two (2) signs at the entrance of the Legacy Polo Grounds development located at 350 Quaker Road. The ZBA tabled the request. James Whitcomb, acting ZBA chairman, wrote a letter to the Supervisor asking if the Town Board wants to take up the issue of whether to allow signs at the entrance of developments (subdivisions). Due to the extent of the variance being requested, the ZBA members felt that this might be a matter of policy rather than a variance. The

development is located in an R-2 zone and the Town Code allows one (1) four square foot sign. The request is for two (2) twenty eight square foot signs. Councilwoman Friess asked if there should be a distinction between identifying a subdivision versus identifying a single residential lot. Councilman Collins suggested discussing this with the Zoning Board members.

5. Wind Energy Conversion System Code – The Planning Board presented their proposal for a Wind Energy Conversion System Code for the Town. At their May 18, 2010 work session, the Board reviewed the proposed code and suggested several changes. The Town Attorney put the proposal and suggested changes into the form of a local law for the Town Board to review. (Suggested changes are in bold font.)

TOWN OF AURORA
LOCAL LAW INTRO. NO. ____-2010
LOCAL LAW ____-2010

A LOCAL LAW, TO AMEND LOCAL LAW 1-1990 KNOWN AS “THE CODES OF THE TOWN OF AURORA”, ADOPTED BY THE TOWN BOARD OF THE TOWN OF AURORA ON JANUARY 22, 1990, TO INCLUDE NON-COMMERCIAL WIND ENERGY CONVERSION SYSTEMS TO BE INCLUDED IN CHAPTER 116 OF SAID CODES.

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF AURORA AS FOLLOWS:

SECTION 1. SECTION 116-40(1): PURPOSE AND INTENT

The purpose of these regulations for Non-Commercial Wind Energy Conversion System (NCWECS) is to:

- A. Ensure that development of these facilities will have a minimal impact on the environment and adjacent properties.
- B. Protect the health, safety and welfare of residents of the Town of Aurora.
- C. Provide standards for the placement, construction, modification, and maintenance of small-scale Residential type NCWECS, which are designed and used to reduce on-site consumption of utility power.

SECTION 2. SECTION 116-40(2): DEFINITIONS

Ambient Sound Level: Ambient sound level is the sound from all sources other than the particular sound of interest; also known as the background sound level. The ambient sound measurement (A-weighted sound level) is taken where the offending sound cannot be heard, or with the sound source shut-off. The ambient sound level, rarely found to be constant over time, can be quite variable. The ambient sound level is considered to be the level that is exceeded 90% of the time when a sound measurement is taken.

Fall-Down Zone: The area surrounding the tower described as one and a half times the height of the tower measured from its base radially.

Total Height (Maximum overall height): The height of the NCWECS as measured from ground elevation to the top of the tip of the blade in the vertical position.

Tower: The support structure, including guyed, monopole and lattice types, upon which a wind turbine and other mechanical devices are mounted.

Tower Height: The height above grade of the uppermost portion of the tower, excluding the length of any axial rotating turbine blades.

Turbine: The parts of the NCWECS including the blades, generator and tail.

Wind Energy Conversion System (WECS): An accessory structure designed and constructed or erected for the purpose of converting wind energy into mechanical or electrical power.

Wind Energy Conversion System (Commercial): A WECS that is intended to generate electricity power for sale to a power grid.

Wind Energy Conversion System (Non-Commercial): A NCWECS that has a maximum rated capacity appropriate to the on-site demand of the end user.

Wind Energy Facility (WEF): Any part of a NCWECS or wind measurement tower, including all related infrastructure, electrical systems and substations, access roads, and accessory structures included therein.

Wind Measurement Tower: A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

Wind Turbine: Any piece of electricity-generating equipment that converts wind energy into electrical energy through the use of airfoils, rotating turbine blades, or similar devices to capture the wind.

SECTION 3. SECTION 116-40(3): PERMITTED USE

Non-Commercial Wind Energy Systems shall be a permitted use in all zoning classifications, subject to a Site Plan Review and approval by the Town of Aurora Town Board and the issuance of a NCWECS permit by the Town of Aurora Building Department as set forth in Section 65 of the Town of Aurora Code.

