

TOWN OF COVINGTON

A PROPOSED LOCAL LAW ENTITLED, “2007 AMENDMENTS TO THE TOWN OF COVINGTON ZONING ORDINANCE”

BE IT ENACTED by the Town Board of the Town of Covington, Wyoming County, New York as follows:

SECTION I. AUTHORITY

The Town Board of the Town of Covington enacts this local law under the authority granted by:

1. Article IX of the New York State Constitution, §2 (c) (6) and (10).
2. New York Statute of Local Government, §10 (1) and (7).
3. New York Municipal Home Rule Law, §10 (1) (i) and (ii) and §10 (1) (a) (6), (11), (12), and (14).
4. New York Town Law §130 (1) (Building Code), (3) (Electrical Code), (5) (Fire Prevention), (7) (Use of Streets and Highways), (7-a) (Location of Driveways), (11) (Peace, Good Order and Safety), (15) (Promotion of Public Welfare), (15-a) (Excavated Lands), (16) (Unsafe buildings), (19) (Trespass), and (25) (Building Lines).
5. New York Town Law §64 (17-a) (Protection of Aesthetic Interest), (23) (General Powers).

SECTION II. PURPOSE

The Town of Covington has determined that a comprehensive local law regulating the development of wind power installations is necessary to protect the interests of the Town and its residents. This local law establishes a permissive and discretionary framework for the establishment of Wind Energy Conversion Devices/Farms in the Town of Covington. Definitions and special use permit regulations for single wind mill installation, wind generators and towers have been deleted and replaced with a definition for Wind Energy Device and supplementary regulations under Article X to govern same.

This local law also sets forth a procedure for site plan review, adds several sections of regulations governing special permit uses to Article XI, including the addition of Commercial Communications Towers and amends Schedule I and Zoning Map relative to the same, all of which were not previously addressed in the Zoning Ordinance.

SECTION III. TITLE

This local law shall be known as "2007 Amendments to the Town of Covington Zoning Ordinance."

SECTION IV. ENACTMENT

The Town Board of the Town of Covington hereby adopts the following changes to the Town of Covington Zoning Ordinance as follows:

1. TABLE OF CONTENTS

ARTICLE III – ADMINISTRATION AND ENFORCEMENT

Add Section 306 – Site Plan Review

ARTICLE IX – DISTRICT REGULATIONS

Amend Section 904 – Planned Industrial Use District (~~Reserved~~)

Add Section 905 – Wind Farm Overlay District (WF-O)

ARTICLE X – SUPPLEMENTARY REGULATIONS

Add Section 1007– Wind Energy Device

ARTICLE XI – REGULATIONS GOVERNING SPECIAL PERMIT USES

Amend Section 1110 – ~~Windmills, Wind Generators and Towers~~ Commercial Communications Tower

Amend Section 1115 – Junk Yards is replaced with Salvage Yard

Add Section 1118 – Commercial Recreation

Add Section 1119 – Gun Club and Firing Ranges

Add Section 1120 – Bed and Breakfast

2. ARTICLE II – DEFINITIONS AND WORD USAGE

Section 201 Definitions

All definitions will be set out in numerical order.

Add COMMERCIAL COMMUNICATION TOWER – A structure, including one (1) or

more antennas, that is intended for transmitting and/or receiving radio, television, telephone or microwave communications but excluding those used either for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar communications.

Add ELECTROMAGNETIC INTERFERENCE (EMI) – The interference to communication systems created by scattering of electromagnetic signals.

Amend JUNK YARD - See "Salvage Yard" for definition.

Add SALVAGE YARD – A lot, land or structure, or part thereof, where junk, waste, discarded or salvaged materials are bought, sold, exchanged, sorted, baled, packed, disassembled, handled or abandoned, including: automobile or other vehicle or machinery, wrecking or dismantling yards; house wrecking yards; used lumber yards; places or yards for storage of salvaged house wrecking and structural steel materials and equipment; or where any unregistered motor vehicle is held outside of a completely enclosed building, whether for the purpose of resale or sale of used parts therefrom, for the purpose of reclaiming for use some or all the materials therein, or for the purpose of storage or disposing of the same for any other purpose. The term "salvage yard" shall not include pawn shops and establishments for the sale, purchase or storage of used furniture, household equipment and clothing, or for processing of used, discarded or salvage materials as part of a manufacturing operation.

Exceptions

1. New and/or used motor vehicles, which are operable, qualify for a current New York State Motor Vehicle inspection sticker under Article 5 of the New York Motor Vehicle and Traffic Law, and are offered for sale to the public, may be stored on premises on which new or used car sales may be conducted in accordance with the provisions of these regulations.
2. The storage of vehicles subject to seasonal use such as travel trailers and snowmobiles even though such vehicles may be unlicensed during the part of the year they are not in use.
3. The storage of agricultural equipment, machinery and vehicles in an Agricultural District which are being used in farm operations.

Add SHADOW FLICKER – The alternating pattern of sun and shade caused by wind tower blades casting a shadow.

Add SITE PLAN – The rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in this zoning law, which shows the

arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan.

Add SITE PLAN REVIEW – The review of a rendering, drawing, or sketch showing the arrangement, layout and design of the proposed single parcel of land shown on said plan.

Add SPECIAL USE PERMIT – The term special use permit shall mean an authorization of particular land use which is permitted in a zoning ordinance, subject to requirements imposed by such zoning ordinance to assure that the proposed use is in harmony with such zoning ordinance and will not adversely affect the neighborhood if such requirements are met.

Add TOTAL HEIGHT – The vertical distance from ground level to the tip of a wind turbine blade when the tip is at its highest point.

Add WIND ENERGY CONVERSION DEVICE - The siting of one (1) mechanical device such as a wind charger, windmill or wind turbine designed and used to convert wind energy into a form of energy for commercial sale. The net metering of the output from a wind charger, windmill or wind turbine pursuant to a tariff filed with the New York State Public Service Commission shall not be considered a Wind Energy Conversion Device and is not subject to regulation by this local law.

Add WIND ENERGY CONVERSION FARM - The siting of two (2) or more mechanical devices such as a wind charger, windmill or wind turbine designed and used to convert wind energy into a form of energy for commercial sale. The net metering of the output from a wind charger, windmill or wind turbine pursuant to a tariff filed with the New York State Public Service Commission shall not be considered a Wind Energy Conversion Farm and is not subject to regulation by this local law.

Add WIND ENERGY DEVICE - A Wind Energy Device of less than 20 kW in total nameplate generating capacity and does not exceed one hundred sixty-five (165) feet in total height.

Add WIND TOWER – The monopole, freestanding, or guyed structure that supports a wind turbine generator.

3. ARTICLE III – ADMINISTRATION AND ENFORCEMENT

Add Section 306 Site Plan Review

A. Review and Approval

1. Prior to the issuance of a zoning permit, the zoning officer shall require site

plan approval by the Planning Board pursuant to this section. The Zoning Officer shall notify an applicant for a zoning permit where site plan approval is required by the provision of this section.

B. Sketch Plan

1. A sketch plan conference may be held between the Planning Board and the applicant prior to the preparation and submission of a formal site plan. The intent of such a conference is to enable the applicant to inform the Planning Board of his/her proposal prior to the preparation of a detailed site plan; and for the Planning Board to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the information to be required on the site plan. In order to accomplish these objectives, the applicant should provide the following:
 - a. A statement and rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, access signs (with descriptions), existing and proposed vegetation, and other planned features; anticipated changes in the existing topography and natural features; and, where applicable, measures and features to comply with flood hazard and flood insurance regulations;
 - b. A sketch or map of the area which clearly shows the location of the site with respect to nearby streets, rights-of-way, properties, easements and other pertinent features; and
 - c. A topographic or contour map of adequate scale and detail to show site topography.

