

**FILED**  
**06-20-2024**  
**CLERK OF CIRCUIT**  
**COURT**  
**MARATHON COUNTY**  
**2024CV000394**  
**Honorable LaMont K.**  
**Jacobson**  
**Branch 3**

STATE OF WISCONSIN

CIRCUIT COURT

MARATHON COUNTY

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MARATHON WIND FARM LLC  
1501 McKinney Street, Suite 1300  
Houston, TX 77010

Plaintiff,

v.

Case No.

Case Code: 30701

TOWN OF BRIGHTON  
210433 State Highway 13  
Spencer, Wisconsin 54479;

TOWN OF EAU PLEINE  
111630 Equity Street  
Stratford, Wisconsin 54484

Defendants.

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**SUMMONS**

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**THE STATE OF WISCONSIN, TO EACH PERSON NAMED ABOVE AS A DEFENDANT:**

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Marathon County Courthouse, 500 Forest St, Wausau, WI 54403, and to the plaintiff's attorney, Matthew D. Lee, Foley & Lardner LLP, 150 East Gilman Street, Suite 5000, Madison, Wisconsin 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: June 20, 2024

FOLEY & LARDNER LLP

*Electronically signed by Matthew D. Lee*

Matthew D. Lee (WI Bar No. 1061375)

Emily G. Jones (WI Bar No. 1115601)

150 E. Gilman Street

Suite 5000

Madison, WI 53703

(608) 257-5035 (telephone)

(608) 258-4258 (facsimile)

*Attorneys for Plaintiff Marathon Wind Farm LLC*

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## COMPLAINT

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Plaintiff Marathon Wind Farm LLC (“Marathon Wind” or “Plaintiff”), by its undersigned attorneys, Foley & Lardner LLP, as and for its Complaint against Defendants Town of Brighton (“Brighton”) and Town of Eau Pleine (“Eau Pleine”) (collectively, “Defendants”) hereby alleges and shows to the Court as follows:

### **NATURE OF THE ACTION AND THE PARTIES**

1. Marathon Wind is a Delaware limited liability company with its corporate headquarters at 1501 McKinney Street, Suite 1300, Houston, TX 77010. Marathon Wind currently leases approximately 12,000 acres of real property located in Marathon County, including in Brighton and Eau Pleine.

2. Brighton is a town in Marathon County, Wisconsin, with its service address at 210433 State Highway 13, Spencer, Wisconsin 54479. As a town, Brighton is engaged in substantial and not isolated activities in this state.

3. Eau Pleine is a town in Marathon County, Wisconsin, with its Town Hall & Shop located at 111630 Equity Street, Stratford, Wisconsin 54484. As a town, Eau Pleine is engaged in substantial and not isolated activities in this state.

### **JURISDICTION AND VENUE**

4. This court has subject matter jurisdiction over this dispute under Wis. Stat. § 801.04.

5. This court has personal jurisdiction over defendants under Wis. Stat. § 801.05(1)(d) and (3).

6. This court is the proper venue for this matter under Wis. Stat. § 801.50(2)(a), (b) and (c). Plaintiff's claims arose in Marathon County, Marathon Wind's real property interests injured by Brighton and Eau Pleine's unlawful actions are located in Marathon County, and Brighton and Eau Pleine, as governmental entities in Marathon County, do substantial business in Marathon County.

### **FACTS**

#### **Wisconsin law and policy preclude local restrictions on wind energy systems**

7. Under Wis. Stat. § 66.0401(1m), Wisconsin prohibits political subdivisions from placing "any restriction, either directly or in effect, on the installation or use of a wind energy system that is more restrictive than the rules promulgated by the commission . . . ."

8. Wis. Stat. § 66.0401(1e)(c) defines "Political subdivision" as "a city, village, town, or county."

9. The Town of Brighton is a political subdivision subject to the limitations of Wis. Stat. § 66.0401(1m).

10. The Town of Eau Pleine is a political subdivision subject to the limitations of Wis. Stat. § 66.0401(1m).

11. Wis. Stat. § 66.0401(1m) defines the term “commission” as the Wisconsin Public Service Commission (the “PSC”).

12. The PSC has adopted detailed regulations relating to wind energy systems. These are codified in the Wisconsin Administrative Code Chapter PSC 128 (“PSC Chapter 128”).

13. PSC Chapter 128 limits the ability of political subdivisions to restrict wind energy systems.

14. Wis. Admin Code § PSC 128.03 provides: “a political subdivision may not place any restriction, either directly or in effect, on the installation or use of a wind energy system except by adopting an ordinance that complies with this chapter and [Wis. Stat. §] 66.0401 and is not more restrictive than this chapter.”

#### **Marathon Wind’s Proposed Marathon County Wind Energy System**

15. Marathon Wind is a wholly owned subsidiary of EDP Renewables North America LLC (“EDPR NA”). EDPR NA and its subsidiaries develop and maintain renewable energy systems, including wind energy systems. The wind energy systems developed and maintained by the EDPR NA corporate family are located in Wisconsin and 16 other states.

16. In 2017, EDPR NA began developing plans to establish 99 megawatts of wind energy systems in rural Marathon County, including within the towns of Brighton and Eau Pleine (the “Marathon County Project” or the “Marathon County Wind Energy System”).

17. EDPR NA's selection of Marathon County for a wind energy system followed years of research on, site visits to, and consideration of numerous potential siting locations both inside and outside Wisconsin.

18. EDPR NA identified the towns of Brighton and Eau Pleine as desirable locations for a wind energy system based on, among other factors, the available wind resource, proximity to transmission lines, and the supportive community.

19. In 2018, EDPR NA formed Marathon Wind to develop the Marathon County Project and bring renewable, low-cost energy to residents of Wisconsin, in particular, those in Marathon County. EDPR NA is an affiliate of Marathon Wind.

20. Wisconsin's strong state policy supporting the development of wind energy systems, codified at Wis. Stat. § 66.0401(1m) and Wis. Admin Code § PSC 128, make Wisconsin a desirable location for a wind energy system and for Marathon Wind's business activities in general.

21. In 2018, Marathon Wind began leasing property from Marathon County landowners. The purpose of entering into these leases was to secure real property rights to locations on which Marathon Wind may want to site wind towers or other components of a wind energy system.

22. Marathon Wind currently leases a total of approximately 12,000 acres in the Town of Brighton and Town of Eau Pleine from approximately 65 different landowners. Upon information and belief, all 65 landowners desire that their leased land be used to support Marathon Wind's energy system(s).

23. Marathon Wind leased these properties with the intent to build and operate a wind energy system on them.

24. Marathon Wind began communicating with Brighton regarding Marathon Wind's intent to develop a wind energy system in Brighton in 2019.

25. Marathon Wind began communicating with Eau Pleine regarding Marathon Wind's intent to develop a wind energy system in Eau Pleine in 2019.

26. Developing a wind energy system is a time- and resource-intensive process. It requires detailed review and approval from a system operator before construction can be authorized. The system operator for the Midwest region (including Wisconsin) is the Midcontinent Independent System Operator ("MISO").

27. MISO formed in response to Federal Energy Regulatory Commission ("FERC") Orders 888 and 889 which, in the mid- to late-1990s, established rules to open the bulk electric system to competition. MISO became the nation's first FERC-approved Regional Transmission Organization ("RTO") in 2001. MISO reviews and approves energy projects in its territory that wish to interconnect into the regional transmission system. This process, called the "Generator Interconnection Process," takes several years to complete before an energy project can move forward.

28. EDPR NA initially submitted the Marathon County Project to MISO in 2017. The Marathon County Project was resubmitted to MISO in 2020.

29. The Marathon County Wind Energy System reached the top of the MISO queue in October 2022.

30. MISO completed a Stage 3 review of the project and issued a draft Generator Interconnection Agreement on June 13, 2024. Marathon Wind is currently negotiating that Agreement with American Transmission Company ("ATC"). ATC owns and manages the transmission infrastructure to which the Marathon County Project must connect.

31. While the Marathon County Project has been in the MISO queue, EDPR NA and Marathon Wind commissioned numerous studies required to build a wind energy system in Marathon County. These studies include, but are not limited to, a meteorological campaign, cultural resource studies, endangered wildlife, bird, and bat studies, wetland and waterway delineations, environmental site assessments, and interconnection provider studies.

32. These studies began in 2017. Several of these studies must be re-performed if the Project to which it is tied is not implemented within a certain amount of time. The effectiveness of some studies has already begun to expire.

33. Marathon Wind invested considerable time and resources in obtaining these studies.

34. As the studies expire, they will need to be re-done or refreshed, more than doubling Marathon Wind's cost for completing and submitting the studies.

35. To date, Marathon Wind has invested more than \$5 million in the development of its Marathon County Wind Energy System.

#### **Brighton's ordinance**

36. On or about April 2, 2023, the majority of eligible electors at the Brighton annual town meeting resolved to authorize the Town Board of Brighton to exercise the powers of a village board.

37. On or about May 9, 2023, Brighton enacted the "Town of Brighton Wind Energy Facility Licensing Ordinance," also known as Ordinance No. 17 ("the Brighton Wind Ordinance").

38. A true and correct copy of the Brighton Wind Ordinance is attached as **Exhibit A**.



39. The Brighton Wind Ordinance purports to set minimum requirements for the establishment, permitting, and operation of any wind energy system proposed to be located in Brighton.

40. The Brighton Wind Ordinance restricts wind energy systems' ability to operate in Brighton.

41. The Brighton Wind Ordinance reflects Brighton's policy decision that all wind energy systems should be bound by identical restrictions that are more restrictive than existing state restrictions.

42. The Brighton Wind Ordinance sets a maximum noise limit of 35 decibels (Section 6-1.7).

43. Section 6-1.7 is more restrictive than the maximum noise limits of 45 and 50 decibels set in PSC Chapter 128 (§ PSC 128.14(3)).

44. The Brighton Wind Ordinance's noise limits purport to be enforceable through shutdown orders (Section 8-4).

45. Section 8-4 is more restrictive than PSC Chapter 128, which do not enforce noise limits via shutdown order.

46. The Brighton Wind Ordinance sets minimum setbacks from a property line of the greater of either one mile or ten times the turbine height (Section 6-4).

