

TOWN OF PENDLETON
May 11, 2015

A regular meeting of the Town Board of the Town of Pendleton was held at the Town Hall, 6570 Campbell Blvd. Pendleton, N.Y. on the 11th day May 2015 at 7:00 P.M. Three Public Hearings were scheduled for 6:45 P.M., 6:50 P.M., and 6:55 P.M.

PUBLIC HEARINGS

#1 Public Hearing

Supervisor Riester opened the first Public Hearing at 6:50 P.M
Clerk Pienta read the Public Hearing that was published in the Lockport Union Sun & Journal on May 4, 2015. The purpose of the hearing was for public input for the purchase of a blacktop “hot box” for the Highway Department. The Town will be sharing the cost of the “hot box” with the Town of Newfane. The Town of Pendleton’s share will be \$16,412.72.

No one wished to be heard.

Motion by Councilman Leible, seconded by Councilman Morrison, to close the Public Hearing at 6:51 P.M.

#2 Public Hearing

Supervisor Riester opened the second Public Hearing at 6:51 P.M.
Clerk Pienta read the Public Hearing that was published in the Lockport Union Sun & Journal on May 4, 2015. The purpose of the hearing was for the review and public input regarding a proposed addition to the Town Code for residential Wind Energy Conversion Systems.

No one wished to be heard.

Motion by Councilman Leible, seconded by Councilman Morrison to close the Public Hearing at 6:52 P.M.

#3 Public Hearing

Supervisor Riester opened the third Public Hearing at 6:55 P.M
Clerk Pienta read the Public Hearing that was published in the Lockport Union Sun & Journal on May 4, 2015. The purpose of the hearing was for the transfer of \$40,000.00 funds from SW.0962.9950.0915 Reserve Waterlines to SW8340.0430 Meters toward the purchase of Orion Meter Readers.

No one wished to be heard.

Motion by Councilman Leible, seconded by Councilman Morrison to close the Public Hearing at 6:56 P.M.

REGULAR MEETING

Supervisor Riester called the meeting to order at 7: 02P.M.

Supervisor Riester asked for a moment of silence for Bill Boulden, a former Supervisor for the Town. Supervisor Riester read the invocation.

Starpoint Student Beau Gaull led the salute to the flag.

ROLL CALL:	Supervisor Riester	present
	Councilman Leible	present
	Councilman Morrison	present
	Councilman Fischer	present
	Councilwoman Jarvis	absent

Also present were:

Terry Pienta	Town Clerk
Kelli Coughlin	Assessor
Claude Joerg	Town Attorney
Don Bergman	Budget Officer

There were approximately 40 residents and 12 Starpoint students in attendance.

COMMUNICATIONS

Clerk Pienta read a public notice issued by the Buffalo District US Army Corp of Engineer's for a proposed project to dredge the navigational channel of the Barge Canal on an as needed basis to address re-silting of the navigation channel over a ten year period. She reported that the information for any public responses will be posted on the Town Clerk's Board located in the Lobby.

ROUTINE BUSINESS

RESOLUTION 78 - 15

APPROVAL OF MINUTES

Motion by Councilman Fischer, seconded by Councilman Leible, the following resolution was

ADOPTED Ayes 4 Riester, Leible, Morrison, Fischer
 Nays 0

Resolved that the minutes for the Regular Meetings held on April 13th and the Work Session held April 27th be approved as submitted by the Town Clerk.

Supervisor Riester reported the total expenditures that were authorized and paid in the month of April:

General Fund	\$	47,103.41
Highway	\$	17,440.72
Water	\$	36,987.60
Sewer	\$	5,267.36
Refuse	\$	35,184.34
Trust & Agency	\$	12,782.85
Farmer's Market	\$	81.58

OTHER REPORTS

Supervisor Riester reported that the sales tax collected for the month of March 2015 was \$138,489.86, this is compared to \$151,115.58 for March 2014. This is a decrease of \$12,625.72. The year to date received is \$383,246.28. This is an increase of \$1,464.82 from 2014. He also reported that the paperwork for the Government Efficiency Plan (Resolution 74-15 April 27, 2015) has been completed. This will enable most homeowners to receive the Freeze Credit providing that the Town has not exceeded the tax cap for the year in which the savings occurred. The new law encourages local governments to generate long-term tax relief for taxpayers by sharing services, consolidating or merging, and demonstrating and implementing operational efficiencies. He also reported that he has been busy calling local representatives asking for their support regarding the National Fuel's proposed compressor issue. He was told that Senator Ortt will send be sending a representative to the meeting at the Wendelville Fire on May 20th.

