

**NESQUEHONING BOROUGH  
ORDINANCE NO. 3 OF 2013**

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF NESQUEHONING BOROUGH, CHAPTER 22, KNOWN AS THE SUBDIVISION AND LAND DEVELOPMENT ORDINANCE OF NESQUEHONING, TO PROVIDE FOR THE REGULATION OF WIND ENERGY FACILITIES

Chapter 22 of the Code of Ordinances of the Borough of Nesquehoning is hereby amended.

Section 1. This Chapter shall be known as the Wind Energy Facility Ordinance for the Borough of Nesquehoning.

1. PURPOSE

The purpose of this Chapter is to provide for the land development, construction, operation and decommissioning of Wind Energy Facilities in the Borough of Nesquehoning, subject to reasonable conditions that will protect the public health, safety and welfare.

2. DEFINITIONS

- A. "Applicant" is the person or entity filing an application under this Ordinance.
- B. "Facility Owner" means the entity or entities having an equity interest in the Wind Energy Facility, including their respective successors and assigns.
- C. "Operator" means the entity responsible for the day-to-day operation and maintenance of the Wind Energy Facility.
- D. "Hub Height" means the distance measured from the surface of the tower foundation to the height of the Wind Turbine hub, to which the blade is attached.
- E. "Occupied Building" means a residence, school, hospital, church, public library or other building used for public gathering that is occupied or in use when the permit application is submitted.
- F. "Turbine Height" means the distance measured from the surface of the tower foundation to the highest point of the turbine rotor plane.
- G. "Wind Turbine" means a wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower and pad transformer, if any.

- H. “Wind Energy Facility” means an electric generating facility, whose main purpose is to supply electricity, consisting of one or more Wind Turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.
- I. “Non-Participating Landowner” means any landowner except those on whose property all or a portion of a Wind Energy Facility is located pursuant to an agreement with the Facility Owner or Operator.

3. APPLICABILITY

- A. This Ordinance applies to all land development plans which provide for Wind Energy Facilities to be constructed after the effective date of the Ordinance, except that this Ordinance is not intended to apply to stand-alone Wind Turbines constructed primarily for residential or farm use.
- B. Wind Energy Facilities constructed prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance; provided that any physical modification to an existing Wind Energy Facility that materially alters the size, type and number of Wind Turbines or other equipment shall comply with the provisions of this Chapter.

4. PERMIT REQUIRED

- A. **PERMIT REQUIRED**— No Wind Turbine Generators shall be constructed, operated or maintained within Nesquehoning Borough without a permit for the same. Application for permit shall be made on forms provided by the Borough. A separate application shall be filed for each structure.
- B. **PERMIT FEE** – A permit fee of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per proposed megawatt for Wind Turbine Generators shall be paid at the time the application is submitted. Fees shall not be returned where an application has been denied. The Borough Council may modify this fee by Resolution from time to time in keeping with the Borough’s experience with the cost of administering the provisions of this Ordinance.
- C. **DURATION OF PERMIT** – A permit issued shall be valid for a period of Thirty(30) years. Any application for renewal shall satisfy all criteria and regulations set forth in Exhibit “A”.
- D. **NOTICE OF APPLICATION** – The applicant must provide written notice of application to all property owners and tenants occupying property within 2,000 feet of the boundaries of the property upon which the Wind Turbine Generator(s)

are to be located. Proof of service of such notice by Certified Mail or notarized affidavit of hand delivery must be provided with the application.