47. Section 6-4 is more restrictive than the minimum setback from occupied community buildings or nonparticipating residences of the lesser of 1,250 feet or 3.1 times the maximum blade tip height set forth in PSC Chapter 128 (§ PSC 128.13).

48. Section 6-4 is more stringent than the minimum setback from participating residences, nonparticipating property lines, public rights-of-way, and overhead

communication/transmission lines of 1.1 times the maximum blade tip height set in PSC Chapter 128 (§ PSC 128.13).

49. The Brighton Wind Ordinance requires a Wind Energy System (“WES”) Applicant to guarantee there will no loss in value to any real property within two miles of the WES, and must provide assurances to property owners of protection from losses in real property value. (Section 7-4).

50. Section 7-4 is more restrictive than the PSC Chapter 128 requirement that a WES operator must provide annual compensation only to a nonparticipating residence within a half mile of the facility, and that assuming the facility has three or more turbines, the annual payment to each residence must be \$1,000 plus an inflation factor (§ PSC 128.33(3)). PSC Chapter 128 does not require the WES Applicant to guarantee any proximate landowner that their real property will not lose value as a result of the placement of the WES.

51. The Brighton Wind Ordinance requires the Town and its officers, employees, agents, etc., be included as additional insureds on the WES’s required general liability policy (Section 7-6).

52. Section 7-6 is more restrictive than PSC Chapter 128’s requirement that only turbine host property owners must be named as additional insureds on the required general liability policy (§ PSC 128.18(3)(c)).

53. The Brighton Wind Ordinance requires an Environmental Impact Study (“EIS”), with comments solicited from the Wisconsin Department of Natural Resources (“WDNR”), Wisconsin Department of Transportation (“WDOT”), Wisconsin Department of Health Services (“WDHS”), United States Fish and Wildlife Service (“USFWS”), and U.S. Army Corps of Engineers (“USACE”) (Section 6-3).

54. Section 6-3 is more restrictive than PSC Chapter 128, which does not require an EIS for projects subject to municipal approval, since the Wisconsin Environmental Policy Act (“WEPA”) only applies to state agencies and all WDNR permits required for the project are “integrated actions” not requiring an EIS pursuant to Wis. Admin. Code NR § 150.20.

55. The Brighton Wind Ordinance includes a prohibition on signage (Section 7-3.C).

56. Section 7-3.C is more restrictive than PSC Chapter 128, which does not include a prohibition on signage.

57. The Brighton Wind Ordinance includes siting requirements regarding interference with television and other broadcasts, and purports to include requirements to move turbines if they are found to cause such interference (Section 7-3.D).

58. Section 7-3.D is more restrictive than PSC Chapter 128, which only requires use of reasonable and “commercially available” means to remedy any interference with commercial or private communications (PSC § 128.16).

59. The Brighton Wind Ordinance purports to require the WES operator indemnify the Town for the construction, operation, maintenance, repair, and removal of the Wind Energy System (Section 7-7).

60. Section 7-7 is more restrictive than PSC Chapter 128, which requires indemnifying only the owners of the property on which the facility is located for any damages or injury caused by the construction, operation, or decommissioning of the facility (PSC §128.11(2)).

61. The Brighton Wind Ordinance includes subjective criteria related to whether a WES is contrary to a zoning designation, presents a net economic liability to the community, presents risks to public health, presents risks to wildlife or regional ecosystems, changes the

character of an area, impacts radar systems, or impacts use of restricted air space or a military installation (Section 7-10).

62. Section 7-10 is more restrictive than PSC Chapter 128, which provides that, if an application is complete, a political subdivision may not unreasonably deny an application for a WES, or impose unreasonable conditions as a part of an approval of a WES (PSC § 128.32(2)).

63. The Brighton Wind Ordinance requires the WES operator reimburse the WDOT and Town of Brighton for damage to roads caused by construction or decommissioning of the WES (Section 8-3).

64. Section 8-3 is more restrictive than PSC Chapter 128, which does not require reimbursement to the WDOT and Town for damage to roads caused by construction or decommissioning of the WES.

65. The Brighton Wind Ordinance requires post-construction environmental studies funded by WES Applicants through an Escrow Account, as well as reporting requirements (Section 8-5).

66. Section 8-5 is more restrictive than PSC Chapter 128, which does not require post-construction studies funded by WES Applicants through an Escrow Account or reporting requirements.

67. The Brighton Wind Ordinance requires decommissioning based on condemnation by “state building codes official” or after 3 consecutive months of non-generation (Section 8-6).

68. Section 8-6 is more restrictive than PSC Chapter 128, which has does not require decommissioning based on condemnation.

69. Section 8-6 requires decommissioning within 3 months (Section 8-6).

70. Section 8-6 is more restrictive than PSC Chapter 128, which requires decommissioning only after either 540 days of continuous non-generation or within 360 days of the end of useful life of the wind generation system (PSC § 128.19).

71. Brighton's "one size fits all" Wind Ordinance violates the Wisconsin statewide legislative policy that localities must evaluate each wind system on its own merits.

72. The Brighton Wind Ordinance violates Wisconsin law in its entirety because it is in all respects more stringent than PSC Chapter 128.

### **Eau Pleine's ordinance**

73. On or about June 6, 2023, the majority of eligible electors at the Eau Pleine annual town meeting resolved to authorize the Town Board of Eau Pleine to exercise the powers of a village board.

74. On or about June 13, 2023, Eau Pleine enacted the "Town of Eau Pleine Wind Energy Facility Licensing Ordinance," also known as Ordinance No. 2023-1 ("the Eau Pleine Wind Ordinance").

75. A true and correct copy of the Eau Pleine Wind Ordinance is attached as **Exhibit B**.

76. The Eau Pleine Wind Ordinance purports to set minimum requirements for the establishment, permitting, and operation of any wind energy system proposed to be located in Eau Pleine.

77. The Eau Pleine Wind Ordinance restricts wind energy systems' ability to operate in Eau Pleine.

78. The Eau Pleine Wind Ordinance reflects Eau Pleine's policy decision that all wind energy systems should be bound by identical restrictions that are more restrictive than existing state restrictions.

79. The Eau Pleine Wind Ordinance sets a maximum noise limit of 35 decibels (Section 6-1.7).

80. Section 6-1.7 is more restrictive than the maximum noise limits of 45 and 50 decibels set in PSC Chapter 128 (PSC § 128.14(3)).

81. The Eau Pleine Wind Ordinance's noise limits purport to be enforceable through shutdown orders (Section 8-4).

82. Section 8-4 is more restrictive than the PSC's requirements, which do not enforce noise limits via shutdown order.

83. The Eau Pleine Wind Ordinance sets minimum setbacks from a property line of the greater of either one mile or ten times the turbine height (Section 6-4).

84. Section 6-4 is more stringent than the minimum setback from occupied community buildings or nonparticipating residences of the lesser of 1,250 feet or 3.1 times the maximum blade tip height set forth in PSC Chapter 128 (PSC § 128.13).

85. Section 6-4 is more restrictive than the minimum setback from participating residences, nonparticipating property lines, public rights-of-way, and overhead communication/transmission lines of 1.1 times the maximum blade tip height set in PSC Chapter 128 (PSC § 128.13).

86. The Eau Pleine Wind Ordinance requires a Wind Energy System ("WES") Applicant to guarantee there will no loss in value to any real property within two miles of the

WES, and must provide assurances to property owners of protection from losses in real property value. (Section 7.4).

87. Section 7-4 is more restrictive than the PSC Chapter 128 requirement that a WES operator must provide annual compensation to only a nonparticipating residence within a half mile of the facility, and that assuming the facility has three or more turbines, the annual payment to each residence must be \$1,000 plus an inflation factor (PSC § 128.33(3)). PSC Chapter 128 does not require the WES Applicant to guarantee any proximate landowner that their real property will not lose value as a result of the placement of the WES.

88. The Eau Pleine Wind Ordinance requires the Town and its officers, employees, agents, etc., be included as additional insureds on the WES's required general liability policy (Section 7-6).

89. Section 7-6 is more restrictive than PSC Chapter 128's requirement that only turbine host property owners must be named as additional insureds on the required general liability policy (PSC § 128.18(3)(c)).

90. The Eau Pleine Wind Ordinance requires an EIS with comments solicited from the WDNR, WDOT, WDHS, USFWS, and USACE (Section 6-3).

91. Section 6-3 is more restrictive than PSC Chapter 128, which does not require any EIS for projects subject to municipal approval, since the WEPA only applies to state agencies and all WDNR permits required for the project are "integrated actions" not requiring an EIS pursuant to Wis. Admin. Code NR § 150.20.

92. The Eau Pleine Wind Ordinance includes a prohibition on signage (Section 7-3.C).

93. Section 7-3.C is more restrictive than PSC Chapter 128, which does not include a prohibition on signage.

94. The Eau Pleine Wind Ordinance includes siting requirements regarding interference with television and other broadcasts, and purports to include requirements to move turbines if they are found to cause such interference (Section 7-3.D).

95. Section 7-3.D is more restrictive than PSC Chapter 128, which requires only use of reasonable and “commercially available” means to remedy any interference with commercial or private communications (PSC § 128.16).

96. The Eau Pleine Wind Ordinance purports to require the WES Operator indemnify the Town for the construction, operation, maintenance, repair, and removal of the WES (Section 7-7).

97. Section 7-7 is more restrictive than PSC Chapter 128, which requires indemnifying only the owners of the property on which the facility is located for any damages or injury caused by the construction, operation, or decommissioning of the facility (PSC § 128.11(2)).

98. The Eau Pleine Wind Ordinance includes subjective criteria related to whether a WES is contrary to a zoning designation, presents a net economic liability to the community, presents risks to public health, presents risks to wildlife or regional ecosystems, changes the character of an area, impacts radar systems, or impacts use of restricted air space or a military installation (Section 7-10).