SECTION 4. SECTION 116-40(4): REQUIREMENTS FOR APPLICATION

All applicants for a Non-Commercial WECS permit shall make a written application **to be filed with the Town Clerk and referred to the Town Board. The completed application will be referred to the Town Building Department for review to determine compliance with the requirements of the Codes and that the application is acceptable to proceed for review and processing.** A NCWECS application shall include:

- (1) A completed NCWECS Permit Application Form.
- (2) A completed Site Plan Review Application Form.
- (3) A Full Environmental Assessment Form with completed Part 1, **a visual addendum, and** such other part requiring completion by the applicant.
- (4) Compliance with General Municipal Law Section 239-m if applicable.
- (5) A copy of a Certified Property Survey that also shows:
 - (a) The proposed location of the NCWECS tower.
 - (b) The radius of the fall down zone around the NCWECS tower.
- (6) A Site Plan in form and content acceptable to the Town Board, prepared to scale and in sufficient detail and accuracy, showing at a minimum:
 - (a) The proposed location of the NCWECS, together with guy wires and guy anchors.
 - (b) The maximum height of the proposed tower, including blades in vertical position.
 - (c) A detail of tower type (monopole, guyed, freestanding or other).
 - (d) The color or colors of the NCWECS tower.
 - (e) The location, type and intensity of any lighting on the NCWECS tower.
 - (f) A contour/topography map of the property and adjacent parcels of sufficient scale as to clearly indicate appropriate drainage and erosion impact on- and off-site as well as jurisdictional wetlands.
 - (g) The location of all structures on the property and all structures on any adjacent property within 500 feet of the property lines, together with the distance

of these structures to the NCWECS tower and the distance of the NCWECS tower from all property lines and public roads or rights-of-way.

(h) The names and mailing addresses of all **abutting landowners and landowners within a 2500 feet** radius of the proposed location of the NCWECS.

(i) The location, nature and extent of any proposed fencing and landscaping or screening to be constructed around or in conjunction with the NCWECS tower.

(j) The location and nature of any utility easements and access roads proposed or existing in connection with the NCWECS tower.

(k) Building elevations of accessory structures and immediately adjacent buildings to the proposed NCWECS tower and related facilities.

(l) Evidence that the proposed tower height does not exceed the height recommended by the manufacturer of the system.

(m) Turbine Information: Specific information on the type, size, height, rotor material, rated power output, and performance safety and noise characteristics of the NCWECS.

(n) Written notice that the electrical utility service provided has been informed, and permit requested, as required, to connect to the public grid, adhering to all guidelines set forth by the utility service provider.

(o) Signage **of a minimum of 1-foot by 2-foot size** indicating the potential of electric shock located at a height of **at least** seven feet above the surrounding ground surface **and located at the base of the tower being clearly visible**, and a safety plan of access denial **by way of** climbing.

(p) Manufacturer's specifications and certification on manual and automatic over speed controls built into NCWECS and on-site certification by a qualified installer.

(q) Certified sound rating data covering the NCWECS' sound producing features, including the overall sound pressure levels measured with an A-weighted scale throughout the operating range of design wind speed. The report shall include low frequency, infrasound, pure tone, and repetitive impulsive sound.

(r) The location of noise sensitive receptors (i.e., hospitals, libraries, schools, places of worship or other sensitive receptors identified by the Town Planning Board) within 2500 feet of the proposed NCWECS' location.

SECTION 5. SECTION 116-40(5): EXEMPTIONS

The following are exempt from the requirements of this article:

- (1) Existing NCWECS towers may be repaired and maintained without restriction.

SECTION 6. SECTION 116-40(6): STANDARDS AND PROCEDURE

(1) This article is meant to control and regulate the construction and use of NCWECS towers in the Town of Aurora. Unless specifically referenced in this article, other sections of this chapter may be inapplicable to such facilities.

(2) The Town Board may waive or vary any requirements in this article for good cause shown.

(3) All NCWECS shall require a Site Plan Review, reviewed by the Town of Aurora Planning Board and applicable criteria from this chapter to assist in the approval process deemed appropriate by this chapter.

(4) Structural Safety: Upon written request from the Town Board or Town Planning Board, either during the application process and/or after construction of the tower, the applicant shall provide a certificate from a qualified licensed Professional Engineer

certifying that the tower meets applicable structural safety standards, including but not limited to, wind loading and seismic effects due to soil conditions. Such requests from the Town Board or Town Planning Board shall not occur more often than once every five (5) years, unless the Town Board has reasonable grounds to believe the tower is in an unsafe condition, in which event such a request may be made on a more frequent basis. In any such event, the certificate described herein shall be delivered to the Town Board and/or Town Planning Board within thirty (30) days of such request, and is possibly completed, within thirty (30) days of the date of such certificate, as verified by the **Town of Aurora Code Enforcement Officer and Building Inspector**.