- E. **REVIEW OF APPLICATIONS** – The Borough will review the application submitted and reject the same if it is incomplete in any respect. In such case, the application fee shall be retained as compensation for the time spent in review. If the application is determined to be complete, the Borough Secretary shall place the matter on the agenda for action by the Borough Council at a public meeting.
- F. **ISSUANCE OF PERMITS** – The Borough Council of Nesquehoning, with the assistance of such consultants as they deem appropriate, shall make a determination at a public meeting as to whether the application submitted meets the criteria and regulations set forth in this Ordinance, and approve or reject the application based upon that determination in a public vote.
- G. **CRITERIA AND REGULATIONS FOR GRANTING OF PERMIT** – No permit for the construction, operation or maintenance of a Wind Turbine Generator(s) shall be granted unless the applicant demonstrates compliance in its application with all criteria and regulations set forth herein..
- H. **CONTINUED COMPLIANCE** – An applicant granted a permit under this Ordinance shall be under a continuing obligation to meet the performance criteria and regulations required in this Ordinance. The Nesquehoning Borough Council hereby declares that a Wind Turbine Generator(s) which ceases to meet the criteria and regulations required by the Ordinance after construction and pursuant to a permit, shall constitute a nuisance, and following thirty(30) day notice to the applicant at the address listed on the application for permit, of the need for abatement, which remains unremedied or unappealed, the Borough may act to remove the structure. Such Notice shall be designated as a Notice of Violation, and shall be appealable as set forth below.
- I. **NO FURTHER LAND DEVELOPMENT** – No property or block of property upon which a permit has been granted for the construction, maintenance or operation of a Wind Turbine Generator(s) shall thereafter be eligible for the issuance of a building permit within the distances of 2,500 feet from a permitted Wind Turbine Generator(s), unless the party requesting the building permit shall have executed a written waiver or non-disturbance easement, covenant or consent, any of the aforementioned which has been recorded in the Office of the Recording of Deeds of Carbon County, Pennsylvania.
- J. **NO FURTHER SUBDIVISION** – No property or lot upon which a Wind Turbine Generator has been located shall be further subdivided where to do so

would result in the setbacks required by this Ordinance and/or as set forth in the permit not being met.

5. LAND DEVELOPMENT REQUIREMENTS

- A. No land development plan providing for the construction or erection of a Wind Energy Facility or addition of a Wind Turbine to an existing Wind Energy Facility shall be approved unless such plan has complied with the requirements of this Chapter and Chapter 22 – Subdivision and Land Development Requirements.
- B. Any physical modification to an existing and permitted Wind Energy Facility that materially alters the size, type and number of Wind Turbines or other equipment shall require land development approval under the Subdivision and Land Development Ordinance of the Borough of Nesquehoning. Like-kind replacements shall not require a permit modification.

6. ADDITIONAL LAND DEVELOPMENT PLAN REQUIREMENTS

- A. The land development plan shall demonstrate that the proposed Wind Energy Facility will comply with this Chapter and the PA Uniform Construction Code, Act 45 of 1999 as amended, and the regulations adopted by the Department of Labor and Industry.
- B. The land development plan, in addition to the other requirements of the Subdivision and Land Development Ordinance of the Borough of Nesquehoning shall contain the following:
  - 1. A narrative describing the proposed Wind Energy Facility, including an overview of the project; the project location; the approximate generating capacity of the Wind Energy Facility; the approximate number, representative types and height or range of heights of Wind Turbines to be constructed, including their generating capacity, dimensions and respective manufacturers, and a description of ancillary facilities.
  - 2. An Affidavit or similar evidence of agreement between the property owner and the Facility Owner or Operator demonstrating that the Facility Owner or Operator has the permission of the property owner to apply for necessary permits for construction and operation of the Wind Energy Facility.
  - 3. Identification of the properties on which the proposed Wind Energy Facility will be located, and the properties adjacent to where the Wind Energy Facility will be located.

4. A site plan showing the planned location of each Wind Turbine, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the Wind Energy Facility to the substation(s), ancillary equipment, buildings, and structures, including permanent meteorological towers, associated transmission lines, and layout of all structures within the geographical boundaries of any applicable setback.
  5. Documents related to decommissioning, including a schedule for the decommissioning and financing security.
  6. Other relevant studies, reports, certifications and approvals as may be reasonably requested by the Borough of Nesquehoning, its employees or agents to ensure compliance with this Chapter.
- C. The applicant is required to demonstrate to the Nesquehoning Borough Council that the permits and licenses have been obtained from the Federal Energy Regulatory Commission, the Pennsylvania Department of Environmental Protection and the Public Utility Commission.
  - D. The applicant is required to demonstrate compliance that all Federal and State regulations have been met in regards to the National Environmental Policy Act, Pennsylvania Natural Diversity Index Submission and Pennsylvania Historical and Museum Commission.
  - E. The applicant is required to provide documentation of the response to the Notice of Proposed Construction forms submitted to the FAA and Pa DOT Bureau of Aviation.