99. Section 7-10 is more restrictive than PSC Chapter 128, which provides that, if an application is complete, a political subdivision may not unreasonably deny an application for a WES, or impose unreasonable conditions as a part of an approval of a WES (PSC § 128.32(2)).

100. The Eau Pleine Wind Ordinance requires the WES operator reimburse the WDOT and Town of Eau Pleine for damage to roads caused by construction or decommissioning of WES (Section 8-3).



101. Section 8-3 is more restrictive than PSC Chapter 128, which does not require reimbursement to the WDOT and Town for damage to roads caused by construction or decommissioning of WES.

102. The Eau Pleine Wind Ordinance requires post-construction environmental studies funded by WES Applicants through an Escrow Account, as well as reporting requirements (Section 8-5).

103. Section 8-5 is more restrictive than PSC Chapter 128, which does not require post-construction studies funded by WES Applicants through an Escrow Account, as well as reporting requirements.

104. The Eau Pleine Wind Ordinance requires decommissioning based on condemnation by “state building codes official” or after 3 consecutive months of non-generation (Section 8-6).

105. Section 8-6 is more restrictive than PSC Chapter 128, which does not require decommissioning based on condemnation.

106. Section 8-6 requires decommissioning within 3 months (Section 8-6).

107. Section 8-6 is more restrictive than PSC Chapter 128, which requires decommissioning only after either 540 days of continuous non-generation or within 360 days of the end of useful life of the wind generation system (PSC § 128.19).

108. Eau Pleine’s “one size fits all” Wind Ordinance violates the Wisconsin statewide legislative policy that localities must evaluate each wind system on its own merits.

109. The Eau Pleine Wind Ordinance violates Wisconsin law in its entirety because it is in all respects more restrictive than PSC Chapter 128.

**The Towns’ Prohibited Actions Harm and Damage Marathon Wind**

110. Marathon Wind leased approximately 12,000 acres of land in Marathon County and began developing its Marathon County Wind Energy System in reliance on Wisconsin state law prohibiting local entities from establishing more restrictive development rights than those set forth by Chapter PSC 128, Wis. Adm. Code.

111. When the Brighton and Eau Pleine Wind Ordinances were passed, Marathon Wind was beginning to price and market the energy the Marathon County Wind Energy System would eventually generate.

112. As a result of the Brighton Wind Ordinance, Marathon Wind cannot receive a license for the proposed wind energy system in the Town of Brighton. Indeed, the Brighton Wind Ordinance makes it effectively impossible for any applicant to receive a license for a wind energy system in the Town of Brighton.

113. Since the Brighton Wind Ordinance was enacted, Marathon Wind has all but halted its development of its Wind Energy System in Brighton due to the Brighton Wind Ordinance's restrictions.

114. The Brighton Wind Ordinance causes severe damage to Marathon Wind.

115. Unless the Town of Brighton is enjoined by this Court from enforcing the Brighton Wind Ordinance, Marathon Wind will continue to be irreparably harmed by the loss of the Marathon County Wind Energy System due to the Town of Brighton's actions in passing and enacting the Brighton Wind Ordinance.

116. The Town of Brighton's actions deprive Marathon County and Wisconsin residents of access to wind energy consistent with Wisconsin public policy.

117. The Town of Brighton's actions also deprive Marathon County residents of access to the more than 100 jobs that building the Marathon County Wind Energy System would bring to the County.

118. As a result of the Eau Pleine Wind Ordinance, Marathon Wind cannot receive a license for the proposed wind energy system in the Town of Eau Pleine. Indeed, the Eau Pleine Wind Ordinance makes it effectively impossible for any applicant to receive a license for a wind energy system in the Town of Eau Pleine.

119. Since the Eau Pleine Wind Ordinance was enacted, Marathon Wind has all but halted its development of its wind energy system in Eau Pleine due to the Eau Pleine Wind Ordinance's restrictions.

120. The Eau Pleine Wind Ordinance causes severe damage to Marathon Wind.

121. Unless the Town of Eau Pleine is enjoined by this Court from enforcing the Brighton Wind Ordinance, Marathon Wind will continue to be irreparably harmed by the loss of the Marathon County Wind Energy System due to the Town of Eau Pleine's actions in passing and enacting the Eau Pleine Wind Ordinance.

122. The Town of Eau Pleine's actions deprive Marathon County residents of access to wind energy consistent with Wisconsin public policy.

123. The Town of Eau Pleine's actions also deprive Marathon County residents of access to the more than 100 jobs that building the Marathon County Wind Energy System would bring to the County, and the associated revenues.

124. Public policy in Wisconsin supports Marathon County residents having access to the energy developed by the Wind Energy System.

125. Marathon Wind's damage cannot be cured with financial compensation.

### Procedural History

126. On September 5, 2023, Marathon Wind personally served a letter regarding the Brighton Wind Ordinance on Ms. Nadine Willett, the Brighton Town Clerk (the “Brighton Notice Letter”) (**Exhibit C**).

127. The Brighton Notice Letter gave written notice of the circumstances of Marathon Wind’s injury and claim on behalf of Marathon Wind and its affiliates and was signed by Marathon Wind’s attorney. It was served on Ms. Willett less than 120 days after enactment of the Brighton Wind Ordinance.

128. The Brighton Notice Letter included Marathon Wind’s address and an itemized statement of the relief sought.

129. On September 5, 2023, Marathon Wind personally served a letter regarding the Eau Pleine Wind Ordinance on Ms. Deanna Landwehr, the Eau Pleine Town Clerk (the “Eau Pleine Notice Letter”) (**Exhibit D**).

130. The Eau Pleine Notice Letter gave written notice of the circumstances of Marathon Wind’s injury and claim on behalf of Marathon Wind and its affiliates and was signed by Marathon Wind’s attorney. It was served on Ms. Landwehr less than 120 days after enactment of the Eau Pleine Wind Ordinance.

131. The Eau Pleine Notice Letter included Marathon Wind’s address and an itemized statement of the relief sought.

132. The personal service of each of the Brighton Notice Letter and the Eau Pleine Notice Letter satisfied the notice requirement in Wis. Stat. § 893.80.

133. Ms. Willett sent a letter dated December 22, 2023 by certified mail to Marathon Wind’s attorney. The letter, received by the attorney on December 26, 2023, contained what

purported to be a Notice of Disallowance adopted by the Town Board of the Town of Brighton. However, the purported Notice was sent to Marathon Wind's attorney, not to Marathon Wind, the claimant.

134. The Town of Eau Pleine did not send a Notice of Disallowance to Marathon Wind or its attorney, which is a deemed denial under Wis. Stat. § 893.80.

135. Marathon Wind complied with Wis. Stat. § 893.80's notice requirements.

### **FIRST CAUSE OF ACTION**

#### **DECLARATORY JUDGMENT THAT BRIGHTON'S WIND ORDINANCE IS NULL AND VOID AND INJUNCTIVE RELIEF**

136. Plaintiff incorporates paragraphs 1-135 as if fully set forth herein.

137. A justiciable controversy exists between Marathon Wind and Brighton concerning the validity of the Brighton Wind Ordinance, by virtue of the ordinance's enactment, among other things, which is ripe for determination under the Uniform Declaratory Judgments Act.

138. Wis. Stat. § 806.04 provides courts with the authority to declare rights, status and other legal relations.

139. Marathon Wind is entitled to a preliminary and permanent injunction enjoining the Town and its agents, officers, and employees from enforcing the unlawful Brighton Wind Ordinance.

140. Marathon Wind is entitled to an order declaring that the Brighton Wind Ordinance is unlawful and unenforceable due to its restrictions exceeding those set forth in PSC 128.

### **SECOND CAUSE OF ACTION**

#### **DECLARATORY JUDGMENT THAT EAU PLEINE'S WIND ORDINANCE IS NULL AND VOID AND INJUNCTIVE RELIEF**

141. Plaintiffs incorporate paragraphs 1-140 as if fully set forth herein.

142. A justiciable controversy exists between Marathon Wind and Eau Pleine concerning the validity of the Eau Pleine Wind Ordinance, by virtue of the ordinance's enactment among other things, which is ripe for determination under the Uniform Declaratory Judgments Act.

143. Wis. Stat. § 806.04 provides courts with the authority to declare rights, status and other legal relations.

144. Marathon Wind is entitled to a preliminary and permanent injunctions enjoining the Town and its agents, officers, and employees from enforcing the unlawful Eau Pleine Wind Ordinance.

145. Marathon Wind is entitled to an order declaring that the Eau Pleine Wind Ordinance is unlawful and unenforceable due to its restrictions exceeding those set forth in PSC 128.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully demands judgment awarding the following relief:

A. Entry of a preliminary and permanent injunction against the Town of Brighton prohibiting it from enforcing any portion of the "Town of Brighton Wind Energy Facility Licensing Ordinance," also known as Ordinance No. 17;

B. Entry of a preliminary and permanent injunction against the Town of Eau Pleine prohibiting it from enforcing any portion of the "Town of Eau Pleine Wind Energy Facility Licensing Ordinance," also known as Ordinance No. 2023-1;

C. Entry of a declaratory judgment establishing each of the following:

- i. the "Town of Brighton Wind Energy Facility Licensing Ordinance," also known as Ordinance No. 17, is unlawful and therefore void due to its restrictions exceeding the scope of PSC Chapter 128;
- ii. the "Town of Eau Pleine Wind Energy Facility Licensing Ordinance," also known as Ordinance No. 2023-1, is

unlawful and therefore void due to its restrictions exceeding the scope of PSC Chapter 128; and

D. Award Plaintiff its court costs, and expenses, including, but not limited to, expert witness fees, incurred in connection with this matter; and

E. Grant Plaintiff such other and further relief that the Court may deem just and proper.

Dated: June 20, 2024

FOLEY & LARDNER LLP

*Electronically signed by Matthew D. Lee*

Matthew D. Lee (WI Bar No. 1061375)

Emily G. Jones (WI Bar No. 1115601)

150 E. Gilman Street

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Madison, WI 53703

(608) 257-5035 (telephone)

(608) 258-4258 (facsimile)

*Attorneys for Plaintiff Marathon Wind Farm, LLC*

# EXHIBIT A



**Town of Brighton  
Wind Energy Facility Licensing Ordinance**

**Be it enacted by the Town Board of the  
Town of Brighton as follows:**

**ORDINANCE NUMBER: 17**

**Section 1. Title.**

This Ordinance may be cited as the Town of Brighton Wind Energy Facilities Ordinance.