C. Application for Site Plan Approval

1. An application for site plan approval shall be made in writing to the Chairman of the Planning Board and shall be accompanied by information contained on the following checklist. Where the sketch plan conference was held, the accompanying information shall be drawn from the following checklist as determined necessary by the Planning Board at said sketch plan conference.
 - a. Site Plan Checklist
 - i. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing;
 - ii. North arrow, scale and date;
 - iii. Boundaries of the property plotted to scale;

- iv. Existing watercourses;
- v. Grading and drainage plan, showing existing and proposed contours;
- vi. Location, design, type of construction, proposed use and exterior dimensions of all buildings;
- vii. Location, design and type of construction of all parking and truck loading areas, showing access and egress;
- viii. Provision for pedestrian access;
- ix. Location of outdoor storage, if any;
- x. Location, design and construction materials of all existing or proposed site improvements including drains, culverts, retaining walls and fences;
- xi. Description of the method of sewage disposal and location, design and construction materials of such facilities;
- xii. Description of the method of securing public water and location, design and construction materials of such facilities;
- xiii. Location of fire and other emergency zones, including the location of fire hydrants;
- xiv. Location, design and construction materials of all energy distribution facilities, including electrical, gas and solar energy;
- xv. Location, size and design and type of construction of all proposed signs;
- xvi. Location and proposed development of all buffer areas, including existing vegetative cover;
- xvii. Location and design of outdoor lighting facilities;
- xviii. Identification of the location and amount of building area proposed for retail sales or similar commercial activity;
- xix. General landscaping plan and planting schedule;

- xx. An estimated project construction schedule;
 - xxi. Record of application for and approval status of all necessary permits from state and county officials;
 - xxii. Identification of any state or county permits required for the project=s execution; and
 - xxiii. Other elements integral to the proposed development as considered necessary by the Planning Board.
- b. Site Plan Review does not apply to single family residences, customary farm buildings and their accessory buildings, but is required on all special use permit applications.

D. Review of Site Plan

1. The Planning Board=s review of the site plan shall include, as appropriate, but is not limited to, the following general considerations:
 - a. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.
 - b. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
 - c. Location, arrangement, appearance and sufficiency of off-street parking and loading.
 - d. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
 - e. Adequacy of stormwater and drainage facilities.
 - f. Adequacy of water supply and sewage disposal facilities.
 - g. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant=s and adjoining lands, including the maximum retention of existing vegetation.
 - h. Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.

- i. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- j. Overall impact on the neighborhood including compatibility of design considerations.

E. Public Hearing

- 1. The Planning Board may conduct a public hearing on the site plan if considered desirable by a majority of its members.
- 2. Such hearing shall be held within sixty-two (62) days of the receipt of application for site plan review and shall be advertised in the town's official newspaper at least five (5) days before the public hearing.

F. Planning Board Action on Site Plan

- 1. Within sixty-two (62) days of the receipt of an application for site plan approval, the Planning Board shall render a decision, file said decision with the Town Clerk, and mail such decision to the applicant with a copy to the Zoning Officer. The time within which a decision must be rendered may be extended by mutual consent of the applicant and Planning Board.
 - a. Upon approval of the site plan and payment by the applicant of all fees and reimbursable costs due to the Town, the Planning Board shall endorse its approval on a copy of the final site plan and forward a copy to the applicant, Zoning Officer, and file same with the Town Clerk.
 - b. Upon disapproval of a site plan, the Planning Board shall so inform the Zoning Officer and the Zoning Officer shall deny a zoning permit to the applicant. The Planning Board shall also notify the applicant in writing of its decision and its reasons for disapproval. Such disapproval shall be filed with the Town Clerk.

G. Reimbursable Costs - Costs incurred by the Planning Board for consultation fees or other extraordinary expenses in connection with their review of a proposed site plan shall be charged to the applicant.

H. Performance Guarantee

- 1. No certificate of occupancy shall be issued until all improvements shown on the site plan are installed or a sufficient performance guarantee has been posted for improvements not yet completed.

2. The sufficiency of such performance guarantee shall be determined by the Town Board after consultations with the Planning Board, Zoning Officer, Town Attorney and other appropriate parties.

I. Inspection of Improvements - The Zoning Officer shall be responsible for the overall inspection of site improvements including coordination with the Planning Board and other officials and agencies, as appropriate.

J. Integration of Procedures - Whenever the particular circumstances of proposed development require compliance with either the special use procedure in this zoning ordinance or other requirements of the Town, the Planning Board shall attempt to integrate, as appropriate, site plan review as required by this section with the procedural and submission requirements for such other compliance.

4. ARTICLE VI – HEIGHT REGULATIONS

Add E. The height limitation of this Law shall not apply to Commercial Communication Towers, Wind Energy Conversion Devices, Wind Energy Conversion Farms or Wind Energy Devices.

In no case will Commercial Communication Towers be more than one hundred ninety (190) feet, Wind Energy Conversion Devices or Wind Energy Conversion Farms be greater than four hundred and fifty (450) feet and Wind Energy Device more than one hundred sixty-five (165) feet.

5. ARTICLE IX - DISTRICT REGULATIONS

Amend Section 901 Agricultural District

C. Permitted Accessory Uses

Add 9) Wind Energy Device

D. Special Use Permits

Amend 11) ~~Windmills, wind generators or towers~~ Commercial Communication Tower

Amend 15) Junk Yard is replaced with Salvage Yards

Amend Section 904 I – Planned Industrial Use District (~~Reserved~~)

Add Section 905 Wind Farm Overlay District (WF-O)

A. Intent

It is the purpose of the regulations of this Article to promote public health, safety and general welfare of the Town of Covington residents by addressing, in a careful manner, the establishment, placement, construction, enlargement and erection of Wind Energy Conversion Devices/Farms on a comprehensive Town-wide basis by providing a discretionary framework for the establishment of the same. This framework is intended to do the following:

1. Protect human life and health.
2. Address the visual, aesthetic and land use compatibility aspects of wind energy conversion devices/Farms.
3. Encourage the location of Wind Energy Conversion Devices/Farms in areas where adverse impacts on the community are minimized.
4. Encourage the configuration of Wind Energy Conversion Devices/Farms in a way that minimizes the adverse visual impact of the same.
5. Enhance the provisions of Wind Energy Conversion Devices/Farms regulations within the Town.
6. Minimize the total number of Wind Energy Conversion Devices/Farms throughout the Town.
7. Maximize the positive fiscal impacts for the community and land owners and support the continued economic vitality of the agricultural community.

B. Permitted Principal Uses

1. None

C. Permitted Accessory Uses

1. None

D. Special Use Permits

1. Wind Energy Conversion Devices/Farms

E. Design Requirements

1. Location

- a. A Wind Energy Conversion Device/Farm may only be located in a Wind Farm Overlay District.
 - b. A Wind Energy Conversion Device/Farm may not be located within seven hundred fifty (750) feet of any State Forest, public park or any other area that has been set aside for the sole purpose of preserving a unique wildlife habitat or natural formation recognized by a State, Federal or local government designation; or within five hundred (500) feet of a State or Federal identified wetland, unless an area variance is granted by the Zoning Board of Appeals.
2. Set Backs
- a. The tower or towers for a Wind Energy Conversion Device/Farm must meet the following set back requirements (all set back distances shall be measured from the center line of the wind turbine).
 - b. Every Wind Energy Conversion Device in a Wind Energy Conversion Farm must be set back (as measured from the center of the base of the tower):
 - i. from the property line of the parcel on which the Wind Energy Conversion Device is located by a minimum distance of seven hundred fifty (750) feet unless waived in writing, in the form of an easement that is recorded in the Wyoming County Clerk's Office, by the abutting landowner and an area variance is granted by the Zoning Board of Appeals.
 - ii. from any residence or building that is on any parcel by a minimum distance of one thousand five hundred feet (1,500) feet, unless waived in writing, in the form of an easement that is recorded in the Wyoming County Clerk's Office, by the owners of such structure and an area variance is granted by the Zoning Board of Appeals.
 - iii. from any public building that is on any parcel by a minimum distance of one thousand five hundred feet (1,500) feet or an area variance is granted by the Zoning Board of Appeals.
 - iv. from the right-of-way of any public road by a minimum distance of seven hundred fifty feet (750) feet or twice its total height, whichever is greater or an area variance is granted by the Zoning Board of Appeals.