Councilman Leible reported that there were 13 violations issued in the month of April, 13 remain outstanding. A total of 22 violations remain outstanding for the year. The Building Department issued 27 permits; fees received were \$2,365.00. He also reported that the Highway Department repaired two caved in driveways, installed three new driveways, patched numerous potholes, repaired and replaced signs, repaired plow damage, took two trucks to the auction and also reported two shared services with Cambria. The complete report will be on file in the Town Clerk's Office. He also reported that the newsletter articles for the Summer edition are due May 25th.

Councilman Morrison reported that he met with a structural engineer from CRA Infrastructure & Engineering and Engineer Britton to examine the Historical Society's building for structural safety. Construction of a new Historical building is being considered but the Town Board is concerned with the safety of the current building since that may not occur for some time. Some of the recommendations to be considered:

- Materials being stored in the attic to be removed to reduce the load on the joists
- Inspection of the joists to determine their condition, any found to be compromised should be reinforced
- Removal of the floor boards in the attic to examine some of the joists not visible
- Monitor the snow load on the roof in the winter
- Monitor the snow drifts on the south and west side of the outside of the building
- Initiate a monitoring program to verify if any displacement of the structure is going on

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He also reported that the recent electronic pickup was for 12 pallets. There were 22 full pallets and they will return next week to pick up the rest of them. He is also trying to arrange for a Shred-It event for the Town resident's during one of the weeks during the Farmer's Market. The cost is \$250.00 per hour plus the cost of advertising for the event.

Councilman Fischer reported that he has requested information from a company for salt sheds with concrete walls like the State's salt sheds. When he receives the information he will pass it on to Councilwoman Jarvis. He is also waiting for a return phone call from the company that built the compressor in Wales. He thought perhaps he might get the gentleman to come out and speak with the Board, he may be able to provide additional information to the Board. He also announced that the Veteran's and Boy Scouts will have a memorial ceremony at the memorial gun on May 25th at 11:00 A.M.

Engineer Dave Britton reported that the MS4 Annual Report has been available for comment, no comments were received from the public so the report is ready for the Supervisor to sign.

Attorney Claude Joerg reported that he has been monitoring the emails received regarding the National Fuel compressor. He provided some copies of several of the emails to Supervisor Riester.

NEW BUSINESS

RESOLUTION 79 - 15

AUTHORIZATION FOR THE SUPERVISOR TO SIGN THE ANNUAL MS4 REPORT

Motion by Councilman Leible, seconded by Councilman Morrison, the following resolution was

ADOPTED Ayes 4 Riester, Leible, Morrison, Fischer
 Nays 0

WHEREAS, the Town of Pendleton has been identified as a Municipal Separate Storm Sewer System (MS4) under the EPA's Phase II Stormwater Regulations under the Clean Water Act of 1999, and

WHEREAS, the Phase II Program requires each MS4 to prepare a Draft Annual Report on the Town's efforts to protect and improve the water quality of our streams and water bodies, and

WHEREAS, the public is invited to review the Draft Annual Report and provide input, and WHEREAS, the Annual Report must be submitted to the New York State Department of Environmental Conservation offices in Albany, NY, by June 1, 2015.

NOW, THEREFORE BE IT RESOLVED, that the Town Board accepts said Draft Annual Report and is available for public review at the Town of Pendleton Town Clerks Office and authorizes the Supervisor to sign the Annual Report after the 10 day review period has passed.