The Town of Brighton, Marathon County, State of Wisconsin ordains as follows:

**Section 2. Findings, Purpose and Authority.**

**2-1 Findings.** Wind energy facilities ("WEFs"), while an increasingly important part of a renewable energy portfolio, can have certain adverse impacts. In this regard, the Town finds that the report issued by the National Research Council entitled "Impacts of Wind-Energy Projects," May 2007 ("2007 NRC Report"), addresses several important public health and safety issues relative to wind energy facilities that require regulation by the Town. The Town further finds that the provisions of the "Draft Model Wind Ordinance for Wisconsin: as promoted by the State of Wisconsin's Department of Administration, are inadequate to reasonably protect public health and safety, The Town also finds the Public Service Commission of Wisconsin's delay of the Wind Siting Council's 2019 report of special concern. The Wind Siting Council is expected to meet every five years. These concerns are in regard to the expectations of more recent studies possibly having been conducted in this five-year period that may bring to light more definitive conclusions regarding the health and safety of our community. Reference is made to the reference sheet attached hereto as Exhibit A. With these concerns in mind, the Town Board of the Town of Brighton finds and declares that:

**2-1.1** The Wisconsin State Constitution legally obligates government officials to protect the health, safety and well-being of their community.

**2-1.2** Shortsighted planning has often resulted in the creation of problem industries that adversely affect public health and quality of life, compromise aesthetics, and degrade community character. Industrial WEFs are not exempt from those problems, and careful siting and protections are of paramount importance. This Ordinance will contribute to this effort.

**2-1.3** Regulation of the siting and installation of wind turbines is necessary for protection of the health, safety, and well-being of neighboring property owners, the general public the local economy, local ecosystems, and regional military facilities.

**2-1.4** The findings set forth in this section are cumulative and interactive, and they shall be liberally interpreted in conjunction with one another.

**2-1.5** Industrial WEFs have increased significantly in number and can potentially be sited without sufficient regard to their impact on the health, welfare, and safety of residents, especially in small, rural communities.

**2-1.6** While wind energy is a semi-renewable energy resource of electricity generation, and under some circumstances it may reduce the use of nonrenewable energy sources, the possible benefits must be balanced against potential negative impacts to local citizens, local economy, local ecosystems, and regional military facilities.

**2-1.7** WEFs represent significant potential negative aesthetic and environmental impacts because of their enormous size, lighting, and shadow flicker effects.

**2-1.8** WEFs are industrial by their nature and are not compatible with pastoral communities due to their disruption of views and skylines, especially in rural communities (like this) without many high, unnatural structures.

**2-1.9** This community has many scenic viewsheds, and some of these would be negatively impacted by industrial WEFs.

**2-1.10** This community is surrounded by other communities that share our agricultural and rural residential character.

**2-1.11** Construction of WEFs can create traffic problems and damage local roads.

**2-1.12** Portions of land within our community are designated as State-regulated wetlands

**2-1.13** This community's geology includes erodible soils and high-water tables. This community's geology may be incompatible with certain industrial development. Risks include aquifer and well water contamination via soil overburden infilling on shallow bedrock.

**2-1.14** If not properly regulated, installation of WEFs in areas with similar geology have the potential to create numerous additional drainage paths which might allow contaminated ground water to directly enter into the aquifer below. For instance, construction of miles of wide gravel access roads increases the number of drainage paths for the contaminated water to contaminate drinking water for our and other nearby communities.

**2-1.15** Installation of WEFs can create drainage problems through erosion and lack of sediment control of facilities and access road sites and harm farmlands through construction methods utilized.

**2-1.16** Independent experts have concluded that industrial wind energy turbines can adversely affect meteorology up to fifteen (15) miles away. The resulting changes like lower humidity levels can result in reduced regional agriculture yields.

**2-1.17** A WEF may be a significant source of noise and vibration for the community. These can have negative health impacts on nearby residents, particularly in quiet rural areas. These can also negatively affect the quiet enjoyment of the area, properties, and quality of life of residents. According to various medical experts and the World Health Organization, the infrasound component of such noise can be the most problematic.

**2-1.18** The WEF's noise and vibration may also negatively affect wildlife. Some noise and vibration impact on wildlife relate to predator-prey behaviors, mating opportunity, and other behaviors that can adversely impact wildlife populations and diversity.

**2-1.19** Our community boasts many species of birds and is a habitat for many species of wildlife, both year-round and seasonal.

**2-1.20** Independent experts (e.g., ornithologists) have concluded that Industrial Wind Turbines/ ("IWTs") kill large quantities of birds. Especially troublesome are the raptors that are destroyed.

**2-1.21** Independent experts (e.g., chiropterologists) have concluded that bats killed by IWTs can result in an appreciable reduction in regional agricultural yields. Estimates have been done for every U.S. County, and these experts have projected that this could adversely affect our local economy by more than 1.2 million dollars a year.

**2-1.22** WEFs can cause danger to humans, animals and ecosystems, resulting from ice throw, turbine collapse, oil contamination, and annoyance.

**2-1.23** In certain circumstances, WEFs can cause electromagnetic interference with various types of communications, including cell phones, radios, and televisions.

**2-1.24** Independent experts have concluded that IWTs can have other adverse health effects on wildlife, livestock, and domestic animals.

**2-1.25** WEFs, without proper setbacks, can adversely affect property values, which can cause economic hardship to property owners. Reductions in property values could reduce our community's tax base, resulting in a tax rate increase on all community property owners.

**2-1.26** Review of professional and legal literature demonstrates there can be serious legal and economic downsides for landowners entering into complicated and one-sided lease/easement contracts written by WEF developers not available for public review and discussion

**2-1.27** WEFs have the potential to adversely interfere with orderly development of our community, including single-family residences and small subdivisions, by making such development unappealing.

**2-1.28** The community and its citizens desire to maintain the pastoral, rural nature of this region. WEFs are in conflict with the culture and character of this community,

**2-1.29** WEFs need to be regulated for proper removal when no longer in operation.

**2-1.30** Due to the unusually broad array of potentially problematic findings, and the lack of scientifically proven net benefits, the Precautionary Principle dictates that our community be particularly conservative and cautionary in its regulation of industrial wind energy and its granting of a license.

**2-1.31** In formulation of this Ordinance, many studies have been reviewed and taken into consideration. Other energy ordinances through the U.S. have been analyzed. Experiences of other communities with industrial wind energy have been studied by Members of the Town Board.

**2-2** The purpose of this Ordinance is to require the operator of a proposed WEF to be located in the Town of Brighton to obtain a license from the Town prior to beginning construction activities in order to protect public health and safety, to minimize or prevent potential adverse off-site impacts from on-site and off-site operations, and to promote the general welfare of the people and communities within the Town of Brighton.

**2-3** This Ordinance is adopted under the powers granted to the Town of Brighton by Wis. Stat. §§ 60.10, 60.22(3), and 61.34, its authority under§ 66.0401 and§ 66.0403, and other authority under the statutes, and its adoption of village powers under§ 60.10(2) (c). Any amendment, repeal or recreation of the statutes relating to this Ordinance made after the effective date of this Ordinance is incorporated into this Ordinance by reference on the effective date of the amendment, repeal, or recreation.

**2-4** Wisconsin Courts have recognized that the evaluation of an application for local approval of a WEF requires a case-by-case approach. The Town must receive information about the specifics of a particular proposed WEF and then decide whether a restriction is warranted. Town ordinances may not arbitrarily set a one size fits all scheme of requirements for any WEF.

**Section 3. Definitions.**

As used in this Ordinance, the following terms shall have the meanings indicated. Words not defined in this Ordinance shall be given their ordinary and common meaning:

**Accessory building:** A building that is located on the Wind Energy Facility ("WEF") property.

**Accessory Equipment:** Any equipment serving or being used in conjunction with a Large Wind Energy Facility ("LWEF"). The term includes utility or transmission equipment, power supplies, generators, batteries, equipment buildings, and storage sheds, shelters or similar structures.

**Administrative Approval:** The Town of Brighton has the right to review applications and the right to approve or disapprove applications submitted by the Wind Energy Facility.

**Blade Glint:** The intermittent reflection of the sun off the surface of the blades of one or more wind turbines.

**Board:** This refers to the Town Board for the Town of Brighton, Marathon County, State of Wisconsin.

**Conservation Area:** Such areas include natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act 33 USC Sec.1251 et seq.; shoreland areas; water bodies; riparian buffers; populations of endangered or threatened species or habitat for such species; archaeological sites, cemeteries, and burial grounds; important historic sites; other significant natural features and scenic viewsheds; and existing trails or corridors that connect the tract to neighboring areas.

**dBa:** A-weighted decibels, abbreviated dBA (or dBa or dB(a)], is an expression of the relative loudness of sounds in air as perceived by the human ear. With A-weighting, the decibel levels of low frequencies are reduced compared to the middle and high frequencies (A-weighted energy equivalent sound level). Unless specified otherwise, in this Ordinance dBA means LAeq (energy equivalent sound level).

**Electrical Transmission Tower:** An electrical transmission structure used to support high-voltage overhead power lines. The term shall not include any utility pole.

**FAA:** The Federal Aviation Administration or successor agency.

**Infrasound:** Low frequency sounds that are not ordinarily hearable by humans. All sounds are energy waves, so humans can be affected by infrasound despite not being aware of its presence. The World Health Organization has concluded that health effects due to low frequency components in noise are estimated to be more severe than for community noise in general.

**kW:** Kilowatt

**LWEF (Large Wind Energy Facility):** A WEF that has a rated capacity of 100 kW or more.

**Maintenance:** The cleaning, painting, repair, or replacement of defective parts (including plumbing, electrical, or mechanical work that might require a building permit) in a manner that does not alter the basic design or composition of a structure, such as a wind turbine.