3. Spacing and Density - A Wind Energy Conversion Device must be separated from any other Wind Energy Conversion Device, or adjacent Wind Energy Conversion Farm by a minimum distance equal to twice the height of the Wind Energy Conversion Device and by a sufficient distance so that the Wind Energy Conversion Device does not interfere with the other Wind Energy Conversion Device.
4. Structure - A Wind Energy Conversion Device must be of monopole construction to the extent practicable. If monopole construction is not practicable, a Wind Energy Conversion Device must be of freestanding construction to the extent practicable. If monopole or freestanding construction is not practicable, a Wind Energy Conversion Device may be guyed.
5. Clearance - The vertical distance from ground level to the tip of a wind turbine blade when the blade is at its lowest point must be at least thirty (30) feet.
6. Access and Safety
 - a. Security - A Wind Energy Conversion Device, including any climbing aids, must be secured against unauthorized access by means of a locked barrier. A security fence may be required.
 - b. Climbing Aids - Monopole Wind Energy Conversion Device shall have all climbing aids and any platforms locked and wholly inside the tower.
 - c. Operational Safety - Wind Energy Conversion Devices shall have an automatic braking, governing or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades and turbine components.
7. Lightning - All Wind Energy Conversion Devices shall provide a continuous electrical path to the ground to protect the tower from lightning.
8. Access Roads - All Wind Energy Conversion Devices/Farms shall use existing roads to provide access to the facility site, or if new roads are needed, minimize the amount of land used for new roads and locate them so as to minimize adverse environmental impacts.
9. Electrical Wires

- a. Location - All electrical wires associated with a Wind Energy Conversion Device must be located underground and must be located in a manner that does not interfere with reasonably expected farm practices (see also Construction section under Agricultural Mitigation).
 - b. Transmission Lines - All Wind Energy Conversion Farms shall combine transmission lines and points of connection to local distribution lines.
 - c. Operational Safety - All Wind Energy Conversion Farms shall connect the facility to existing substations, or if new substations are needed, minimize the number of new substations.
10. Lighting - A Wind Energy Conversion Device and turbine may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e. Mercy Flight), or the Planning Board. If lighting is required, the lighting must comply with FAA minimum requirements and, whenever possible, be at the lowest intensity allowed. If more than one lighting alternative is available, the Town reserves the right to choose the least obtrusive lighting option available.
11. Buildings and Outdoor Storage - Any ancillary buildings and any outside storage associated with a Wind Energy Conversion Device/Farm must, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility into the natural setting and existing environment (i.e. in an agricultural setting accessory buildings could be designed to look like barns). Appropriate landscaping or architecture shall be provided to screen accessory structures from roads and adjacent residences.
12. Aesthetics and Visual Assessment
- a. Appearance, Color, and Finish - The exterior surface of any visible components of a Wind Energy Conversion Device/Farm must be a nonreflective, neutral color. Wind Energy Conversion Devices and Farms that are located within view, or within one (1) mile of each other must be of uniform design, including tower type, color, number of blades, and direction of blade rotation.
 - b. Visual Impact Assessment - The applicant shall submit a Visual Environmental Assessment Form (Visual EAF - SEQR), as well as a visual impact assessment of any proposed Wind Energy

Conversion Device/Farm or any proposed modifications to any existing Wind Energy Conversion Device/Farm prepared by a qualified professional in a format generally accepted in the profession. The visual impact assessment shall include:

- i. “Before and after” photos or computer simulations from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. A balloon test may also be requested by the Planning Board.
 - ii. Alternative Wind Energy Conversion Device designs.
 - iii. Assessment of any visual impact from abutting properties and streets of the tower base, guy wires, accessory buildings and any other element of the Wind Energy Conversion Device/Farm as determined and directed by the Planning Board.
 - iv. A viewshed map of the proposed Wind Energy Conversion Device/Farm with a radius of seven (7) miles from any portion of the Wind Energy Conversion Device/Farm.
 - v. An inventory of all aesthetic resources in the viewshed defined in item iv.
 - vi. The assessment of the visual impact shall also include, but not be limited to, an analysis of the lighting or illumination of the Wind Energy Conversion Device and assessment of any shadowing or other visual effect of the Wind Energy Conversion Device relating to the level of natural or artificial illumination.
- c. Visual Impacts Mitigation Plan - The applicant may be required to prepare and implement a Visual Impacts Mitigation Plan to mitigate negative impacts on aesthetics of a proposed Wind Energy Conversion Device/Farm. Such a plan would show how the applicant would protect or make improvements to the aesthetics of another part of the Town to offset the negative impacts on aesthetics within the viewshed.

13. Signs - No wind turbine, tower, building, or other structure associated with a Wind Energy Conversion Device/Farm may be used to advertise or promote any product or service. A weather resistant sign. plate no greater than two (2) square feet in size containing the current owner or operator, emergency phone number, and current address of such owner/operator shall be located on the exterior surface of the tower or of the fence surrounding each tower and viewable by a Zoning Enforcement Officer. No other word or graphic representation, other than appropriate warning signs, may be placed on a wind turbine, tower, building, or other structure associated with a Wind Energy Conversion Device so as to be visible from any public road.

14. Agriculture Mitigation - The following shall apply to construction areas for Wind Energy Conversion Devices located in County-adopted, State-certified Agricultural Districts. The applicant is encouraged to coordinate with the New York State Department of Agriculture and Markets (Ag and Markets) to develop an appropriate schedule for milestone inspections to assure that the goals are being met. For larger projects, the applicant shall hire an Environmental Monitor to oversee construction and restoration in agricultural fields.
 - a. Siting
 - i. Minimize impacts to normal farming operations by locating structures along field edges where possible.
 - ii. Locate access roads, which cross agricultural fields, along ridge tops where possible to eliminate the need for cut and fill and reduce the risk of creating drainage problems.
 - iii. Avoid dividing larger fields into smaller fields, which are more difficult to farm, by locating access roads along the edge of agricultural fields where possible.
 - iv. All existing drainage and erosion control structures such as diversions, ditches, and tile lines shall be avoided or appropriate measures taken to maintain the design and effectiveness of the existing structures. Any structures disturbed during construction shall be repaired to as close to original condition as possible, as soon as possible, unless such structures are to be eliminated based on a new design.
 - b. Construction

