

ORDINANCE NO. 2-2008

NORTH ABINGTON TOWNSHIP
LACKAWANNA COUNTY, PENNSYLVANIA

AN ORDINANCE AMENDING THE NORTH ABINGTON TOWNSHIP ZONING ORDINANCE OF SEPTEMBER 4, 2001, TO:

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BE IT HEREBY ORDAINED AND ENACTED by the Board of Supervisors of North Abington Township, Lackawanna County, Pennsylvania, by authority of and pursuant to the provisions of Act of 1968, P.L. 805, No. 247 of the General Assembly of the Commonwealth of Pennsylvania, approved July 31, 1968, as reenacted and amended, known and cited as the *Pennsylvania Municipalities Planning Code*, as follows:

ITEM 1 - Add the following definitions to Article III:

Outdoor Furnace: Any device, contrivance or apparatus or any part thereof, including but not limited to, a boiler, fire box, exchanger, grate, fuel gun, fuel nozzle, chimney, smoke pipe, exhaust conduit and like devices, which is installed, affixed or situated out-of-doors for the primary purpose of the combustion of fuel from which heat or energy is derived and intended to be directed therefrom by conduit or other mechanism into any interior space for the supply of heat or energy.

Pets, Keeping of: The keeping of domestic animals for noncommercial purposes that are normally considered to be kept in conjunction with a dwelling for the pleasures of the resident family and which are not defined as livestock by this Ordinance. This shall include dogs, cats, birds, hamsters, gerbils, and other animals commonly sold in retail pet shops.

Wind Energy Facility: A facility where one (1) or more wind turbines and/or other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities are located and are used for the generation of electricity which is used on-site for commercial purposes or which is sold on the open market. A wind turbine accessory to a principal structure which is sized and intended to be used to generate electricity primarily for the principal structure to which it is accessory shall not be considered a *wind energy facility*.

Wind Turbine Generator: 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.

Wind Turbine Generator, Accessory: 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, and which is sized and intended to be used to generate electricity primarily for the principal structure to which it is accessory.

Wind Turbine Generator, Hub Height: The distance measured from the surface of the tower foundation to the height of the wind turbine hub to which the blade is attached.

Wind Turbine Generator, Turbine Height: The distance measured from the surface of the tower foundation to the highest point of the turbine rotor plane.

ITEM 2 - Make the following changes to the Schedule of Uses (§404.1):

- Add *outdoor furnaces on less than 2 acres* as a conditional use in all Zoning Districts.
- Add *outdoor furnaces on 2 acres or more* as an accessory use in all Zoning Districts.
- Add *wind turbine generators, accessory* as an accessory use in all Zoning Districts.
- Add *wind energy facilities* as a conditional use in the A-1 Zoning District.

ITEM 3 - Amend §501.4 to read as follows:

501.4 Height Limitations

The specific height requirements which are set by other sections of this Ordinance for certain structures shall apply. Unless specifically regulated by other sections of this Ordinance, the height regulations in the Schedule of Development Standards shall not apply to spires, belfries, cupolas, domes, not used for human occupancy, nor to chimneys, ventilators, monuments, water towers, masts and aerals, television antennas, wind turbine generators, public utility structures that are not buildings, silos, chimneys, ventilators, and parapet walls extending not more than four (4) feet above the regulated height of the building, skylights, bulkheads, and ornamental or necessary mechanical appurtenances. Any such non-agricultural structure which exceeds the maximum height requirement by more than fifteen (15) feet shall be considered a conditional use. The Township may require larger setbacks and specific structural designs to ensure that the height or the failure of any such structure will not effect adjoining properties or the public health, safety and welfare.

ITEM 4 - Amend §501.6 to read as follows:

501.6 Projections Into Yards

Projections into required yards shall be permitted as follows; however, in no case shall a projection be less than ten (10) feet from any side or rear lot line or twenty (20) feet from any public road right-of-way.

- A. Bay windows, fire places, fire escapes, chimneys, uncovered stairs and landings, and balconies and cornices, canopies, eaves, or other architectural features not required for structural support may project into the required front, side or rear yards not more than a total of three (3) feet.
- B. Patios may be located in the required side and rear yards not less than twenty (20) feet to any rear property line and ten (10) feet to any side property line, and may project into front yards up to ten (10) feet.
- C. Unenclosed decks and porches on dwellings may project into front yards up to ten (10) feet. This shall also apply to any existing dwelling with a nonconforming front yard setback, but in no case shall the front yard setback be reduced to less than fifteen (15) feet.