**Meteorological Measuring Device:** An instrument, such as an anemometer, that measures wind speed. This is often on a tower, typically located at hub-height of the anticipated turbines.

**Modification or Modify:** Any change, addition, removal, swap-out, exchange, and the like that does not qualify as "Repairs and/or Maintenance" as defined herein is a Modification. Also included is any change, addition, swap-out, exchange, and the like that requires or results in changes and/or upgrades to the structural integrity of a turbine.

**Necessary:** What is technologically required for the equipment to function as designed by the manufacturer. Anything less will restrict or inhibit the provision of service as intended and described in the Application. Necessary does not mean what may be desired or preferred technically.

**Ordinary Maintenance:** Actions that ensure that the WEF is kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity and structural integrity. Ordinary Maintenance does not include Modifications.

**Person:** An individual, trustee, executor, receiver, other fiduciary, corporation, firm, partnership, association, organization, club, etc., acting as an entity.

**Repair:** The replacement of existing work with the same kind of material used in the existing work, not including additional work that would change the structural safety of the structure or that would affect or change required existing facilities, a vital element of an elevator, plumbing, gas piping, wiring, or heating installations, or that would be in violation of a provision of law or this Ordinance. The term "Repair" or "Repairs" shall not apply to any change in construction.

**Shadow Flicker:** The visual effect that results when the blades of an operating wind energy turbine pass between direct and indirect light from the sun and an observer and cast an observable, moving shadow on a person or property in the vicinity.

**State:** The State of Wisconsin

**SWEF (Small Wind Energy Facility):** A WEF that has a rated capacity of less than 100 kW. Such a facility is used primarily for on-site consumption, is an accessory use, and consists of no more than one wind turbine and any associated tower, control and/or conversion electronics.

**Temporary:** Something intended to exist or does exist for fewer than 180 days, except for an anemometer or other meteorological measuring device that is used to test the wind conditions, which are considered temporary when it exists for two years or less.

**Utility Pole:** A structure owned and/or operated by a public utility, municipality, electric membership corporation, or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

**WEF (Wind Energy Facility):** An electricity-generating facility whose primary purpose is to supply electricity. This consists of one or more wind turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines, and other appurtenant structures and/or facilities.

**Wind Energy:** Wind turbines convert the kinetic energy of moving air (wind) into mechanical power. Note that the term "wind energy" is more technically correct than saying "wind power".

**Wind Farm:** A marketing term for a LWEF.

**Windmill:** A wind-driven machine that does not produce electricity.

**Wind Turbine:** A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator. Such a system might include a nacelle, rotor, tower, pad transformer, and other appurtenant structures and/or facilities.

**Wind Turbine Height:** The distance measured from the lowest adjacent grade to the highest point of the structure, including any attachments, such as a lightning protection device or a turbine rotor or tip of the turbine blade when it reaches its highest elevation.

#### **Section 4. License Required**

**4-1 License Requirement.** Except as provided in Section 4-6(a), a Person is prohibited from commencing construction activities on a WEF or operation of a WEF in the Town without first obtaining a license from the Town Board ("WEF license"). The requirements for applying for a WEF license is provided in Section 5.

**4-2 License Term.** An initial license term may be approved for a maximum of 15 years. A license renewal may be for a term of up to 10 years.

**4-3 License Amendment.** If the Town has issued a WEF license, the operator may request an amendment to that license during the license term, using the same process as applies to an original license application.

**4-4 License Transfer.** A WEF license may be assigned or transferred in the manner set forth in Section 9-1.2 hereof.

4-5 License Revocation. A WEF license may be suspended or revoked under the procedures in Section 9-2.4(E).

4-6 License Exclusion.

- (a) Temporary towers may be erected to use a meteorological measuring device to test the wind conditions on the proposed LWEF site. Such towers do not require approval of a WEF License. However, each such temporary pole or tower shall comply with the dimensional requirements stipulated by the Town Board. A copy of an FAA determination report as a result of filing the FAA Form 7460-1, "Notice of Proposed Construction or Alteration of an Object that may Affect the Navigable Airspace," shall be submitted prior to submission of any building permits for such a temporary tower. The temporary pole or tower may be any approved height but it must be set back from all property lines, vacant or occupied dwelling units, rights-of-way, and access easements by a distance that is greater than 1.5 times its height. The temporary pole or tower may not have any signs; may not be illuminated (except as required by the FAA or Department of Defense); and must be completely removed within two (2) years of the date that it is erected, unless the Town Board grants a single one (1) year extension.
- (b) An Applicant for a WEF that qualifies as a SWEF may submit a short form application with a reduced fee, in the discretion of the Town Board. If the Board grants such a request, it shall specify the application requirements and fee for such SWEF.

### **Section 5. Requirement for Applying for a WEF license or Renewal of a WEF Approval.**

5-1 Application for a WEF License. The Applicant shall submit an application that contains all required documentation required under Section 6 to the Town Clerk.

5-2 Application for Renewal of a License. The operator shall make a written request to the Town Clerk for a renewal of the license no later than October 1 of the year in which the license will expire.

5-3 Preliminary Review, Preliminary Hearing, and Proposed Decision.

(a) Preliminary Review. The Town Clerk shall forward an application or a request for renewal to the Town Board for initial review to determine if additional information or expertise is necessary to properly evaluate the application.

(b) Additional Information. The Town Board may request that the Applicant submit additional information if the Town Board determines that the application or request for renewal is incomplete, or if the Town Board determines that additional information is needed to determine whether the requested approval will meet the requirements of this Ordinance.



(c) Proposed Decision. Upon completion of its review of the application and a review of any report from retained experts, the Town Board shall issue a proposed decision on whether to grant a wind license, with or without conditions, or to deny the application or request.

**5-4 Decision by the Town Board.**

(a) Notice and Hearing; Proposed Decision. Upon the issuance of a proposed decision under Section 5-3(c), the Town Clerk shall place the preliminary decision of the Town Board on the Town's posting sites and make it available for public inspection at the Town Hall. The Town Board shall set a date for a public hearing on the preliminary decision and, for an application for a WEF license, give Class II public notice and post the notice in the designated posting places at least 15 days prior to the date scheduled for the hearing, and mail the notice to all neighboring landowners. At the public hearing, the Town Board shall take public comment on the proposed decision.

(b) Town Board Final Decision. Following the receipt of public comments at the public hearing and any submitted written comments, the Town Board may make a final decision whether to grant a WEF license or to renew a license, or set a date for a subsequent Town Board meeting during which the Town Board will make a final decision.

(c) Basis of Proposed and Final Decisions. The Town Board shall base its proposed and final decisions on a review of the application, any available retained experts' reports, public comments and information provided at the public hearing, and other relevant information at the discretion of the Town Board, including, without limitation, the items described in Section 7-9 of this Ordinance.

(d) Initial Application. In the case of an application for a WEF license, the Town Board shall grant the license if it determines that the operation of the WEF will be consistent with the standards and the purposes of this Ordinance.

(e) Renewal. In the case of a request for renewal of a license, the Town Board shall grant the request for renewal if it finds that there have been no material violations of the Ordinance or the license which have not been appropriately remedied, the operator has not received multiple or recurring citations or orders for violations of the WEF license or this Ordinance.

(f) Denial. If the Town Board denies an application for a WEF license or denies a request for renewal of a license, the Town Board shall notify the Applicant in writing.

**5-5 Developer Agreement.** The Town Board may enter into a developer agreement with an Applicant that supersedes in whole or in part the requirements of this Ordinance.

## **Section 6. Application.**

### **6-1 WEF License Application Process.**

Throughout the license process, the Applicant shall promptly notify the Town Board of any changes to the information contained in the license application. Changes that do not materially alter the initial site plan may be administratively accepted. The application for a WEF shall be an electronic digital filing that contains at least the following:

**6-1.1 Summary.** A narrative overview of the WEF, including its generating capacity.

**6-1.2 Inventory.** A tabulation describing the:

- A: Specific number, types, and height of each wind turbine to be constructed, including their generating capacity.
- B: Dimensions and respective manufacturers.
- C: Appurtenant structures and/or facilities.

**6-1.3 Vicinity map.**

Identification of the property on which the proposed WEF will be located

**6-1.4 LWEF Site Plan.**

A plan showing the:

- A: Planned location of each wind turbine
- B: All property lines within two (2) miles of the property lines of the proposed site.
- C: Each turbine's setback distance from the closest LWEF boundary.
- D: Access road and turnout locations.
- E: Substation(s) and ancillary equipment, buildings, and structures, including permanent meteorological towers.
- F: Electrical cabling from the WEF to the substation(s) and from the substation(s) to where the electricity will leave the site.
- G: Associated transmission lines.  
Conservation Areas, including natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act; shoreland areas; water bodies; riparian buffers; populations of endangered or threatened species (Federal or State) or habitat for such species; flyways; archaeological sites, cemeteries, and burial grounds; important local historic sites; existing healthy, native forests consisting of at least one acre of contiguous area; individual existing healthy trees that are at least 100 years old; other significant natural features and scenic viewsheds; existing trails or corridors that connect the tract to neighboring areas.
- I. Location of all structures and properties within the geographical boundaries of any applicable setback.

- J. A landscaping plan that shows proposed screening and buffering of all buildings and other non-turbine structures on the site or sites.
- K. Location of wells, abandoned and active, within a 0.5-mile radius of the project boundary.
- L. The number, location, and purpose of any proposed new wells for the LWEF.

#### **6-1.5 LWEF Misc.**

The Applicant shall provide the following information to the Town Board:

- A. A Stand-down Plan for high wind conditions.
- B. Signed copies of all original leases/easements and agreements for this LWEF (not memorandums).
- C. The type, size, and total installed height of all LWEFs.
- D. The rotor material, rated power output, performance history, safety history, and noise characteristics of each make/model of LWEF turbine, tower, and all transmission equipment being used.
- E. The typical length of service of the proposed components.
- F. Any other materials needed to satisfy the requirements of this license.