- i. The surface of access roads constructed through agricultural fields shall be level with the adjacent field surface.
- ii. Where necessary, culverts and water bars shall be installed to maintain natural drainage patterns.
- iii. All topsoil must be stripped from agricultural areas used for vehicle and equipment traffic and parking. All vehicle and equipment traffic and parking shall be limited to the access road and/or designated work areas such as tower sites and lay down areas. No vehicles or equipment will be allowed outside the work area without prior approval from the landowner and, when applicable, the Environmental Monitor.
- iv. Topsoil from work areas (tower sites, parking areas, “open-cut” electric cable trenches, along access roads) shall be stockpiled separate from other excavated material (rock and/or subsoil). At least fifty (50) feet of temporary workspace is needed along “open-cut” electric cable trenches for proper topsoil segregation. Topsoil stockpile areas shall be clearly designated in the field and on the on-site “working set” of construction drawings. Stockpiles will be located far enough from access roads and work areas to eliminate the possibility of vehicles inadvertently compacting this soil.
- v. In cropland, hayland and improved pasture a minimum depth of forty-eight (48) inches of cover will be required for all buried electric wires. In unimproved grazing areas and land permanently devoted to pasture, a minimum depth of thirty-six (36) inches of cover will be required. In areas where the depth of soil over bedrock ranges from zero (0) to forty-eight inches (48), the electric wires shall be buried entirely below the top of the bedrock or at the depth specified for the particular land use whichever is less. At no time will the depth of cover be less than twenty-four (24) inches below the soil surface.
- vi. All excess subsoil and rock shall be removed from the site. On site disposal of such material may be allowed if approved by the landowner and, when applicable, the Environmental Monitor, with appropriate consideration given to any possible agricultural or environmental impacts.

- vii. In pasture areas, work areas will be fenced to prevent livestock access, consistent with landowner agreements.
- viii. All pieces of wire, bolts, and other unused metal objects will be picked up and properly disposed of as soon as practical after the unloading and packing of turbine components so that these objects will not be mixed with any topsoil.
- ix. Travel of all heavy equipment (including concrete trucks and erection cranes) will be limited to designated access roads and gravel crane pads at all times.
- x. Excess concrete will not be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.
- xi. Any permits necessary for disposal under local, State and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.

c. Restoration

- i. Restoration scheduling will be consistent with the seasonal limitations identified by Ag and Markets and will be incorporated into the project's Agricultural District Notice of Intent (if applicable) as well as the Stormwater Management Plan (general permit).
- ii. Following construction, all disturbed agricultural areas will be decompacted to a depth of eighteen (18) inches with a deep ripper or heavy-duty chisel plow. In areas where the topsoil was stripped, soil decompaction shall be conducted prior to topsoil replacement. Following decompaction, all rocks four (4) inches and larger in size will be removed from the surface of the subsoil prior to replacement of the topsoil. The topsoil will be replaced to original depth and the original contours will be reestablished where possible. All rocks four (4) inches and larger shall be removed from the surface of the topsoil. Subsoil decompaction and topsoil replacement should be avoided after October 1, unless approved on a site-specific basis by the landowner in consultation with Ag and Markets. All parties involved should be cognizant that areas restored after October 1 may not obtain sufficient

growth to prevent erosion over the winter months. If areas are to be restored after October 1st, some provision should be made to restore any eroded areas in the springtime, to establish proper growth.

- iii. All access roads will be regraded to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the design.
- iv. All restored agricultural areas shall be seeded with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.
- v. All surface or subsurface drainage structures damaged during construction shall be repaired to as close to preconstruction conditions as possible, unless said structures are to be removed as part of the project design.
- vi. Following restoration, all construction debris will be removed from the site.

d. Three Year Monitoring and Remediation

- i. The applicant will provide a monitoring and remediation period of no less than three (3) years immediately following the completion of initial restoration. The three (3) year period allows for the effects of climatic cycles such as frost action, precipitation and growing seasons to occur, from which various monitoring determinations can be made. The monitoring and remediation phase will be used to identify any remaining agricultural impacts associated with construction that are in need of mitigation and to implement the follow-up restoration.
- ii. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed fences, etc. Impacts will be identified through on site monitoring of all agricultural areas impacted by construction and through contact with respective farmland operators and New York State Ag and Markets.

- iii. Topsoil deficiency and trench settling shall be mitigated with imported topsoil that is consistent with the quality of topsoil on the affected site. Excessive amounts of rock and oversized stone material will be determined by a visual inspection of disturbed areas as compared to portions of the same field located outside the construction area. All excess rocks and large stones will be removed and disposed of by the applicant.
 - iv. When the subsequent crop productivity within affected areas is less than that of the adjacent unaffected agricultural land, the applicant as well as other appropriate parties, will help to determine the appropriate rehabilitation measures to be implemented. Because conditions which require remediation may not be noticeable at, or shortly after, the completion of construction, the signing of a release form prior to the end of the remediation period will not terminate the applicant's responsibility to fully redress all project impacts.
 - v. Subsoil compaction shall be tested using an appropriate soil penetrometer or other soil compaction measuring device. Compaction tests will be made for each soil type identified on the affected agricultural fields. The subsoil compaction test results within the affected area will be compared with those of the adjacent unaffected portion of the farm field/soil unit. Where representative subsoil density of the affected area exceeds the representative subsoil density of the unaffected areas, additional shattering of the soil profile will be performed using the appropriate equipment. Deep shattering will be applied during periods of relatively low soil moisture to ensure the desired mitigation and to prevent additional subsoil compaction. Oversized stone/rock material which is uplifted to the surface as a result of the deep shattering will be removed.
15. Noise - Audible noise due to the operation of any part of a Wind Energy Conversion Device shall not exceed fifty (50) dBA for any period of time, when measured at any residence, school, hospital, church, public park or public library, unless the project developer has obtained a noise easement.
16. Insurance - Prior to issuance of a building permit, the applicant shall provide the Town proof of a level of insurance to be determined by the Planning Board in consultation with the Town's insurer and attorney,

to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility.

17. Shadow Flicker

- a. Shadow Flicker Map - Maps shall be prepared showing projected annual hours of shadow flicker impact for all sensitive areas / locations within the project area including, but not limited to, any residence, school, hospital, church or public library.
- b. Shadow Flicker Duration - Shadow flicker for all sensitive areas/locations within the project area shall be limited to thirty (30) hours per year and shall not exceed thirty (30) minutes per day.

18. Electromagnetic Interference (EMI) - All Wind Energy Conversion Devices shall be properly sited, filtered and/or shielded in order to avoid any interference with electromagnetic communications, such as radio, telephone or television signals caused by any Wind Energy Conversion Device or the applicant shall mitigate any such interference.

19. Avian Analysis

- a. The applicant shall submit an avian study to assess the potential impact of proposed Wind Energy Conversion Devices/Farms upon bird and bat species. The avian study shall at a minimum report on a literature survey for threatened and endangered species, and any information or critical flyways.
- b. The applicant must identify any plans for post-construction monitoring or studies. The analysis should also include an explanation of potential impacts and propose a mitigation plan, if necessary.
- c. This analysis can be submitted as part of the application or can be included in a Draft Environmental Impact Statement (DEIS).

20. Height Limitation

- a. The maximum height for any device which is part of a Wind Energy Conversion Device/Farm shall be four hundred fifty (450) feet measured as follows:
 - i. From the highest vertical point of the wind turbine when the

turbine blade is in vertical position perpendicular to its base.

- ii. Other maximum building structure height restrictions within other sections of the Zoning Ordinance are not applicable.