(5) The Town Board and/or Town Planning Board may request reasonable additional information, including but not limited to, any visual and aesthetic information it deems appropriate on a case-by-case basis. Such additional information may include, among other things, a Professionally Engineered Wind Study, enhanced landscaping plans, line-of-sight drawings and/or visual simulations from neighboring viewpoints, microwave interference, etc.

(6) The Town Board or Town Planning Board may recommend and/or may require that NCWECS towers be set back a sufficient distance from adjacent property lines and/or structures, and public roadways to safeguard the general public and/or adjacent property from damage in the event of tower failure or falling debris, which distance shall take into account the fall-down zone of any tower and/or antenna. Guy wires erected must adhere to Code-approved setback standards as well as fencing requirements.

(7) The "Fall-Down Zone" should not be located closer to any property line equal to one and a half times the Total Height and a minimum of 500 feet from existing structures not owned by the applicant. Notwithstanding the limitations contained herein, the Town Board can set a different fall-down zone upon receipt of information from the applicant or adjoining property owners which demonstrates the safety of the general public or adjacent property is protected.

(8) The applicant must comply with all applicable state and federal regulations, including FAA regulations.

(9) Access:

(a) Tower climbing access shall be located no closer than 12 feet from the ground.

(b) A locked anti-climb device to be installed on the tower.

(c) A locked, protective fence, seven feet in height that encloses the tower and guy wires, and discourages access will be required.

(10) Only one NCWECS **tower** shall be permitted **as a non-commercial use primarily for residential purposes. The division of adjoining property shall be considered in the limitation of NCWECS towers.**

(11) No NCWECS tower shall contain any signage other than electrical shock warning, or advertising of any kind.

(12) No NCWECS tower, including blades, shall exceed 140 feet in height including the height of any structure or facility upon which such a tower is constructed unless the applicant can demonstrate the existence of a necessary and/or special need to construct a higher wind tower in order to obtain a reasonable level of performance.

(13) No person operating a NCWECS shall willfully, negligently, or through failure to provide necessary equipment, service, or maintenance or to take necessary precautions cause, suffer, allow, or permit unnecessary emissions from said NCWECS source of sound that may cause noise to adjacent properties. This policy specifies that the Ambient Sound Level, measured at the property line upon which the NCWECS facility is located shall not be increased by more than 3 decibels weighted for the "A" scale [dBA] due to the operation of the NCWECS.

- (14) In order to reduce visual impact, the NCWECS shall be painted a non-reflective, unobtrusive color that blends the system with the surrounding landscaping.
- (15) Intermittent shadow or flutter shadow shall not be cast on any adjacent residence, more than an average of ten (10) minutes a day.
- (16) Exterior lighting on any NCWECS shall not be allowed unless mandated by the Federal Aviation Administration.
- (17) All structures which may be charged with lightning will be grounded according to New York State adopted National Electric Code. Whenever possible, all wiring associated with a NCWECS shall be installed underground within the "Fall-Down Zone".
- (18) All NCWECS shall be operated in such a fashion as to minimize disruptive electromagnetic interference as is evident in television, microwave and radio reception/transmission. If it is determined that a NCWECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate the interference including relocation or removal of NCWECS tower.
- (19) Erosion control and sedimentation will be addressed by the Town Planning Board after a review of the soil conditions at the proposed site. The Town Planning Board recommendations will be managed by the property owner in a manner consistent with all applicable State and Federal laws and regulations.
- (20) Removal of NCWECS tower: The property owner shall agree to remove the tower, if said tower, ceases to be used for its intended purpose for twelve (12) consecutive months. The Town Board shall require the property owner to provide a demolition bond or other form of security acceptable to the Town Board and Town Attorney as to the form, content and manner of execution, in an amount sufficient to ensure the faithful performance of the removal of the tower and the restoration of the site subsequent to its removal.

SECTION 7. SECTION 116-40(7): PERMIT AND RELATED FEES

- (1) Permit fees pertaining to NCWECS tower permit or building permit issues pursuant to this section **as adopted by resolution of the Town Board.**
- (2) All fees associated with the engineering, wind measurement statistics or any special testing and/or inspections, are the sole responsibility of the project sponsor.