#### **6-1.6 WEF Air Space Impacts.**

- A. For all portions of the WEF more than 200 feet tall, the Applicant shall provide a copy of an FAA determination as a result of filing the FAA Form 7460-1, "Notice of Proposed Construction or Alteration of an Object that may Affect the Navigable Airspace."
- B. If any portion of a LWEF will be located within five (5) miles of any civilian or military airport runway, or heliport, the Applicant shall demonstrate compliance with all local County, State and Federal airport related laws.
- C. The Applicant shall establish to the satisfaction of the Town Board that the LWEF will not adversely impact the restricted air space in the area.
- D. The Applicant shall forward this application to the Commanding Officers of all military bases located within 150 miles of the LWEF, in order to provide for review and comment concerning any possible impacts on the operations and mission of each military base. These comments are separate from whatever is in the DOD Clearinghouse documents. This application will not be deemed completed until such time as said review is completed and written comments are received.
- E. The Applicant shall provide a narrative description of all risks to
  - 1. Civil air navigation (including civilian radar).
  - 2. Military air navigation routes, military air traffic control areas, military training routes, military special-use airspace, military radar or other potentially affected military operations, and shall further include documentation that addresses any potential adverse impact on military operations and readiness as identified by the DOD Clearinghouse and any remediation action agreed to by the Applicant.

3. NEXRAD weather radar systems.
4. Hot Air Balloon rides available to the public within twenty (20) miles of the WEF.
5. Emergency Medical Helicopters.

#### **6-1.7 Noise Impacts.**

Applicant will provide a post-construction noise monitoring plan which shall, at a minimum, provide verification from a qualified party that at the WEF boundaries and at proximate residences, WEF noise does not exceed 35 dBA for more than five (5) consecutive minutes during a representative range of operating and atmospheric conditions. Instrumentation to verify this shall meet ANSI or IEC Type 1 standards, and measurement procedures shall comply with relevant portions of ANSI S12.9, Part 3. Each report will include the SCADA/ Power output data at the time of the testing.

#### **6-1.8 Visual Impacts.**

The Applicant shall furnish a visual impact assessment to the Town Board, which shall include:

- A. Pictorial representations of "before and after" views from 360-degree viewpoints within two (2) miles of the proposed WEF boundaries, including a drone perspective from the WEF. These will include, but not be limited to, major roads; State and local parks; other public lands; historic districts; preserves and historic sites. The Town Board will provide guidance concerning the appropriate key sites. The Applicant shall provide a map showing the locations of where the pictures were taken and the distance of each location from the proposed WEF.
- B. If any portion of a proposed WEF will be located within one (1) mile of the right-of-way of a Federal or State-designated Scenic Route/By-way, the Applicant shall describe the proposed measures to be taken to minimize the visual impact of the proposed WEF (including shadow flicker and blade glint) upon a Scenic Route/By-way.
- C. The Applicant shall not install any lighting that exceeds the minimum required by the FAA. If approved by the FAA, on-demand lighting (AVWS) is required.

#### **6-1.9 LWEF Impacts on Other Town Municipalities.**

If the proposed WEF is within two (2) miles of other neighboring municipalities, the Applicant shall provide written notification of this application to those municipalities.

#### **6-1.10 Maintenance Plan.**

The Applicant shall detail the triennial, storm follow-up, and other actions that will be taken to keep the WEF operating quietly, efficiently, and not polluting land, water, or air. This will include (but not limited to) the minimization of: audible sounds, infrasound, vibrations, blade glint, and fluid leaks. The Applicant shall conduct preventive maintenance inspections at least once every year and after any wind event defined gale force (39mph) or greater. Each inspection shall look for such things as metal fatigue, nut loosening, and other potential failures that might impact the public health and safety. Such inspection reports shall be provided to the Town Board within thirty (30) days of the inspection.

**6-1.11 Decommissioning Plan.**

A description of how the structural and turbine materials will be disposed of and how the site will be restored, as well as:

- A. Anticipated life of the WEF.
- B. Estimated decommissioning costs including contingency costs of at least 20% (in current dollars), as provided by an appropriately experienced licensed engineer.
- C. A verifiable means of determining whether the decommissioning plan needs to be activated due to cessation of use, such as a letter from the electric utility stating that it will notify the Town Board within ten (10) business days if electricity is not received from any turbine within the WEF for any thirty (30) consecutive days.
- D. Method for ensuring that funds will be available for decommissioning and restoration as set forth in 6-7.

**6-1.12 Ancillary Materials.**

Other relevant studies, reports, certifications, and approvals as may be reasonably requested by the Town to ensure compliance with this Ordinance, or to protect the health, safety and well-being of the Town's citizens or local ecosystems. The inputs of local citizens will be solicited in at least one (1) public hearing on this application.

**6-1.13 Testament.**

The Applicant will agree to abide by the provisions of this Ordinance.

**6-2 LWEF Economic Impact Study.**

The Town may hire independent experts (paid for from the Escrow Account: (see 6-5) who will do a thorough, conservative assessment of the LWEF's net economic impact on the community. This will include possible tourism reduction, reduced agricultural yields due to bat takings, property devaluations (and the commensurate loss in tax base), cost to the community due to adverse health effects, higher cost of electricity, etc. This will be compared to any guaranteed incomes from the LWEF.

**6-3 LWEF Environmental Impact Study.**

An Environmental Impact Study (EIS) may be conducted that includes review comments from citizens in the Town, independent experts, as well as all applicable State and Federal agencies, including at least the:

- A. WI Department of Health,
- B. WI Department of Transportation,
- C. WI Department of Natural Resources,
- D. U.S. Fish and Wildlife Service, and
- E. U.S. Army Corps of Engineers.

As a minimum the EIS shall include the potential impacts on: (i) humans (such as audible and inaudible sounds, vibrations, electromagnetic fields/ ("EMFs"), shadow flicker, blade glint, ice throw, component liberation due to major storms, etc.), (ii) wildlife, livestock and domestic animal populations, including migratory flyways and corridors (same concerns as with humans), (iii) land and vegetation (such as agricultural effects), (iv) wetlands, water bodies, flowing water sources and groundwater (including aquifer impacts due to turbine foundations, etc.), and (v) air (such as changes in humidity). The study area shall include the proposed LWEF, as well as the area at least two (2) miles surrounding the proposed LWEF.

All costs and expenses incurred related to the Environmental tests for the LWEF shall be paid from the Escrow Account (see 6-5). The Town may use the Escrow Account funds to hire independent qualified experts, as needed, to do the following:

1. Provide the location and full description of any of the following: open drainage courses, streams, vernal pools, wetlands, and other important natural areas and site features, including, but not limited to, floodplains, deer wintering areas, Essential Wildlife Habitats, Significant Wildlife Habitats, livestock, Scenic or Special Resources, habitat of rare and endangered plants and animals, natural communities of endangered species (federal or state), unique natural areas, sand and gravel aquifers, wells, and historic and/or archaeological resources.
2. The Applicant must provide a written report from all appropriate State and Federal agencies detailing their evaluation of the proposed LWEF.
3. The Applicant must demonstrate, to the satisfaction of the Town, that the proposed LWEF will not have undue hydro-geological consequences (e.g. with surface or subterranean water resources and storm water runoff), or adverse effects on geological stability; rare, threatened, or endangered wildlife; Significant Wildlife Habitat; Essential Wildlife Habitat; Raptor Habitat; livestock; threatened or endangered plants; and rare or exemplary natural plant communities and ecosystems.
4. The Applicant must provide a cumulative-impact assessment of the LWEF in the context of any other LWEFs within twenty-five (25) miles, including migratory bird, bat and large mammal corridors, and demonstrate that the LWEF is not located in an area that will result in degradation of important wildlife corridors or flyways.
5. Pre-construction and post-construction field studies shall be conducted using the most advanced techniques available. If the pre-construction field studies demonstrate significant adverse effect to birds, bats, game animals, water resources, habitat fragmentation or other ecosystem degradation, the LWEF Applicant shall propose a remediation plan, subject to the Town's approval. The Applicant accepts that some environmental impacts cannot be satisfactorily resolved, and that such situations will be factored into the Town's decision regarding the net benefits of the LWEF.
6. In determining the nature and effectiveness of such remediation plans, the Town will be guided by inputs of its citizens, its own consultants, the appropriate State & Federal agencies, and applicable state and federal laws and regulations. The LWEF Applicant will be responsible for the full cost of implementing any approved remediation plan, under the supervision of the Town and its designated agents.

7. After implementation of any remediation plan, the Town will review the situation to determine its effectiveness. Should the Town find the remediation efforts inadequate, the LWEF Applicant will be given sixty (60) days from that finding to resolve the deficiencies. In the absence of a successful resolution, the Town (at its sole discretion) shall have the right to deny the LWEF license.

8. A computer-generated "zone of visibility map" (covering at least a one [1] mile radius from the proposed LWEF) shall be created to illustrate locations from which the proposed installation may be seen, with and without foliage.

**6-4 WEF Dimensional Requirements.** To provide for at least minimal operational safety for persons and property located outside of a WEF, all WEFs shall comply with the minimums and maximums contained in the following table:

Type of Wind Energy Facility	Minimum Wind Turbine Setback from any Property Line, Public or Private Right of Way and/or Access Easement*	Maximum Wind Turbine Height**
SWEF (up to 100kW)	1.5 feet for each foot of height from any property line and any vacant or occupied dwelling unit on the same property. If the TownBoard determines there will be no significant impact on abutting properties or those across a stream, lake, or other body of water, no such setback is required from the waterward propertyline for a turbine placed in a body of water, or on a dock or pier.	75 feet
LWEF (100kW or more)	One (1) mile or 10x the turbine height, from facility property lines, whichever is greater.	76 feet or higher

\* Such minimum setbacks for a WEF shall be measured from its outermost extension (whether blade tip, nacelle/turbine housing, or tower/pole edge) that is nearest the WEF property line, public or private right-of-way, and access easement.