C. Site Plan

1. Wind Energy Conversion Devices/Farms may not be constructed, erected, located, altered or used without first obtaining review, approval and a license pursuant to this Article.
 - a. The site plan, as specified herein, for all Wind Energy Conversion Devices/Farms must be reviewed by the Planning Board and its designated expert.
 - b. Upon completion of the Planning Board review of the Wind Energy Conversion Device/Farm site plan, the Planning Board shall render an advisory recommendation to the Town Board recommending approval, denial or conditional approval of the site plan.
 - c. The Town Board may then approve, deny or impose conditions on the Wind Energy Conversion Device/Farm site plan.
2. An applicant proposing a Wind Energy Conversion Device/Farm must submit the following site plan materials:
 - a. Survey of the property showing existing features such as contours, buildings, structures, streets, utility easements, rights-of-way, land use, land use district, ownership of surrounding property, and vehicular access;
 - b. Site plan showing the location of proposed structures;
 - c. Preliminary layout plans, including the location of new access roads and transmission lines;
 - d. A description of the routes used by construction and delivery vehicles and any road improvements that will be necessary in the Town to accommodate construction vehicles, equipment or other deliveries;
 - e. Anticipated construction schedule;
 - f. Description of operations (including anticipated regular and unscheduled maintenance); and

- g. Storm Water Management Plan.
3. These site plan materials are required in addition to the items set forth in Article III, Section 306.
 4. The Planning Board may waive these submission requirements if this information is included in a Draft Environmental Impact Statement (DEIS).
- D. State Environmental Quality Review Act - The applicant shall fully comply with the New York State Environmental Quality Review Act and shall submit a Draft Environmental Impact Statement (DEIS).
- E. Application Fee
1. To initiate the review process contemplated by this Section, including site plan review, an applicant for a Wind Energy Conversion Device/Farm shall remit an application fee to the Town in the amount of seven hundred and fifty dollars (\$750.00) per megawatt of generating capacity for each anticipated device. Said sum shall not be refundable in whole or in part.
 2. The applicant shall pay the fees and expenses of any consultant(s) used by the Planning Board or Town Board to assist in the review of the application.
 3. The Town Board may set up an escrow fund to receive funds in advance for payment of these fees and expenses.
 4. Any application hereunder shall not be deemed compete until the funds are deposited with said Town.
- F. Indemnity and Save Harmless Agreement - The applicant shall agree to indemnify and save the Town, its officers, agents and employees harmless from any liability imposed upon the Town, its officers, agents, and/or employees arising from the negligence, active or passive, of the applicant.
- G. Removal of Obsolete/Unused Facilities
1. Upon the original issuance of a special use permit for a Wind Energy Conversion Device, the applicant agrees to dismantle and remove the Wind Energy Conversion Device from the property when the Wind Energy Conversion Device ceases to be used for its intended purpose for a period of twelve (12) consecutive months, or the special use permit is revoked or not renewed.
 2. The decision as to whether the project has been abandoned or the permit

revoked shall be in the sole and absolute discretion of the Town Board and not subject to review or appeal.

3. To secure the applicant's performance to dismantle and remove the Wind Conversion Device once the same ceases to be used for the intended purpose, the following will be complied with:
 - a. In conjunction with the issuance of the original special use permit, the applicant shall post a bond or deposit with the Town the sum of \$100,000.00 per Wind Energy Conversion Device (the "Escrow Fund") to be held in escrow by the Town pursuant to the terms of this local law.
 - b. The Town reserves the right to review annually to ensure sufficient monies are available for removal.
 - c. Removal of the system shall include the removal of the entire structure, including foundations forty-eight (48) inches below the surface, transmission equipment and fencing, if any, from the property.
 - d. After the applicant dismantles and removes the Wind Energy Conversion Device, said deposit shall be returned to the applicant.
4. In the event that the Wind Energy Conversion Device is not dismantled and removed, the Town shall have the right, on thirty (30) days written notice, mailed certified return receipt requested to the last known address of the applicant, to have the Wind Energy Conversion Device dismantled and removed and charge the cost thereof against the Escrow Fund.
5. In the event there is any unused portion of the Escrow Fund remaining, after the dismantling and removal of the Wind Energy Conversion Device, the balance shall be returned to the applicant.
6. If the cost to dismantle and remove the Wind Energy Conversion Device in excess of the amount in the Escrow Fund, the applicant shall reimburse the Town for such excess upon demand.
7. In the event the applicant fails to so reimburse the Town and the Town commences legal action to enforce this local law, the applicant shall reimburse the Town for its reasonable attorney's fees and court costs.

H. Maintenance and/or Performance Bond

1. Prior to approval of any application, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of

security acceptable to the Town Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said Wind Energy Conversion Device during its lifetime and provide for its removal.

2. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the Wind Energy Conversion Device and site.
3. In furtherance of the forgoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application to accomplish the foregoing.

I. Inspection of Wind Energy Conversion Devices - All Wind Energy Conversion Devices will be subject to a bi-annual inspection by the Zoning Officer unless said requirement is waived by the Planning Board.

J. Transfer of Facility

1. No transfer of any Wind Energy Conversion Device, nor sale of the entity owning such facility shall occur without prior approval of the Town, which approval shall be granted upon:
 - a. The receipt of proof of the ability of the successor to meet all requirements of this Local Law; and
 - b. The written acceptance of the transferee of the obligations of the transferor under this Local Law.
2. No transfer shall eliminate the liability of an applicant or of any other party under this Local Law.

K. Before a license can be issued by the Town Board, a Host Agreement shall be entered into by the applicant and the Town of Covington.

L. Before a license can be issued by the Town Board, a Road Agreement shall be entered into by the applicant and the Town of Covington.

6. ARTICLE X – SUPPLEMENTARY REGULATIONS

Add Section 1007– Wind Energy Device

- A. Design Requirements - Sixty percent (60%) of all electricity or power generated on site by a Wind Energy Device is required to be utilized on the same site with the maximum turbine power output limited to 20 KW.

- B. Location - A Wind Energy Device may only be located in A-Agricultural District as an accessory use.
- C. Setbacks – A Wind Energy Device will be required to be set back from any power line, residence, public or private building, structure, right-of-way to any road and property line a minimum distance of one and one-half (1 ½) the height of the proposed Wind Energy Device or a variance is granted by the Zoning Board of Appeals. This requirement is in addition to and compliance with Schedule I of this Zoning Law.
- D. A Wind Energy Device must be of monopole construction to the extent practicable. If monopole construction is not practicable, a Wind Energy Device must be of freestanding construction to the extent practicable. If monopole or freestanding construction is not practicable, a Wind Energy Device may be guyed.
 - 1. If the Wind Energy Device is guyed, fencing will be required around each guy wire at a minimum height of seven and one-half (7½) feet.
 - 2. Each guy wire will be wrapped with reflective tape a minimum height of ten (10) feet.
 - 3. Guy wire must be a minimum distance of twenty-five (25) feet from any property line.
 - 4. All electrical wires shall be located underground, to the extent practicable.
- E. Application Fee
 - 1. To initiate the review process contemplated by this Section for an applicant for a Wind Energy Device, the applicant shall remit an application fee to the Town in the amount of two hundred and fifty dollars (\$250.00) for each anticipated device. Said sum shall not be refundable in whole or in part.
 - 2. The applicant shall pay the fees and expenses of any consultant(s) incurred by the Town to assist in the review of the application, including but not limited to engineering.
- F. Electrical inspection of the Wind Energy Device shall be conducted by a state recognized electrical inspector.

7. ARTICLE XI – REGULATIONS GOVERNING SPECIAL PERMIT USES

Amend Section 1110 Windmills, Wind Generators and Towers Commercial Communications Tower

No Commercial Communication Tower or antenna(s) shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these regulations.