RESOLUTION 80 - 15

AMEND RESOLUTION 44 - 15 (FEBRUARY 23, 2015)

Motion by Councilman Leible, seconded by Councilman Fischer, the following resolution was

ADOPTED Ayes 4 Riester, Leible, Morrison, Fischer

Nays 0

Resolved to amend Resolution 44-15 (dated February 23, 2015) to read that multifamily dwellings within the Town of Pendleton will be allowed within the Light Commercial but will be excluded in the Light Industrial Zoning Districts.

RESOLUTION 81 - 15

AUTHORIZATION TO PURCHASE A BLACKTOP "HOT BOX"

Motion by Councilman Leible, seconded by Councilman Fischer, the following resolution was

ADOPTED Ayes 4 Riester, Leible, Morrison, Fischer

Nays 0

Resolved to authorize the purchase of a blacktop "hot box" with the Town of Newfane with the Town's cost to \$16,412.72.

RESOLUTION 82 - 15

SCHEDULE A PUBLIC HEARING FOR THE TRANSFER OF FUNDS FOR THE PURCHASE OF THE "HOT BOX"

Motion by Councilman Leible, seconded by Councilman Fischer, the following resolution was

ADOPTED Ayes 4 Riester, Leible, Morrison, Fischer

Nays 0

Resolved to schedule a Public Hearing for June 8th 2015 for the transfer of \$16,412.72 from DA.0962 Budgetary Provisions to DA5130.02 Fixed Assets for the purchase of the blacktop "hot box".

RESOLUTION 83 - 15

SEQR NEGATIVE DECLARATION

Motion by Councilman Leible, seconded by Councilman Morrison, the following resolution was

ADOPTED Ayes 4 Riester, Leible, Morrison, Fischer

Nays 0

Resolved, that based upon the findings from the environmental impact assessment for the proposed addition to the Town Code for residential Wind Energy Conversion Systems that not result in any adverse environmental impacts and to authorize Supervisor Riester to sign and issue the Negative Declaration.

RESOLUTION 84 - 15

WIND ENERGY CONVERSION SYSTEMS

Motion by Councilman Leible, seconded by Councilman Fischer, the following resolution was

ADOPTED Ayes 4 Riester, Leible, Morrison, Fischer

Nays 0

Resolved to approve and amend the Town Code to include Residential Wind Energy Conversion Systems.

Article VIII.B Residential Wind Energy Conversion Systems

1. Title

This article shall be known as and may be cited as the "Residential Wind Energy Conversion Systems (RWECS) Law of the Town of Pendleton

2. Purpose

The purpose of this article is to provide standards for RWECS designed for home and/or farm wind energy conversion system use on the same parcel, and that they are primarily used to reduce consumption of utility power at that location. The Town of Pendleton is primarily responsible for promoting the health, safety and general welfare of its residents and the environmental quality of its lands. This article is designed to preserve and protect the quality of life and the quality of the environment within the borders of the Town of Pendleton and to ensure that the health, safety, and general welfare continue to exist at the highest level and standards which the Town's residents have consistently required and expect.

3. Intent

The intent of this article is to protect the Town's interest in properly siting all residential wind energy turbines and/or similar facilities in accordance with approved plans. Site plan approval is not required for farm operations located within an agricultural district.

This article may be periodically reviewed and revised by the Town Board in order to maintain compliance with the spirit and intent of this article.

4. Definitions

Farm Operation: Agricultural and farming activities located within an agricultural district as defined in § 301 of the New York State Agricultural and Markets Law.

Residential Wind Energy Conversion System (RWECS): A wind energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics and is intended to solely supply electrical power for the use on the subject property.

Total Height: The height of the wind energy conversion system measured from the ground elevation to the top of the tip of the blade in the vertical position.

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

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

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.

5. Application Process

Applicant shall file a site plan review application with the Planning Board. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that the property owner is familiar with the proposed application and authorizing the submission of the application.