\*\* Height is measured from the lowest adjacent grade to the highest point of the structure, including any attachments (such as a lightning protection device or a turbine rotor or tip of the turbine blade when it reaches its highest elevation). No portion of any wind turbine blade shall be closer than 25 feet to any portion of the ground that surrounds any WEF.

**6-4.1** No LWEF wind turbine shall be permitted to be within five (5) miles of any operating or proposed radar facility (NEXRAD, military, commercial, etc.).

#### **6-5 LWEF Escrow Account.**

The Applicant shall pay to the Town a non-refundable Application Fee (see 7-8). The Town Board and/or Planning Commission reserve the right to obtain engineering, economic impact, environmental impact, or other professional services to aid it in the review of any submitted WEF application. These costs (and other expenses incurred by the Town) are reimbursable only from the Escrow Account, not the Application Fee.

**6-5.1** The Applicant shall reimburse the Town for all oversight expenses incurred relating to the LWEF, from application through decommissioning.

**6-5.2** These LWEF-related oversight expenses include (but are not limited to) amounts required for Building Permits, Licensing, Re-Licensing, and Decommissioning e.g., administration, engineering, expert health and wildlife evaluations, handling complaints, legal, etc. "Legal" includes reasonable attorney fees for the Town.

**6-5.3** Any Escrow Account interest shall stay with the account and be considered new principal.

**6-5.4** This Escrow Account will be set up by the Applicant at the time of the LWEF license Application. This Escrow Account will be at a financial institution approved by the Town, solely in the name of the Town, to be managed by the Town Treasurer (or designee). The Applicant will make an initial deposit of \$10,000. An LWEF License Application will not be processed until proof of deposit has been provided by the Applicant. A LWEF License Application determination will not be made until all costs incurred by the Town to date have been reimbursed by the Applicant.

**6-5.5** If the LWEF Application is denied, all Escrow Account funds will be returned to the Applicant, less related expenses incurred by the Town. The money will be returned, along with a statement as to these costs, within 30 days of the Application being formally denied, or receipt of a Letter of Withdrawal. License Fees are non-refundable.

**6-5.6** This Escrow Account will be funded during the life of the LWEF by the Applicant/Operator. The Applicant/Operator will replenish any Escrow funds used by the Town within 14 days of being sent written notification (and explanation) of said withdrawals. Failure to maintain the Escrow Account at \$10,000 (within 30 days of being given notice) shall be cause for revocation (or denial of renewal) of the LWEF License.

**6-5.7** Once the Applicant believes that the Applicant has satisfactorily complied with the decommissioning conditions specified herein, the Applicant will send the Town written notification. The Town then has sixty (60) days to verify to its satisfaction that all decommissioning conditions have been complied with. If there is material non-compliance, the Town will so notify the Applicant and the process starts over. Otherwise, the Town will return all Escrow Account funds to the Applicant, less related expenses incurred by the Town, along with an explanatory statement.



## **Section 7 Installation and Design.**

### **7-1 LWEF Power Collection.**

The electrical connection system from the turbines to a collection point or substation shall, to the maximum extent possible, be placed underground. The power from that collection point or substation may use overhead transmission lines if approved by the Town Board.

### **7-2 Security.**

The Applicant shall submit design plans to verify that the WEF is:

- A. Located, fenced, or otherwise secured so as to prevent unauthorized access.
- B. Made inaccessible to individuals and constructed or shielded in such a manner that it cannot be climbed or collided with.
- C. Installed in such a manner that it is readily accessible only to persons authorized to operate or service it.
- D. The Applicant shall not install any video surveillance at a height exceeding 10 feet from ground level unless otherwise approved by the Town Board.

### **7-3 The WEF shall:**

- A. Be a non-obtrusive color (such as light blue, off-white, or light gray) that blends with the sky, as determined by the Town Board.
- B. Not be artificially lighted, except to the extent required by the FAA or other applicable authority that regulates air safety.
- C. Not contain any signs or other advertising (including flags, streamers or decorative items or any identification of the turbine manufacturer, WEF Applicant and operator). This does not include any identification plaques that might be required by the electric utility or a governmental agency.
- D. Be sited and operated so as to not interfere with television, internet service, telephone (including cellular, broadband, and digital), microwave, satellite (dish), navigational, or radio reception in neighboring areas. The Applicant and/or operator of the WEF shall be responsible for the full cost of any remediation necessary to correct any problems or provide equivalent alternate service, within thirty (30) days of being given notice. This includes relocation or removal of problematic turbine(s), or any other equipment, transmission lines, transformers, and other components related thereto.
- E. Have a leak containment system for oil, hydraulic fluids, and other non- solids that is certified by an expert (such as an engineer, turbine manufacturer, etc.) acceptable to the Planning Board that all such fluids will be captured before they reach the ground. The Applicant shall pay the cost(s) of the expert.
- F. For LWEFs, prepare an incident response plan that ensures that local emergency responders have the necessary equipment and training to effectively handle emergencies such as oil spills, turbine fires, turbine structural damage (or collapse) of equipment, including access to heavy equipment needed for rescue of trapped

personnel. The Escrow Fund will be used to reimburse all local emergency responders for any necessary equipment or training required.

- G. An Applicant shall notify the Town Board of the occurrence and nature of an LWEF emergency within 24 hours of an LWEF emergency.
- H. An Applicant shall establish and maintain liaison with the Town Board and with fire, police, and other appropriate first responders serving the LWEF to create effective emergency plans that include all of the following:
  - A list of all the types of LWEF emergencies that require notification under Par. G,
  - Current emergency contact information for first responders and for the LWEF Applicant, including names and phone numbers.
  - Procedures for handling different types of LWEF emergencies, including written procedures that provide for shutting down the LWEF or a portion of the system as appropriate.
  - Duties and responsibilities of the Applicant and of first responders in the event of an LWEF emergency.
  - An emergency evacuation plan for the area within 0.5 mile of an LWEF, including the location of alternate landing zones for emergency services aircraft.
- I. The Applicant shall review the emergency plan at least annually in collaboration with fire, police, and other appropriate first responders to update and improve the emergency plan as needed.
- J. The Applicant shall distribute current copies of the emergency plan to the Town Board, fire, police, and other appropriate first responders as identified by the Town Board.
- K. The Town Board shall require the Applicant to provide annual training for fire, police, and other appropriate first responders regarding responding to an LWEF emergency until the LWEF has been decommissioned.
- L. An Applicant of an LWEF shall do all of the following:
  - 1. Furnish its operator, supervisors, and employees who are responsible for emergency action a copy of the current edition of the emergency procedures established under this subsection to ensure compliance with those procedures.
  - 2. Train the appropriate operating personnel to ensure they have knowledge of the emergency procedures and verify that the training is effective.
  - 3. As soon as possible after the end of an LWEF emergency, review employee activities to determine whether the procedures were effectively followed.

#### **7-4 LWEF Real Property Value Protection Plan.**

The LWEF Applicant shall assure the Town that there will be no loss in real property value, resulting from the installation of the LWEF, within two miles of each wind turbine within their LWEF. To legally support this claim, the Applicant may be asked to consent in writing to a Real Property Value Protection Agreement ("Agreement") as a condition of approval for the LWEF. This Agreement shall provide assurance to non-participating real property owners (i.e., those with no turbines on their property) near the LWEF that they have some protection from LWEF-related real property values losses.

**7-5 LWEF Surety for Removal, when Decommissioned.**

The applicant shall place with the Town an acceptable letter-of-credit, bond, or other form of security that is sufficient to cover the cost of removal at the end of each WEF turbine's useful life, as detailed in the decommissioning plan. Such surety shall be at least \$200,000 for each wind turbine; provided, however, the Town Board may approve a reduced surety amount that is not less than 125% of a cost estimate that is certified by an engineer, salvage company, or other expert acceptable to the Town Board. This calculation will not take into account any estimated salvage values.

The Town shall use this surety to assure the faithful performance of the decommissioning terms and conditions of the Applicant's plan and this law. The full amount of the bond or security shall remain in full force and effect until all necessary site restoration is completed to return the site to a condition comparable to what it was prior to the WEF, as determined by the Town Board. The Applicant will be responsible for assuring that any subsequent Assigns of the LWEF will provide acceptable surety to the Town prior to any transfer of ownership

**7-6 LWEF Liability Insurance.**

**7-6.1** The holder of a license for an LWEF shall agree to secure and maintain for the duration of the license public liability insurance, as follows:

A. Commercial general liability covering personal injuries, death and property damage: \$2,500,000 per occurrence (\$5,000,000 aggregate), which shall specifically include the Town and its officers, councils, employees, committee members, attorneys, agents and consultants as additional named insureds.

B. Umbrella coverage: \$5,000,000.

**7-6.2** The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A".

**7-6.3** The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days prior written notice in advance of a cancellation.

**7-6.4** Renewal or replacement policies shall be delivered to the Town at least 15 days before the expiration of the insurance that such policies are to renew or replace.

**7-6.5** No more than 15 days after the grant of the license and before construction is initiated, the license holder shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

**7-6.6** A certificate of insurance that states that it is for informational purposes only, and does not confer sufficient rights upon the Town, shall not be deemed to comply with this Ordinance.

**7-7 LWEF Indemnification.**

The granting of the Town's LWEF License shall contain an indemnification provision. This clause shall require the Applicant to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town (and affected municipalities), and its officers, Board members, committees, councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by delivery, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said LWEF, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town or its employees or agents. With respect to the penalties, damages, or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

**7-8 Fees.** Non-refundable Fees shall be as follows.

**7-8.1** The initial application fee for a WEF shall be \$2,500.00 which shall reimburse the Town for reasonable expenses relating to the review and processing of an application for a wind energy system; provided, however, the fee amount could increase based on the nature and review of the application. The Board may waive part or all of the application fee, in its discretion, for a SWEF.

**7-8.2** The Town's fee or reimbursement requirement under Section 7-8.1 shall be based on the actual and necessary cost of the review of the wind energy system application, and shall include the cost of services necessary to review an application that are provided by outside engineers, attorneys, planners, environmental specialists, and other consultants or experts.

**7-9 Town Board's License Provisions.**

The following are considerations for approval of an application to construct an LWEF.