ITEM 5 - Amend §503.2 to read as follows:

503.2 Fences and Walls

The erection of any fence or wall in all Districts shall require a zoning permit and shall be subject to the following provisions: (Subsections C, D and E shall not apply to agricultural fences and permits shall not be required for agricultural fences, or vegetable and flower garden fences.)

- A. All fences and walls shall comply with §502.3 of this Ordinance for clear sight triangles.
- B. A fence shall be considered *solid* if the ratio of the solid portion to the open portion exceeds one (1) to four (4), not including the posts. A fence shall be considered *open* if the ratio of the solid portion to the open portion is

less than or equals one (1) to four (4), not including the posts.

- C. All walls exceeding four (4) feet in height and all solid fences exceeding four (4) feet in height shall meet the required front yard setback. Walls four (4) feet in height or less, solid fences four (4) feet in height or less, and open fences may be erected up to the right-of-way line.
- D. All walls exceeding six (6) feet in height and all solid fences exceeding six (6) feet in height shall meet the required side and rear yard setback. Walls six (6) feet in height or less, solid fences six (6) in height or less, and open fences may be erected up to the property line.
- E. All fence posts and other structural supports shall be located on the side of said fence towards the interior of the property owned by the person erecting the fence.
- F. No fence or wall shall encroach upon any public right-of-way.
- G. The following fences and fencing materials are prohibited:
 - 1. Barbed wire except for that surmounting a *man-proof* fence and said barbed wire is at least six (6) feet above ground level and agricultural fences.
 - 2. Electrically charged fences except for agricultural fences and vegetable and flower garden fences.
 - 3. Broken glass surmounting a wall.
 - 4. Junk, junk vehicles, sheet metal, pallets, appliances, tanks, barrels or similar material.

ITEM 6 - Replace §503.9 Reserved with the following §503.9:

503.9 Wind Turbine Generators, Accessory (See also §501.4 for height limitation requirements.)

An accessory wind turbine generator is 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, and which is sized and intended to be used to generate electricity for the principal structure to which it is accessory. Accessory wind turbine generators are permitted in all districts only in compliance with the following:

A. Setback; Height in R-1 and R-2

- 1. No part of the wind turbine generator structure shall be located closer to any property line or road-right-of-way than the height of the structure as measured from the highest point of the rotor plane.
- 2. The height of a wind turbine generator structure, as measured from the highest point of the rotor plane, shall not exceed sixty (60) feet in R-1 and R-2 Zoning Districts.
- 2. Guy wire anchors shall not extend closer than ten (10) feet to any property line or road-right-of-way.

B. Noise - Noise from the accessory wind turbine generator shall comply with §701.6. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms.

C. Uniform Construction Code - Applications for accessory wind turbine generators shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings documenting compliance with the Uniform Construction Code. The generator and support structure shall be installed in accord with all Uniform Construction Code and manufacturer requirements.

D. Compliance with FAA Regulations - Accessory wind turbine generators shall comply with applicable FAA regulations.

ITEM 7 - Amend §503.12 to read as follows:503.12 Freshwater Ponds

In addition to other applicable standards in this Ordinance, the following standards shall apply to all freshwater ponds constructed in association with any residential, agricultural or commercial use:

- A. A minimum parcel size of three (3) acres shall be required.
- B. Ponds shall comply with applicable state regulations.

ITEM 8 - Add §503.14 to read as follows:503.14 Outdoor Furnaces

Outdoor furnaces shall require a permit as an accessory use only in accord with the following:

- A. EPA Emission Levels - Outdoor furnaces shall meet EPA's Phase I emissions levels for the voluntary program for outdoor wood-fired hydronic heaters and carry the *orange tag* which states: *This model has been tested by an accredited independent laboratory according to EPA Method 28 OWHH and meets the emissions level for U.S. EPA's Phase I Voluntary Program.*
- B. Installation - All outdoor furnaces shall, at a minimum, be installed to the manufacturer's specifications.
- C. Setback - Outdoor furnaces shall not be located less than fifty (50) feet from any property line or public or private road right-of-way.
- D. Conditional Use - Any outdoor furnace proposed to be located less than one hundred (100) feet from any property line or public or private road right-of-way shall be considered a conditional use and the Board of Supervisors may require additional setbacks if possible, increased chimney height, or other installation modifications to minimize emission effects on adjoining properties..
- E. Chimney Height - If located fifty (50) feet or less to any principal building, the chimney of the outdoor furnace shall be at least two (2) feet higher than the eave line of that building.
- F. Spark Arresters - All outdoor furnaces shall be equipped with properly functioning spark arresters in accord with the manufacturer's specifications.
- G. Fuel - The only fuels allowed shall be those listed fuels recommended by the manufacturer. The following are specifically prohibited: trash, plastics, gasoline, rubber, naphtha, household garbage, material treated with petroleum products (particle board, railroad ties and pressure-treated wood), leaves, paper products and cardboard.