This site plan review shall include:

12 sets of plans prepared and certified by a NYS licensed professional engineer, an architect, a landscape architect, or land surveyor

Drawing title including: name of project, name and address of applicant and person who prepared the drawings. North point, scale, legend, location map and date:

Property survey of proposed project, including dimensions, angles and acreage plotted to scale. Also show adjoining properties, owner names *and addresses*, and buildings within 500 feet of project boundary

Street name, right-of-way and pavement width of all existing streets on or adjacent to the site, also including the location of adjacent or abutting driveways and street intersections

Topographic Survey (minimum grid of 50 feet), Datum shall be State Plane, includes benchmark(s), location & elevation on drawing.

All existing buildings

Proposed building locations, building setbacks and minimum zoning setbacks, side yard dimensions, space between buildings, green areas, parking areas and ingress and egress identified.

All existing water courses, tree masses and other natural features, elevation of water in existing water courses and proposed and existing base flood elevations (100 year if in a flood hazard area).

SEQR Forms submitted. This action will be classified as an unlisted action. As a result, the short form will be used.

Visual impact study of the proposed RWECS as installed, which may include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

Location and elevation of the proposed RWECS

Vertical drawing of the RWECS showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs and access doors.

Location of all above ground utility lines on the site or within one radius of the total height of the RWECS, transformers, power lines, interconnection point with transmission lines and other ancillary facilities or structures shall be shown.

Record as-built drawings shall be submitted to the Building Department prior to issuance of final building Department approval.

The Planning Board shall schedule a Public Hearing.

Within 62 days after the public hearing, the Planning Board may approve, approve with conditions or deny the site plan review application. Denial of the application shall be by written decision based upon substantial evidence submitted to the Planning Board. Upon approval, the applicant shall obtain a building permit for the RWECS.

6. Standards:

a. Minimum Lot Size: 5 acres

b. Setbacks:

1. From property lines: minimum distance 1 1/2 times the total height of the RWECS from any property line.
2. From on-site residential dwelling buildings: minimum distance 1 1/2 times the total height of the RWECS

3. From off-site residential dwelling: minimum distance shall be 500 feet from the tower.
 4. All RWECS shall be set back from rights-of-way, easements, public ways, power lines, and any pre-existing structures by a distance of at least equal to its fall zone
- c. The minimum distance between the ground and any part of the rotor blade shall be 30 feet at its lowest point of rotation.
 - d. Only one RWECS per legal lot shall be allowed
 - e. Exterior lighting, other than the conventional lighting for maintenance purposes, on any structure associated with the RWECS, shall not be allowed except that which is specifically required by the Federal Aviation Administration.
 - f. No brand names, logos or advertising shall be placed or painted on the tower, rotor, generator, or tail vane where it would be visible from the ground, except that a system's or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
 - g. All wind turbines shall be equipped with an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over-speeding and excessive pressure on the tower structure, rotor blades, and turbine components, or nacelles. This should meet or exceed the industrial standards for the size of the system and be certified by the manufacturer. The applicant shall have a manual filed with the Town Clerk also showing any revisions.
 - h. No RWECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission or reception antenna for radio, television or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No RWECS shall be installed in any location along the major axis of an existing microwave communication link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a RWECS is causing electromagnetic interference, the property owner shall take the necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the RWECS Building Permit and approval for the RWECS causing the interference.
 - i. RWECS shall conform to the following specifications:
 1. Kilowatt limit: 10 kilowatts maximum.
 2. Color: The color of all RWECS shall be reviewed as environmentally appropriate subject to Planning Board approval. The RWECS tower and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and shall incorporate non-reflective surfaces to minimize negative visual impact.
3. Structure. All RWECS structures shall be a monopole tower.