## 7. DESIGN AND INSTALLATION

### A. Uniform Construction Code

To the extent applicable, the Wind Energy Facility shall comply with the Pennsylvania Uniform Construction Code, Act 45 of 1999 as amended, and the regulations adopted by the Department of Labor and Industry.

### B. Design Safety Certification

The design of the Wind Energy Facility shall conform to applicable industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Nortske Veritas,

Germanischer Lloyd Wind Energies, or other similar certifying organizations.

C. Controls and Brakes

All Wind Energy Facilities shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for overspeed protection.

D. Electrical Components

All electrical components of the Wind Energy Facility shall conform to relevant and applicable local, state, and national codes, and relevant and applicable international standards.

E. Visual Appearance: Power Lines

1. Wind Turbines shall be a non-obtrusive color such as white, off-white or gray.
2. Wind Energy Facilities shall only be artificially lighted to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.
3. Wind Turbines shall not display advertising, except for reasonable identification of the turbine manufacturer, Facility Owner and Operator.
4. On-site transmission and power lines between Wind Turbines shall, to the maximum extent practicable, be placed underground.

F. Warnings

1. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
2. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points or guy wires and along the guy wires up to a height of ten feet from the ground.

G. Climb Prevention/Locks

1. Wind Turbines shall not be climbable up to fifteen(15) feet above ground surface.

2. All access doors to Wind Turbines and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.

## 8. SETBACKS

### A. Occupied Buildings

1. Wind Turbines shall be set back from the nearest Occupied Building a distance not less than the greater of the maximum setback requirements for that zoning classification where the turbine is located or 1.1 times the Turbine Height, whichever is greater. The setback distance shall be measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building.
2. Wind Turbines shall be set back from the nearest Occupied Building located on a Non-participating Landowner's property a distance of not less than five (5) times the Hub Height, as measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building.

B. Property Lines: All Wind Turbines shall be set back from the nearest property line a distance of not less than the greater of the maximum setback requirements for that zoning classification where the turbine is located or 1.1 times the Turbine Height, whichever is greater. The setback distance shall be measured to the center of the Wind Turbine base.

C. Public Roads: All Wind Turbines shall be set back from the nearest public road a distance of not less than 1.1 times the Turbine Height, as measured from the right-of-way line of the nearest public road to the center of the Wind Turbine base.

## 9. WAIVER OF SETBACKS

- A. Upon request, the governing body may grant partial waivers of setback requirements hereunder where it has been determined that literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question and provided that such waiver will not be contrary to the public interest.
- B. The governing body may take into consideration the support or opposition of adjacent property owners in granting waivers of setback requirements hereunder.

## 10. USE OF PUBLIC ROADS

- A. The Applicant shall identify all state and local public roads to be used within the

Borough of Nesquehoning to transport equipment and parts for construction, operation or maintenance of the Wind Energy Facility.

- B. The Borough of Nesquehoning's engineer or a qualified third party engineer hired by the Borough of Nesquehoning and paid for by the Applicant, shall document road conditions prior to construction. The engineer shall document road conditions again thirty(30) days after construction is complete or as weather permits.
- C. The Borough of Nesquehoning may bond the road in compliance with state regulations.
- D. Any road damage caused by the applicant or its contractors shall be promptly repaired at the Applicant's expense.
- E. The Applicant shall demonstrate that it has appropriate financial assurance to ensure the prompt repair of damaged roads.

#### 11. LOCAL EMERGENCY SERVICES

- A. The Applicant shall provide a copy of the project summary and site plan to local emergency services, including paid or volunteer Fire Department(s).
- B. Upon request, the Applicant shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for the Wind Energy Facility.

#### 12. NOISE AND SHADOW FLICKER

- A. Audible sound from a Wind Energy Facility shall not exceed fifty (50) dBA, as measured at the exterior of any Occupied Building on a Non-participating Landowner's property. Methods for measuring and reporting acoustic emissions from Wind Turbines and Wind Energy Facility shall be equal to or exceed the minimum standards for precision described in AWEA Standard 2.1-1989 titled *Procedures for the Measurement and Reporting of Acoustic Emissions from Wind Turbine Generation Systems Volume I: First Tier*. The Municipality may grant partial waiver of such standards where it has determined that literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question and provided that such waiver will not be contrary to the public interest.
- B. The Facility Owner and Operator shall make reasonable efforts to minimize shadow flicker to any Occupied Building on a Non-participating Landowner's property.