ITEM 9 - Add §858 to read as follows:**858 Wind Energy Facilities**

In addition to all other applicable standards in this Ordinance and all of the requirements of the Township Wind Turbine Generator Ordinance, the following regulations shall apply to wind energy facilities:

858.1 Purposes

- A. To accommodate the need for wind energy facilities while regulating their location and number in the Township in recognition of the need to protect the public health, safety, and welfare.
- B. To avoid potential damage to adjacent properties from wind turbine structure failure and falling ice, through

engineering and proper siting of such structures.

858.2 Number

The number of wind turbines on a particular parcel shall be governed by compliance with all setback, separation and height requirements.

858.3 Permits; Use Regulations

- A. Permits - A zoning permit shall be required for every wind energy facility and wind turbine installed in the Township, and all such facilities shall comply with the Township Wind turbine Generator Ordinance.
- B. Associated Use - All other uses ancillary to the wind energy facility (including a business office, maintenance depot, etc., greater than 1,000 sq. ft.) are prohibited from the wind energy facility, unless otherwise permitted in the District in which the wind energy facility is located. This shall not prohibit the installation, as accessory structures, of equipment containers not intended for human occupancy to house only equipment necessary for the operation of the wind energy facility.
- C. Wind Energy Facility as a Second Principal Use - A wind energy facility shall be permitted on a property with an existing use in districts where permitted subject to the following land development standards:
 1. The minimum lot area, minimum setbacks and maximum height required by this Ordinance for the wind energy facility and wind turbines shall apply; and, the land remaining for accommodation of the existing principal use(s) on the lot shall also continue to comply with the minimum lot area, density and other requirements.
 2. The vehicular access to the equipment building shall, whenever feasible, be provided along the circulation driveways of the existing use.
 3. The applicant shall present documentation that the owner of the property has granted an easement or other legal interest for the land for the proposed facility and that vehicular access is provided to the facility.

858.4 Standards

- A. Wind Energy Facility Height - The applicant shall demonstrate that the wind turbines are at the minimum height required to function satisfactorily. No wind turbine that is taller than this minimum height shall be approved.
- B. Parcel Size; Setbacks
 1. Separate Parcel - If the parcel on which the wind energy facility is a separate and distinct parcel, the District minimum lot size shall apply; and, in all cases, the lot shall be of such size that all required setbacks are satisfied.
 2. Lease, License or Easement - If the land on which the wind energy facility is leased, or is used by license or easement, the setback for any wind turbine, the support structure, equipment containers, other accessory structures, and guy wire anchors shall be a minimum of thirty (30) feet from the line of lease, license or easement. In any case, no wind turbine shall be located closer to any property line (not lease, license or easement line) than 1.1 times the turbine height. .
 3. Public and Semi-Public Structures - No wind turbine shall be located less than two thousand (2,000) feet from any existing public or semi-public principal structure measured from the center point of the turbine base. (For the purposes of this §858, *existing principal structure* shall mean any existing principal structure or any principal structure for which a zoning permit has been issued.)

4. Principal Structures on Wind Energy Facility Parcel - No wind turbine shall be located less than six hundred (600) feet from any existing principal structure on the wind energy facility parcel or lease, license or easement parcel as measured from the center point of the turbine base, unless the property owner provides written permission allowing for a lesser distance. (For the purposes of this §858, *existing principal structure* shall mean any existing principal structure or any principal structure for which a zoning permit has been issued.) In no event shall the setback distance be less than 1.1 times the total height of the wind turbine as measured from the highest point of the rotor plane.
5. Principal Structures on Other Parcels - No wind turbine shall be located less than one thousand (1,000) feet from any principal structure existing on any other parcel prior to the erection of the wind turbine as measured from the center point of the turbine base unless the owner of such existing principal structure 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 Recorder of Deeds of Lackawanna County, Pennsylvania. Such easement or covenant shall run with the land and, at a minimum, provide that the said property owner waives and releases any and all claims, damages and/or losses resulting from higher noise levels, visual impacts or flickering reflections and/or shadows which may arise as a result of the location of a wind turbine generator within the established setback distance of an existing principal structure on the property of the owner executing same. Such easement, covenant or consent shall meet such requirements as to form and content as may be required by the Township. In no event shall the setback distance be less than 1.1 times the total height of the wind turbine as measured from the highest point of the rotor plane.
6. Property Lines and Public Roads - No wind turbine shall be located less than 1.1 times the total height of the wind turbine from property lines and public road rights-of-way as measured from the highest point of the rotor plane.
7. Communication and Electric Lines - No wind turbine shall be located less than 1.1 times the total height of the wind turbine from the nearest above ground public electric power line or public telephone line or other public communication line as measured from the highest point of the rotor plane.