A. Shared Use of Existing Towers and/or Structures

1. In all instances, shared use of an existing tower and/or structure (i.e., another commercial communications tower, water tower, building, etc.) shall be preferred to the construction of a new Commercial Communication Tower.
2. An applicant shall be required to present an adequate report inventorying existing towers or other structures within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities as an alternative to a proposed new commercial communication tower.
3. The installation of a commercial communication antenna(s) on an existing structure located within the A-Agricultural District shall be considered a permitted accessory use not subject to Site Plan Review, provided the following criteria are met:
 - a. The existing structure is not increased in height or otherwise modified so as to change its visual appearance,
 - b. The antenna(s) do not extend above such structure more than ten (10) feet, and
 - c. The applicant provides the necessary documentation to the Zoning Enforcement Officer to verify the existing structure and proposed antenna(s) installation would comply with the NYS Uniform Fire Prevention and Building Code.
 - d. An applicant proposing to share use of an existing tower and/or structure shall be required to document intent from an existing tower/structure owner to allow shared use.

B. New or Altered Towers and/or Structures

1. The Planning Board may, in its sole discretion, consider a new or altered (including towers or structures which are modified, reconstructed or

changed) Commercial Communication Tower/structure where the applicant demonstrates to the satisfaction of the Planning Board that shared usage of an existing tower/structure is impractical.

- a. The applicant shall be required to submit a report demonstrating good faith efforts to secure shared use from existing towers or other structures as well as documentation of the physical and/or financial reasons why shared usage is not practical.
 - b. Written request and responses for shared use shall be provided.
2. The applicant shall be required to submit a site plan in accordance with Section 306 for all Commercial Communication Towers that are proposed to be erected, moved, reconstructed, changed or altered.
 - a. Site plan review will also be required in those instances when antenna(s) are being added to existing structures not in compliance with the criteria set forth in Subsection A of this Section.
 - b. In addition to Section 306, the site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wire anchors, parking and landscaping and shall include grading plans for new facilities and roads.

C. Supporting Documentation

1. The Planning Board shall require that the site plan include a completed Visual Environmental Assessment Form (Visual EAF - SEQR); and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antenna and justification for any required clearing.
2. The applicant must provide a coverage/interference analysis and capacity analysis showing that location of the antennas as proposed is necessary to meet the frequency reuse and spacing needs of the cellular system and to provide adequate portable cellular telephone coverage and capacity to areas which cannot be adequately served by locating the antennas in a less restrictive district.
3. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual EAF in addressing this Subsection and Subsections J and K of this Section.

D. Shared Usage of Site with New Tower

1. Where shared usage of all existing towers or other structures is found to be impractical, as determined in the sole discretion of the Planning Board, the applicant shall investigate shared usage of an existing tower or other

structure site for its ability to accommodate a new tower and accessory uses.

2. Documentation and conditions shall be in accordance with Subsection B of this Section.
3. Any new Commercial Communication Tower approved for a site with an existing tower or other structure site shall be subject to the standards of Subsections F through N of this Section.

E. New Tower at a New Location – The Planning Board may consider a new Commercial Communication Tower on a site not previously developed with an existing tower or other structure when the applicant demonstrates that shared usage of an existing tower site is impractical, as determined in the sole discretion of the Planning Board, and submits a report as described in Subsection B of this Section

F. Future Shared Usage of New Tower

1. The applicant must design a proposed Commercial Communication Tower to accommodate future demand for commercial broadcasting and reception facilities.
2. This requirement may be waived provided that the applicant demonstrates, in the sole discretion of the Planning Board, that provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:
 - a. The number of Federal Communications Commission (FCC) licenses anticipated for the area;
 - b. The kind of tower site and structure proposed;
 - c. The number of existing and potential licenses without tower spaces;
 - d. Available spaces on existing and approved towers; and
 - e. Potential adverse visual impact by a tower designed for shared usage.

G. Setbacks for New Towers

1. All proposed Commercial Communication Towers and accessory structures shall be set back from abutting residential parcels, public property or street lines a distance sufficient to contain on-site substantially all ice-fall or debris from tower failure and preserve the privacy of adjoining residential properties.

2. All Commercial Communication Tower bases must be located at a minimum setback from any property line at a distance at least two (2) times the full tower height, or the distance between the tower base and guy wire anchors, or the minimum setback of the underlying zoning district, or a minimum setback at a distance which shall be established in the sole discretion of the Planning Board based on the unique characteristics of the site, whichever of the foregoing is greater.
3. The minimum setback requirement of this paragraph may be increased in the sole discretion of the Planning Board, or it may be decreased, again, in the sole discretion of the Planning Board, in those instances when the applicant has submitted plans for a tower designed in such a manner as to collapse within a smaller area.
4. Such tower design and collapse zone must be acceptable to the Town Engineer and the Planning Board.
5. Accessory structures must comply with the minimum setback requirements in the underlying district.

H. Aesthetics and Visual Assessment

1. Appearance, Color, and Finish - The exterior surface of any visible components of a Commercial Communication Tower must be a nonreflective, neutral color. Commercial Communication Towers that are located within view of each other, or within one (1) mile of each other must be of uniform design, including tower type, color, number of blades, and direction of blade rotation.
2. Visual Impact Assessment - The applicant shall submit a Visual Environmental Assessment Form (Visual EAF - SEQR), as well as a visual impact assessment of any proposed Commercial Communication Tower or any proposed modifications to existing Commercial Communication Tower prepared by a qualified professional in a format generally accepted in the profession. The visual impact assessment shall include:
 - a. "Before and after" photos or computer simulations from key viewpoints both inside and outside of the Town, including state highways and other major roads, from state and local parks, other public lands; from any privately owned preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. A balloon test may also be requested by the Planning Board.
 - b. Alternative Commercial Communication Tower designs.

- c. Assessment of any visual impact from abutting properties and streets of the tower base, guy wires, accessory buildings and any other element of the Commercial Communication Tower as determined and directed by the Planning Board.
 - d. A viewshed map of the proposed Commercial Communication Tower with a radius of three (3) miles from any portion of the Commercial Communication Tower.
 - e. An inventory of all aesthetic resources in the viewshed defined in item iv.
 - f. The assessment of the visual impact shall also include, but not be limited to, an analysis of the lighting or illumination of the Commercial Communication Tower and assessment of any shadowing or other visual effect of the Commercial Communication Tower relating to the level of natural or artificial illumination.
3. Visual Impacts Mitigation Plan - The applicant may be required to prepare and implement a Visual Impacts Mitigation Plan to mitigate negative impacts on aesthetics of a proposed Commercial Communication Tower. Such a plan would show how the applicant would protect or make improvements to the aesthetics of another part of the Town to offset the negative impacts on aesthetics within the viewshed.

I. New Tower Design

1. Alternate designs shall be considered for new towers, including lattice and single pole structures.
2. Plans should show that the owner of the Commercial Communication Tower has agreed to permit other persons to attach other communication apparatus, which do not interfere with the primary purposes of the commercial communication tower, provided that such other persons agree to negotiate a reasonable compensation to the owner from such liability as may result from such attachment.
3. The design of a proposed new tower shall comply with the following:
 - a. Unless specifically required by other regulations, all towers shall have a neutral, earth tone, sky tone or similar finish that will minimize the degree of visual impact that the new tower may have.
 - b. Artificial lighting, including strobes, beacons and other hazard avoidance lighting, shall be limited to that required by the Federal

Aviation Administration (FAA) or other governmental agency, recognized safety guidelines and the Planning Board.

- c. Any new tower shall be designed and constructed to have the minimum height and carrying capacity needed to provide future shared usage (co-locating of a minimum of two (2) additional antennae.)
- d. The Planning Board may request a review of the application by the Town Engineer, or other engineer selected by the Planning Board, for evaluation of need for and design of any new tower. The costs associated for such review shall be borne by the applicant.
- e. Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.
- f. No portion of a tower may be used for signs or advertising purposes, including company name, banners, streamers, etc.
- g. The applicant shall provide documentation acceptable to the Planning Board that certifies the operation of the proposed Commercial Communication Tower facility will not interfere with usual and customary transmission or reception of radio, television or other communication equipment.
- h. Space on communication towers shall be made available for public safety purposes (i.e., Wyoming County Public Safety Radio System) at no cost to public safety agencies.