- C. The governing body may take into consideration the support or opposition of adjacent property owners on granting waivers of noise and shadow flicker restrictions.

13. SIGNAL INTERFERENCE

The Applicant shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television or similar signals, and shall mitigate any harm caused by the Wind Energy Facility.

14. LIABILITY INSURANCE

There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least \$1 million per occurrence and \$1 million in the aggregate. Certificates shall be made available to the Borough of Nesquehoning upon request

15. DECOMMISSIONING

- A. The Facility Owner and Operator shall, at its own expense, complete decommissioning of the Wind Energy Facility, or individual Wind Turbines, within twelve (12) months after the end of the useful life of the Facility or individual Wind Turbines. The Wind Energy Facility or individual Wind Turbines will presume to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months.
- B. Decommissioning shall include removal of Wind Turbines, buildings, cabling, electrical components, roads, foundations to a depth of 35 inches, and any other associated facilities.
- C. Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.
- D. An independent and certified Professional Engineer shall be retained to estimate the total cost of decommissioning (“Decommissioning Costs”) without regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment (“Net Decommissioning Costs”). Said estimates shall be submitted to the Borough of Nesquehoning after the first year of operation and every fifth year thereafter.
- E. The Facility Owner or Operator shall post and maintain Decommissioning Funds in an amount equal to Net Decommissioning Costs; provided, that at no point shall Decommissioning Funds be less than twenty five percent (25%) of Decommissioning Costs. The Decommissioning Funds shall be posted and

maintained with a bonding company or Federal or Commonwealth chartered lending institution chosen by the Facility Owner or Operator and participating landowner posting the financial security, provided that the bonding company or lending institution is authorized to conduct such business within the Commonwealth and is approved by the Borough of Nesquehoning.

- F. Decommissioning Funds may be in the form of performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance as may be acceptable to the Borough of Nesquehoning.
- G. If the Facility Owner or Operator fails to complete decommissioning within the period prescribed by Paragraph 17(A), then the landowner shall have six(6) months to complete decommissioning.
- H. If neither the Facility Owner or Operator, nor the landowner complete decommissioning within the periods prescribed by Paragraphs 17(A) and 17(G), then the Borough of Nesquehoning may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a Participating Landowner agreement to the Borough of Nesquehoning shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Borough of Nesquehoning may take such action as necessary to implement the decommissioning plan.
- I. The escrow agent shall release the Decommissioning Funds when the Facility Owner or Operator has demonstrated and the municipality concurs that decommissioning has been satisfactorily completed, or upon written approval of the municipality in order to implement the decommissioning plan.

## 16. PUBLIC INQUIRIES AND COMPLAINTS

- A. The Facility Owner and Operator shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

## 17. REMEDIES

- A. It shall be unlawful for any person, firm, or corporation to violate or fail to comply with or take any action which is contrary to the terms of the ordinance, or any permit issued under th ordinance, or cause another to violate or fail to comply, or to take action which is contrary to the terms of the ordinance or permit issued under the ordinance.
- B. If the Borough of Nesquehoning determines that a violation of the Ordinance or the permit has occurred, the Borough of Nesquehoning shall provide written

notice to any person, firm, or corporation alleged to be in violation of this Ordinance or permit. If the alleged violation does not pose an immediate threat to the public health or safety, the Borough of Nesquehoning and the parties shall engage in good faith negotiations to resolve the alleged violation. Such negotiations shall be conducted within the thirty (30) days of the notice of violation.

- C. If, after thirty (30) days from the date of the notice of violation, the Borough of Nesquehoning determines, in its discretion, that the parties have not resolved the alleged violation, the Borough of Nesquehoning may institute civil enforcement proceedings or any other remedy at law or in equity to ensure compliance, as provided in Chapter 22 of the Subdivision and Land Development Ordinance.

As to all other matters the Subdivision and Land Development Ordinance is hereby ratified and this Amendment shall be effective immediately upon adoption.


ORDERED AND ENACTED this 18<sup>th</sup> day of December, 2013.

BOROUGH OF NESQUEHONING

BY: 

ATTEST:   
SECRETARY

Examined and Approved this 18<sup>th</sup> day of December, 2013.

  
MAYOR