C. Wind Energy Facility Design

1. Standards; 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 Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations.
2. Reserved
3. Uniform Construction Code - The wind energy facility shall comply with the Pennsylvania Uniform Construction Code.
4. 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.
5. 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.
6. Warnings - A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of ten (ten) feet from the

ground.

7. Signs - No advertising material or signs other than warning, equipment information or indicia of ownership shall be allowed on the wind turbine generators. This prohibition shall include the attachment of any flag, decorative sign, streamers, pennants, ribbons, spinners, or waiving, fluttering or revolving devices, but not including weather devices.
8. Climb Prevention/Locks/Fence
 - a. Wind turbines shall not be climbable up to fifteen (15) feet above ground surface.
 - b. All access doors to wind turbines and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.
 - c. As part of any conditional use approval, the Board of Supervisors may require the erection of a fence around each wind turbine support structure and other equipment. The fence shall be a minimum of eight (8) feet in height.
9. Emergency Services - The facility shall comply with all applicable local, state and federal fire code and emergency services guidelines; and, all wind turbine generators shall be equipped with portable fire extinguishers, unless the local fire department or Township Engineer provides written documentation establishing that the same is not necessary.
10. Other Regulations - The applicant shall document compliance with all applicable state and federal regulations.

D. Noise and Shadow Flicker

1. Audible sound from a wind energy facility shall not exceed forty-five (45) dBA as measured at the exterior of any occupied building on any other parcel. Methods for measuring and reporting acoustic emissions from wind turbines and the 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*.
 2. The facility owner and operator shall use best efforts to minimize shadow flicker to any occupied building on any other parcel.
 3. For the purposes of this Subsection D, *occupied building* shall mean 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
- E. Landscaping - Landscaping shall be required to screen as much of the support structure as possible and any other ground level features (such as a building); and, in general, buffer the wind turbine and support structure site from neighboring properties. Any required vegetation shall be maintained in good condition. The Township may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping.
- F. Water Supplies. All wind turbine generator sites shall be designed and constructed in such a fashion as to avoid any disruption and or interference with private wells, springs and/or other water sources. In the event any problems occur with any private water source, which problems are proximately caused by the operator, the operator shall immediately supply potable water in such quality and quantity as supplied by the original private water source.

- G. Licenses - The applicant shall demonstrate that it has obtained the required licenses from the Township and governing state and federal agencies.
- H. Access; Required Parking - Access to the wind energy facility shall be provided by means of a public street or easement to a public street. The easement shall be a minimum of twenty (20) feet in width and shall be improved to a width of at least ten (10) feet with a dust-free, all weather surface for its entire length. If the wind energy facility site is fully automated, adequate parking shall be required for maintenance workers. If the site is not automated, the number of required parking spaces shall be equal to the number of people on the largest shift.
- I. Color and Lighting; FAA and PA DOT Notice - Wind turbines, including rotors, shall be a non-obtrusive color such as white, off-white or gray. Wind turbines shall comply with all applicable Federal Aviation Administration (FAA) and PA DOT Bureau of Aviation regulations. No wind turbine may be artificially lighted, except as required by FAA requirements. If lighting is required, the lighting alternatives and design chosen shall minimize the disturbance to the surrounding views. The applicant shall provide a copy of the response to *Notice of Proposed Construction or Alteration* forms submitted to the FAA and PA DOT Bureau of Aviation.
- J. Transmission and Power Lines - On-site transmission and power lines between wind turbines shall, to the greatest extent possible, be placed underground.
- K. Communications Interference - The applicant shall document that the radio, television, telephone or reception of similar signals for nearby properties will not be disturbed or diminished; and, this may be accomplished by remedial measures instituted by the wind energy facility operator.
- L. Stray Voltage/Electromagnetic Fields (EMF) - The operator shall utilize Good Utility Practice to minimize the impact, if any, of stray voltage and/or EMF.
- L. Water and Sewer - Water, other than for facility cooling and fire suppression purposes, and sewage facilities shall not be permitted at wind energy facility sites to preclude person(s) from living or staying on the site, unless such facilities serve a use otherwise approved in accord with this Ordinance.
- M. Emergency Services - The applicant shall provide details about any fire suppression system installed in any accessory structure or equipment container associated with the wind energy facility. Upon request, the applicant shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for the wind energy facility.
- N. Site Plan - A full site plan shall be required for all wind energy facility sites, showing the wind energy facility, wind turbines, building, fencing, buffering, access, and all other items required by this Ordinance and the Subdivision and Land Development Ordinance.
- O. Discontinued Use; Removal Bond - Should any wind turbine, support structure or accessory structure cease to be used for its approved use, the owner or operator or then owner of the land on which the facility is located, shall be required to remove the same within one (1) year from the abandonment of use. Failure to do so shall authorize the Municipality to remove the facility and assess the cost of removal to the foregoing parties. The Municipality may also file a municipal lien against the land to recover the costs of removal and attorney's fees. In the case where there is no separate parcel, the lien shall be against the entire parent parcel of land upon which the facility is located by lease, license or easement.