4. The design of RWECS buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening, and landscaping that will blend the facility to the natural setting and the existing environment.
 5. All monopole towers must be unclimbable by design and protected by anti-climbing devices, as per industrial standards or climbing apparatus to prohibit access no lower than 12 feet from the ground.
 6. All related electrical lines shall be buried and marked in compliance with the NEC standards
 7. Total Height shall be limited to a maximum of 120 feet to comply with setbacks
 8. RWECS shall be located only in rear yards
 9. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any aboveground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering to eight feet above the ground. The minimum setback for the guy wire anchors shall be 10 feet from the property boundary.
- j. Certification. The applicant is required to provide the following certifications:
1. Certification of structural components. The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer registered in New York State. The engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the Uniform Construction Code that have been adopted in New York State.
 2. Certification of electrical system. The electrical system shall be certified in writing by an electrical engineer registered in New York State. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the electrical code that have been adopted by New York State.
 3. Certification of rotor overspeed control. The rotor overspeed control system shall be certified in writing by a mechanical engineer registered in New York State. The engineer shall certify compliance with good engineering practices.
- k. General Complaint process.
1. During construction the Town of Pendleton Code Enforcement Officer can issue a stop order at any time for any violations of the permit.
 2. Post construction. After construction is complete, the permit holder shall establish a contact person including name and phone number for receipt of any complaint [*concerning any permit requirements*]. Upon receipt of complaint from the Town of Pendleton Code Enforcement Officer, the permit

holder/contact person shall have seven working days to reply to the Town in writing.

- l. Post Construction Maintenance/inspections
 1. Upon reasonable notice, Town of Pendleton Code Enforcement Officer may enter a lot on which a RWEC Building permit has been granted for the purpose of compliance with any permit requirements. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice.
 2. A RWECS shall be inspected annually by a professional engineer licensed in the State of New York that has been approved by the Town or at any other time, upon a determination by the Town's Code Enforcement Officer, that the wind turbine, tower, or other RWECS components have sustained structural damage, and a copy of the inspection report shall be submitted to the Town Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- m. Fees and costs
 1. \$200.00 per RWECS plus any associated cost incurred by the Town tied to outside consultants.
 2. RWECS Building Permit fee- \$100.00
- n. Abandonment of Use
 1. All RWECS shall be maintained in good condition and in accordance with all requirements of this section. If an annual inspection shows that the structure is unsafe, then the owner will be given an opportunity to bring the structure into compliance. If the structure is deemed unsafe and the owner does not bring the structure into compliance within a reasonable period of time, the tower shall be dismantled and removed from the property at the owner's expense. The town reserves the right to dismantle the structure and to charge back the cost of this removal to the property owner. If unpaid, this cost will be assessed to the tax levy of the property.
 2. Failure to abide by and faithfully comply with this standards of this section and with any and all conditions that may be attached to the granting of the RWECS Building Permit shall constitute grounds for the revocation of the permit.

RESOLUTION 85 - 15

TRANSFER OF FUNDS FOR ORION READERS

Motion by Councilman Leible, seconded by Councilman Morrison, the following resolution was

ADOPTED Ayes 4 Riester, Leible, Morrison, Fischer
 Nays 0

Resolved to transfer \$40,000.00 from SW.0962.9950.0915 Reserve Waterlines to SW.8340.0430 Meters toward the purchase of the Orion Meter Readers.

PUBLIC REMARKS/COMMENTS

Many of the residents were in attendance because of the concerns regarding National Fuel's anticipated plans to install a very large compressor (22,000 HP) to be located approximately 1700 ft. in from Aiken Rd. (approximately 3,500 ft. north from Beach Ridge Rd.) National Fuel has said that a location for the compressor has not been decided yet but the company has been investing money surveying the area. Residents came to the Board with their continued concerns. Supervisor Riester reported the various phone calls he has made, he reported that several of the Board members will be driving to Wales to see the compressor that was installed there, and he reminded everyone about the upcoming meeting at Wendelville Fire Company on Wednesday the 20th. The Board agreed to have flyers mailed out to all the homeowners in Pendleton. He told everyone that they will have the opportunity to speak at the Public Meeting and the comments will be part of National Fuels record.

BOARD MEMBERS DISCUSSION

Motion by Councilman Leible, seconded by Councilman Fischer to schedule a Work Session for Tuesday May 26th at 7:00 P.M. Motion carried.

Motion by Councilman Leible, seconded by Councilman Fischer, to adjourn at 8:46 P.M. Motion carried.

Terry J. Pienta, Town Clerk