J. Existing Vegetation

- 1. Existing on-site vegetation shall be preserved to the maximum extent possible and no cutting of trees exceeding four (4) inches in diameter (measured at a height of four (4) feet off the ground) shall take place prior to approval of the special use permit.
- 2. Clear cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.

K. Screening

- 1. Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property and from public sites known to include important views or vistas.
- 2. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required:

- a. For all Commercial Communication Towers, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least eight (8) feet in height within two (2) years of planting shall be provided to effectively screen the tower base and accessory facilities.
- b. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival.
- c. Plant height in these cases shall include the height of any berm.

L. Access

1. Adequate emergency service access shall be provided.
2. Maximum use of existing roads, public or private, shall be made.
3. Road construction shall, at all times, minimize grounds disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement.
4. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

M. Parking - Parking shall be provided in accordance with Article X. No parking space shall be located in any required yard.

N. Fencing

1. Sites of proposed new Commercial Communication Towers and sites where modifications to existing towers are proposed shall be adequately enclosed by a fence ten (10) feet in height from finished grade, unless the applicant demonstrates to the sole discretion of the Planning Board that such measures are unnecessary to ensure the security of the facility.
2. Such security fencing shall surround the tower base as well as each guy anchor.

O. Maintenance and/or Performance Bond

1. Prior to approval of any application, the Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk a maintenance and/or performance bond or other form of security acceptable to the Town Attorney, in an amount sufficient to cover the installation, maintenance and/or construction of said tower during its lifetime and provide for its removal.

2. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the tower and site.
3. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application to accomplish the foregoing.

P. Removal of Obsolete/Unused Facilities

1. Upon the original issuance of a special use permit for a Commercial Communication Tower, the applicant agrees to dismantle and remove the Commercial Communication Tower from the property when the Commercial Communication Tower ceases to be used for its intended purpose for a period of twelve (12) consecutive months, or the special use permit is revoked or not renewed.
2. The decision as to whether the project has been abandoned or the permit revoked shall be in the sole and absolute discretion of the Town Board and not subject to review or appeal.
3. To secure the applicant's performance to dismantle and remove the Commercial Communication Tower once the same ceases to be used for the intended purpose, the following will be complied with:
 - a. In conjunction with the issuance of the original special use permit, the applicant shall post a bond or deposit with the Town, per Commercial Communication Tower, in an amount to be determined by the Town's engineer and to be held in escrow (the "Escrow Fund") by the Town pursuant to the terms of this local law.
 - b. The Planning Board reserves the right to review annually to ensure sufficient monies are available for removal.
 - c. Removal of the system shall include the removal of the entire structure, including foundations forty-eight (48) inches below the surface, transmission equipment and fencing, if any, from the property.
 - d. After the applicant dismantles and removes the Commercial Communication Tower, said deposit shall be returned to the applicant.

4. In the event that the Commercial Communication Tower is not dismantled and removed, the Town shall have the right, on thirty (30) days written notice, mailed certified return receipt requested to the last known address of the applicant, to have the Commercial Communication Tower dismantled and removed and charge the cost thereof against the Escrow Fund.
 5. In the event there is any unused portion of the Escrow Fund remaining, after the dismantling and removal of the Commercial Communication Tower, the balance shall be returned to the applicant.
 6. If the cost to dismantle and remove the Commercial Communication Tower is in excess of the amount in the Escrow Fund, the applicant shall reimburse the Town for such excess upon demand.
 7. In the event the applicant fails to so reimburse the Town and the Town commences legal action to enforce this local law, the applicant shall reimburse the Town for its reasonable attorney's fees and court costs.
- Q. Indemnity and Save Harmless Agreement - The applicant shall agree to indemnify and save the Town, its officers, agents and employees harmless from any liability imposed upon the Town, its officers, agents, and/or employees arising from the negligence, active or passive, of the applicant.
- R. Insurance - Prior to issuance of a building permit, the applicant shall provide the Town proof of a level of insurance to be determined by the Planning Board in consultation with the Town's insurer and attorney, to cover damage or injury that might result from the failure of a tower or towers or any other part or parts of the generation and transmission facility.
- S. Lighting - A Commercial Communication Tower may not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA), other governmental agency, recognized safety guidelines (i.e. Mercy Flight), or the Planning Board. If lighting is required, the lighting must comply with FAA minimum requirements and, whenever possible, be at the lowest intensity allowed. If more than one lighting alternative is available, the Town reserves the right to choose the least obtrusive lighting option available.
- T. State Environmental Quality Review Act - The applicant shall fully comply with the New York State Environmental Quality Review Act and shall submit a Draft Environmental Impact Statement (DEIS).
- U. All Commercial Communication Towers will be subject to a bi-annual inspection by the Zoning Officer unless said requirement is waived by the Planning Board.

Amend Section 1115 Junk Yards

Any reference to “Junk Yards” will be changed to “Salvage Yards”

Add Section 1118 Commercial Recreation

A. Process

An applicant may apply to the Planning Board for a special use permit to establish a Commercial Recreation area in an Agricultural (A) District. Public and commercial recreation facilities can include, but are not limited to, swimming facilities, sports fields, motor cross tracks, golf courses.

B. Conditions

The following conditions are intended to ensure that the Commercial Recreational area is compatible with surrounding land uses:

1. Noise shall be kept at a level that is not a nuisance to adjacent properties.
2. Adequate parking shall be provided as set forth in Section 1000. Such off street parking shall not be located less than ten (10) feet from any property line.
3. Any other condition that the Planning Board determines is a reasonable condition to mitigate any nuisance of the operation.

Add Section 1119 Gun Clubs and Firing Ranges

A. Process

An applicant may apply to the Planning Board for a special use permit to establish a Gun Club and Firing Range in an Agricultural (A) District.

B. Conditions

The following conditions are intended to ensure that Gun Club and Firing Ranges are compatible with surrounding land uses:

1. Hours of operation shall be limited to daytime hours.
2. The lot size, yard, area and height requirements shall conform to the schedule of this Law.

3. No sign shall be permitted except in accordance with the provisions of Article X.
4. A remote location is required so that the operation will not be detrimental to adjacent property nor unduly interfere with the quiet enjoyment of adjacent properties.
5. The Planning Board may require, as a condition of the special use permit, that the applicant install and maintain a buffer strip around the operation if it is determined that such condition is a reasonable mitigation factor.
6. Off street parking shall be provided in accordance with Article X.
7. Any other condition that the Planning Board determines is a reasonable condition to mitigate any nuisance of the operation

Add Section 1120 Bed and Breakfast Establishments

A. Process

An applicant may apply to the Planning Board for a special use permit to establish a Bed and Breakfast in an Agricultural (A) District and Rural Residential (R-R) District.

B. Conditions

The following conditions are intended to ensure that the Bed and Breakfast is secondary to the residential use and that it is compatible with the residential character of the neighborhood:

1. No bed and breakfast establishment shall have more than six (6) registered guests at any one given time.
2. The Bed and Breakfast establishment must be conducted within a dwelling which is a bona fide residence of the principal practitioner.
3. No sign shall be permitted except in accordance with the provisions of Article X.
4. Off-street parking shall be provided as follows: At least two (2) spaces for a family residing on the premises plus not less than one (1) additional space for each room available for guest reservation.