The operator of every wind energy facility shall provide a bond to cover the cost of wind energy facility and associated equipment removal. Nothing herein shall legally bind the governing body to effect the removal of any wind energy facility, which shall remain the ultimate responsibility of the owner of the property upon which the wind energy facility is located and the owner of the wind energy facility.

- I. Amount - The amount of the bond shall be established by the governing body based upon the size and nature

of the proposed facility, but in no case shall the amount be less than twenty thousand dollars (\$20,000) per wind turbine. This minimum amount shall be increased in accord with the Consumer Price Index at the date of bond posting calculated using 2008 as the base year.

- 2. Form - The Bond shall be executed by a surety company authorized by the laws of the Commonwealth of Pennsylvania to transact business within the Commonwealth of Pennsylvania.
- 3. Term; Annual Renewal - The bond shall be executed in favor of the Municipality and shall be for the use of the Municipality. The term of the bond shall be for one (1) year, with automatic renewal.
- 4. Compliance - It shall be the condition of the bond that if the applicant does not fully and faithfully observe and comply with the provisions of this Ordinance and any other applicable approvals or regulations, the governing body shall have the authority to use such bond to effect the required compliance and/or the removal of the facility.

858.5 Certification

The applicant shall submit certification from a Pennsylvania registered professional engineer that a proposed wind energy facility and support structure will be designed and constructed in accord with accepted engineering practices and all requirements of this Ordinance. Within forty-five (45) days of initial operation, the owner and/or operator of the wind energy facility shall provide a certification from a Pennsylvania registered professional engineer that the wind energy facility and all structures comply with all applicable regulations.

858.6 Review Fees

In addition to the normal application fees, the applicant shall pay all professional costs incurred by the Township for review of structural, radio frequency and other technical aspects of the proposal and shall deposit with the Township an amount deemed adequate by the Governing Body to cover the anticipated costs. If the review costs exceed the deposit, an additional assessment shall be made. If the deposit exceeds the cost, the balance shall be returned to the applicant. No approval shall become effective until all costs have been paid by the applicant.

858.7 Wind Test Towers

Temporary wind test towers may be erected as a conditional use in Districts where wind energy facilities are permitted in accord with §501.4 and other applicable requirements of this Zoning Ordinance. Such towers shall be removed within eighteen (18) months of installation.

SEVERABILITY

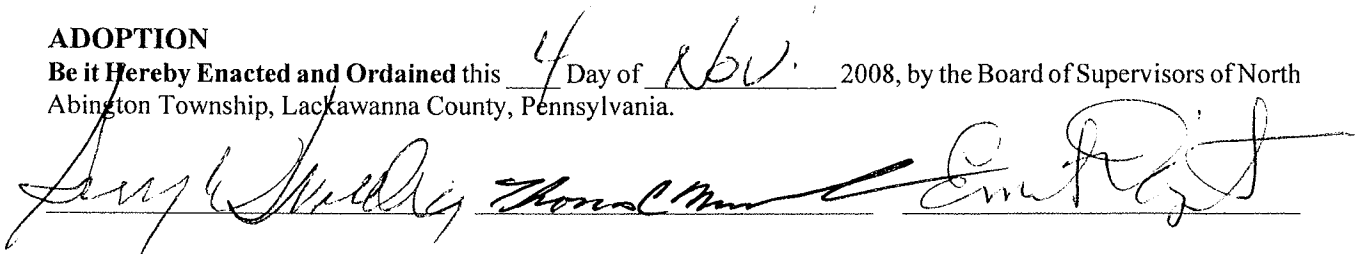
Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole, or any parts thereof.

REPEALER

All other Ordinances or sections of ordinances inconsistent with the provisions of this Ordinance are hereby repealed.

ADOPTION

Be it Hereby Enacted and Ordained this 4 Day of Nov. 2008, by the Board of Supervisors of North Abington Township, Lackawanna County, Pennsylvania.



ATTEST: _____