SECTION 8. EFFECTIVE DATE

This Local Law shall take effect immediately upon the adoption by the Town of Aurora Town Board and filing with the New York Secretary of State.

- 6. Town of Aurora Feedback Survey – Supervisor Jeffe told the Board to review the sample feedback survey and to add their suggestions to be reviewed at a future work session.
- 7. Jewett Holmwood Subdivision Preliminary Plat – Peter Sorgi, Attorney for the subdivision developer, reviewed his 6/22/10 letter to the Board addressing 1) the proposed access road as it relates to the Pintabona property (property to the west of the access road) and 2) soil stability on lots adjacent to Cazenovia Creek. They also provided a plan for the existing median between Quaker and Jewett Holmwood Roads. The plan calls for removing all trees and vegetation and lowering the hill 3 to 5 feet. This would be in conjunction with widening the shoulder on Jewett Holmwood by eight (8) feet. After discussion, the Board felt that it probably wouldn't be necessary to lower the median, especially if it meant removing trees/vegetation. Mr. Sorgi stated that "a district would be formed for plowing the cul-de-sacs so it won't cost others in the town anything". The Board then went on to discuss the lots along Cazenovia Creek. Mr. Sorgi stated they are agreeable to deed restrictions on these properties that address the cutting of trees and the placement of buildings. Councilwoman Friess asked if there could be restrictions on the size of trees that would be cut down. Code Enforcement Officer Bill Kramer asked who enforces deed restrictions. Mr. Sorgi responded that the Town or any

adjacent property could enforce the restrictions. Highway Superintendent Gunner asked about the size of the right-of-way. Mr. Sorgi stated that the right-of-way at the entrance to the subdivision along the Pintabona property would be decreased, but the road width would remain the same. Councilwoman Friess suggested having the fire department look at the cul-de-sacs to see if there is sufficient room for fire trucks. Mr. Gunner asked who would be responsible for keeping sidewalks clear of snow. It was suggested that the homeowner would be responsible, but the Town code currently does not address sidewalk snow removal.

The Board allowed several members of the audience to address the Board:

Marion Dombrowski, Jewett Holmwood Road, stated that there will be erosion if trees are allowed to be removed from the creek bank and top of the bank.

Melissa Dispensa, Quaker Road, commented that by allowing sewers in the subdivision, the Board is creating a "small village".

8. Retirement System Reporting – The Board will adopt a resolution at their July 12, 2010 meeting with regard to the mandated retirement system reporting for elected and appointed officials.
9. SMSI – Supervisor Jeffe stated that if a referendum on the proposed joint municipal facility is to be held at the 2010 General Election (11/2/10) the Board would have to vote on a bond resolution 60 to 75 days prior to Election Day or sometime between 8/20/10 and 9/4/10. The Supervisor gave a summary of her financial concerns:
 - The bond would be for approximately \$9 million. Currently 17% of the General Fund goes towards debt service.
 - The 5-year pay-off schedule for Gleed Avenue is affecting the General Fund balance.
 - The police cost for the Part-town Fund (town outside the village) is increasing. This will result in a dangerously low part-town fund balance.

Supervisor Jeffe stated that as Chief Fiscal Officer for the Town she doesn't think she can vote in support of the SMSI referendum at this time.

Councilman Collins stated that he is in favor of a public vote.

Councilwoman Friess noted that to put the joint municipal building to a public referendum, it would mean that the Board is saying they support a \$9 million project that will be paid for by the tax payers.

Councilman Harris stated he can not support a \$9 million bond that would substantially increase taxes. He noted that he would be able to support a "choose A or B" referendum and believes Gleed is the best choice. Mr. Harris said this is not the right economic time for a referendum like this.

Councilwoman Friess said that the question to the voters should be more like "would you like a 30% tax increase in the general fund?".

Councilman Bach stated he is struggling with the possible future costs to tax payers if this referendum were to pass along with the cost of a new fire hall, senior center, etc. The economic situation is not good for issues like this.

Councilman Collins stated that if the issue goes to referendum he would insist on a postcard being sent to everyone with all the facts.

Al Fontanese and Deborah Carr-Hoagland, Library Board members and SMSI committee representatives, spoke to the Board, insisting that the joint facility be sent to referendum in November. Mrs. Carr-Hoagland believes that putting the facility on Main Street will revitalize Main Street.