8. ARTICLE XII - MOBILE HOME REGULATIONS

Section 1204 Other Requirements

Amend J. No addition shall be made to a mobile home except a canopy and/or porch open on three (3) sides, or ~~an~~ no addition that exceeds one hundred sixty (160) square feet.

9. SCHEDULES

PRELIMINARY ZONING SCHEDULE

Delete Current Preliminary Zoning Schedule.
Replace With attached Preliminary Zoning Schedule.

SCHEDULE OF FEES

Delete Current Fee Schedule.
Replace With attached Fee Schedule.

10. OFFICIAL ZONING MAP

The following parcels comprise each of the individual Planned Industrial Districts.

Planned Industrial District No. 1:

24.-1-29

Planned Industrial District No. 2:

13.-1-18 13.-1-20

The following parcels comprise each of the individual Wind Overlay Districts:

Wind Overlay District No. 1:

51.-1-4.12	51.-1-2	50.-1-12.111	50.-1-13	50.-1-16	50.-1-14
51.-1-1	51.-1-3.1	51.-1-3.2	37.-1-27.3	38.-1-34	38.-1-24.2
37.-1-25.2	37.-2-26	38.-1-40	38.-1-35	37.-1-27.2	38.-1-33
37.-1-27.1	37.-1-25.1	38.-1-36	37.-1-28	38.-1-24.111	38.-1-24.12
38.-1-39	51.-1-4.11	51.-1-7	51.-1-8	51.-1-13	51.-1-10
51.-1-12	51.-1-11	51.-1-9	51.-1-6	51.-1-5.2	51.-1-5.12
51.-1-5.11	38.-1-25.2	38.-1-23	38.-1-26	38.-1-25.1	38.-1-22.12
38.-1-22.2	38.-1-22.11	38.-1-22.3			

Wind Overlay District No. 2:

51.-1-14.1 51.-1-15.1 51.-1-22 51.-1-21 51.-1-20.1 51.-1-20.2

51.-1-17	51.-1-16	51.-1-18	51.-1-27	51.-1-19	51.-1-23
51.-1-24	51.-1-25	51.-1-26	52.-1-2	52.-1-1.12	52.-1-1.11
38.-2-25.2	38.-2-25.1	38.-2-3	38.-2-2	38.-2-4.2	38.-2-4.1
52.-1-1.2	39.-1-2.11	38.-2-24	38.-2-26.2	38.-2-26.1	38.-2-1
38.-2-7.13	38.-2-7.11	38.-2-7.2	38.-2-28	38.-2-27.111	38.-2-5.12
38.-2-27.121	38.-2-27.112	38.-2-27.2	38.-2-5.2	38.-2-5.13	

Wind Overlay District No. 3:

13.-1-5	13.-1-4	13.-1-3.2	13.-1-3.1	13.-1-6.11	13.-1-7.111
26.-1-17.1	26.-1-19.1	26.-1-18.22	26.-1-18.21	26.-1-18.1	26.-1-20.11
26.-1-21	13.-1-6.12	26.-1-20.121			

The following parcels comprise each of the individual Rural Residential Districts:

R-R Rural Residential District No. 1:

24.-1-23	24.-1-19.2	24.-1-3	24.-1-4	24.-1-5	24.-1-6
24.-1-7	24.-1-8	24.-1-9	24.-1-10	24.-1-11.1	24.-1-12
24.-1-13	24.-1-14	24.-1-15	24.-1-16	24.-1-17	24.-1-18
24.-1-19.1	24.-1-20.1	24.-2-45.122	24.-2-24	24.-2-12	24.-2-8
24.-2-9	24.-2-10	24.-2-11	24.-2-19	24.-2-20	24.-2-18
24.-2-23	24.-2-13	24.-2-45.121	24.-2-21	24.-2-17	24.-2-22.2
24.-2-16	24.-2-45.112	24.-2-22.12	24.-2-15	24.-2-14	24.-2-45.111
24.-2-6.11	24.-1-1.1	24.-1-26	24.-1-25	24.-1-24	24.-1-20.2
24.-1-21.1	11.-1-23.111	11.-1-22.12	11.-1-23.112	11.-1-25	11.-1-24
11.-1-22.113	11.-1-18.1	24.-2-43.1			

R-R Rural Residential District No. 2:

11.-1-40	11.-1-13.11	11.-1-13.12	11.-1-13.2	11.-1-5.122	11.-1-5.2
11.-1-12	11.-1-11.11	11.-1-10	11.-1-36.1	11.-1-7	11.-1-8
11.-1-9.1	12-1-35	11.-1-39			

R-R Rural Residential District No. 3:

12.-1-3.1	12.-1-4.111	12.-1-1	12.-1-24.1	12.-1-25	12.-1-24.2
12.-1-23	12.-1-22	12.-1-29	12.-1-28	12.-1-27	12.-1-30
12.-1-38	12.-1-31.111	12.-1-16.21	12.-1-15.1	25.-2-23.2	25.-2-23.111
25.-2-23.112	25.-2-1.12	25.-2-1.11	25.-2-1.2	25.-2-1.3	25.-2-27.3
25.-2-27.2	25.-2-2	25.-2-7.2	25.-2-3	25.-2-7.12	25.-2-5
25.-2-4	12.-1-19	12.-1-18	12.-1-20	12.-1-21	12.-1-17
25.-2-8.11	25.-2-6	25.-1-23	25.-1-24.1	25.-1-25.2	25.-1-26
25.-1-27.1	25.-1-28	25.-1-29	25.-1-30	25.-1-31.1	

R-R Rural Residential District No. 4:

39.-1-15.2 39.-1-8 39.-1-15.1 26.-1-33.2 26.-1-33.11 26.-1-32.1
26.-1-33.3 39.-1-9.1 39.-1-10 39.-1-14.111 39.-1-11.2 39.-1-13.11
39.-1-13.2 39.-1-11.1 39.-1-12 26.-1-31.2 26.-1-31.1 26.-1-29.112
26.-1-29.111 26.-1-27.2 26.-1-25 26.-1-26 26.-1-27.111 26.-1-23.1
26.-1-24 39.-1-13.12

R-R Rural Residential District No. 5:

38.-2-6.1 38.-2-6.2 38.-2-7.121 38.-2-7.122 38.-2-8 38.-2-23.11

R-R Rural Residential District No. 6:

38.-2-12 38.-2-15.21 38.-2-15.22 38.-2-15.12 38.-2-15.132 38.-2-30
38.-1-12 38.-2-29 38.-1-11 38.-1-10.1 38.-1-18.12 38.-2-15.11
38.-1-18.112 38.-1-17 38.-1-16 38.-1-15 38.-1-14 38.-1-13
38.-2-11.2 38.-2-11.1 38.-2-10 38.-1-37 38.-1-18.111 38.-1-19
38.-1-20.1

R-R Rural Residential District No. 7:

38.-1-32 38.-1-31 38.-1-29.1 38.-1-30.2 38.-1-30.1 38.-1-2
38.-1-3.21 38.-1-1.1 38.-1-3.11 38.-1-27 38.-1-26

Add MAP OF FUTURE LAND USE

SECTION V. SEPARABILITY

In the event that any word, phrase or part of this local law shall be declared unconstitutional, the same shall be severed and separated from the remainder of this local law and shall not effect the remainder of said local law which shall remain in full force and effect.

SECTION VI. INCONSISTENCY

All resolutions, ordinances or local laws or portions thereof of the Town of Covington not consistent with this ordinance, in whole or in part, shall be repealed.

SECTION VII. EFFECTIVE DATE

This local law shall become effective upon the filing with the New York State Department of State.