- A. Information. Information about whether an Applicant has consulted with and received any non-binding recommendations for constructing, operating, or decommissioning the LWEF from a State or Federal agency, and whether the Applicant has incorporated such non-binding recommendations into the design of the LWEF.
- B. Studies. Applicant to cooperate with any study of the effects of LWEFs coordinated by a State agency.

- C. Monetary Compensation. Whether the Applicant of an LWEF has offered an agreement that includes monetary compensation to the owner of a nonparticipating residence, if that property suffers a loss in value as a result of the placement of the WEF.
- D. Aerial Spraying. Whether the Applicant of an LWEF has offered an agreement that includes monetary compensation to a farm operator farming on a nonparticipating property located near a WEF for crop loss from such spray.
- E. Permits. The Applicant must submit to the Town Board copies of all necessary State and Federal permits and approvals.
- F. Annual reports. The Applicant to file an annual report with the Town Board documenting the operation and maintenance of the wind energy system during the previous calendar year.

#### **7-10 Standards for the Town Board's WEF License Application Decision.**

The Town Board may disapprove a WEF License Application for a variety of reasons, including but not limited to, the following:

- A. Conflict with safety and safety-related codes and requirements.
- B. The use or construction of a WEF that is contrary to an already-stated purpose of a specific zoning or land use designation.
- C. The operation of an LWEF would be a net economic liability to the community.
- D. The operation of an LWEF would create unacceptable health risks to the public.
- E. The placement and operation of an LWEF that would create unacceptable risks to wildlife and/or regional ecosystems.
- F. The placement and location of a WEF would result in a conflict with, or compromise, or significantly change, the nature or character of the surrounding area.
- G. The operation of an LWEF would create unacceptable interference with any type of civilian or military radar systems.
- H. Conflicts, as determined by the Town Board, with the military's unrestricted ability to use the Restricted Air Space, including no flight hazards and/or use limitations. In addition, the Planning Board will consider whether construction or operation of the proposed WEF would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any military installation or branch of military in the State, and possibly result in a detriment to continued military presence in the State.
- I. Conflicts with any provisions of this Ordinance.

### **Section 8. WEF Post-License Approval Requirements.**

#### **8-1 WEF Certification.**

Prior to operation of any approved and constructed WEF, the Applicant must provide a certification that the project complies with applicable codes, industry practices and conditions of approval (where applicable).

## **8-2 Reservation of Authority to Inspect WEF.**

In order to verify that the holder of a license for a WEF and any and all lessees, renters, and/or licensees of it, have placed and constructed such facilities in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, Ordinances and regulations and other applicable requirements, the Town may inspect all facets of said license holders, renter's, lessee's or licensee's placement, construction, and maintenance of such facilities, including all turbines, towers, buildings, and other structures constructed or located on the site.

**8-2.1** WEFs shall not begin operation until all approvals required under this Ordinance shall have been obtained and all required certifications are provided.

**8-2.2** Following the issuance of any approval required under this Ordinance, the Town Board or its designee shall have the right to enter onto the Site upon which a WEF has been placed, at reasonable times, in order to inspect such WEF and its compliance with this Ordinance.

**8-2.3** After undertaking such inspection, the Town Board or its designated representative shall provide notice of any non-compliance with the terms of this Ordinance or the conditions of approval of any license issued hereunder and shall provide the Applicant or Applicant with a reasonable time frame to cure such violation, such time frame to be determined based upon the seriousness of the violation, its actual and/or potential impact upon public safety, and the actual and/or potential impact of the violation upon Town residents and/or local ecosystems.

## **8-3 WEF Construction Related Damage.**

The Applicant of any permitted WEF shall, to the extent practicable, repair or replace all real or personal property, public or private, damaged during the WEF construction.

The Applicant shall reimburse the WI DOT and/or Town (as appropriate) for any and all repairs and reconstruction to roads that are necessary due to the construction or decommissioning of the LWEF. A qualified independent third party or other qualified person, agreed to by the WI DOT and/or Town (as appropriate) and the Applicant, shall be hired to pre-inspect the roadways to be used during construction and/or decommissioning. This third party shall be hired to evaluate, document, and rate the road's condition prior to construction or decommissioning of the LWEF and again 30 days after the WEF is completed or removed.

A. Any road damage during construction that is done by the Applicant and/or one or more of its subcontractors that is identified by this third party shall be repaired or reconstructed to the satisfaction of the WI DOT and/or Town (as appropriate) at the Applicant's expense, prior to the final inspection. In addition, the Applicant shall pay for all costs related to this third-party pre-inspection work prior to receipt of the final inspection.

B. The surety for removal of a decommissioned WEF shall not be released until the Town Board is satisfied that any road damage that is identified by this third party during and after decommissioning that is done by the Applicant and/or one or more of its contractors or subcontractors has been repaired or reconstructed to the satisfaction of the WI DOT and/or Town at the Applicant's expense. In addition, the Applicant shall pay for all costs related to work of this third party's inspection prior to receipt of the release of the surety.

#### **8-4 LWEF Noise Impacts.**

Independent acoustical experts have determined that 35 dBA is a reasonable proxy to protect nearby citizens from harmful infrasound. As such, no part of the LWEF shall produce noise above 35 dBA LAeq for more than five (5) consecutive minutes, as measured at any WEF property line or residence. Each occurrence by individual turbines shall be a separate violation of this Ordinance, and the penalties (see 9-2) shall be cumulative.

If noise levels exceed 35 dBA for more than five (5) consecutive minutes, as measured at any WEF property line or residence, the problem turbine(s) shall be shut down within one business day of being directed to do so by the Town Board or their designee. The problem turbine(s) shall remain shut down until it can be demonstrated to the satisfaction of the Town Board (or their designee) that those turbines can be operated so as to not exceed 35 dBA for more than five (5) consecutive minutes, as measured at all WEF property lines, or proximate residences.

#### **8-5 LWEF Environmental Monitoring:**

The Applicant will permit post-construction environmental studies deemed appropriate by the Town Board. These will be funded by the Escrow Account. Post-construction field studies will include scientific assessments of regional nesting failures, and territory abandonment of special status species like raptors species, within two (2) miles of the LWEF. When these assessments are being done, only researchers involved with these studies will be legally allowed to touch carcasses. LWEF personnel who move carcasses without written Town approval will be subject to a fine pursuant to this Ordinance, as wind turbines do kill endangered and other highly protected species. During the life of the project every bird or bat carcass, or crippled bird or bat found anywhere within the LWEF, must be reported to the Town by the Applicant within seven (7) days.

#### **8-6 LWEF Decommissioning:**

The Town Board will review the projected Decommissioning costs every five (5) years. The LWEF Applicant will adjust their security to any changes from the original calculation. If the State Building Codes official condemns any portion of an LWEF, or if no electricity is generated from any turbines for three (3) consecutive months, the LWEF Applicant and/or property owner shall have three (3) months to remedy the safety issues or complete the decommissioning of the WEF, according to the approved plan.

**8-6.1** The Town Board may grant extensions of time for repair and/or maintenance, for good cause, such as the need to back-order parts that are not currently available from the supplier or the need to repair an LWEF damaged by a storm.

**8-6.2** Decommissioning shall include the complete removal of turbines, buildings, electrical components, cabling, roads, and any other associated facilities and/or structures, including below-ground items (e.g., foundations), to a depth of eight (8) feet below grade.

**8-6.3** Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

**8-7 WEF Complaints:**

The Town shall set up a procedure for filing and handling WEF complaints. The WEF Applicant shall initially be given a reasonable opportunity to resolve all complaints. The cost of such resolution shall be borne by the WEF Applicant. If resolution is not made in a reasonable time (as determined by the Town), the Town may utilize its Escrow Account to attempt to resolve any LWEF issues. The Town may establish a monitoring committee to oversee resolution of complaints regarding LWEFs.

**8-8 LWEF Lease Agreements.**

The Applicant shall legally file the entire lease document and a record of all signed leases shall be maintained by the Town Board.

**Section 9. Miscellaneous.**

**9-1 Fiscal Responsibility.**

**9-1.1** The Town Board may, at its discretion, request the most recent annual audited financial report of the licensee prepared by a duly licensed Certified Public Accountant during the review process. If such a report does not exist, the Town Board may, in its sole discretion, require a suitable alternative to demonstrate the financial responsibility of the Applicant and its ability to comply with the requirements of this Ordinance.

**9-1.2** No transfer of any LWEF, or license, or the sale of more than 30 percent of the stock of such entity (not counting sale of shares on a public exchange) shall occur without written acceptance by such entity of the obligations of the licensee under this Ordinance and the terms of the license and any related Developer's Agreement. Any such transfer shall not eliminate the liability of any entity for any act occurring during its ownership or status as licensee.



## 9-2 Inspection, Enforcement Procedures, and Penalties

**9-2.1** Inspection. The Town Board, a retained expert, or another authorized representative of the Town, may make inspections or undertake other investigations to determine the condition of a WEF in the Town to safeguard the health and safety of the public and to determine compliance with this Ordinance, upon showing proper identification and providing reasonable notice.

**9-2.2** Violations. The following are violations under this Ordinance:

- A. Engaging in construction, installation, or operation of a WEF without a Wind Energy Facilities License granted by the Town Board or a developer agreement or both.
- B. Failure to comply with the applicable minimum standards and other terms of this Ordinance.
- C. Making an incorrect or false statement, including in the information and documentation submitted during the licensing process or during an inspection by the Town or its duly appointed representative, or a representative of another regulatory agency.
- D. Failure to comply with any conditions of an approval or license, or any agreements entered into as a condition of approving a license.
- E. Failure to take appropriate action in response to a notice of violation or citation, or other order issued by the Town.

**9-2.3** Hearings.

- A. Any person affected by a notice, order, or action under this Ordinance, or upon denial of an application for a license or license renewal, may request a hearing on the matter before the Town Board, provided such person files with the Town Clerk a written petition requesting the hearing and setting forth his or her name, address, telephone number, and a brief statement of the reason for requesting the hearing. Such petition shall be filed within 30 days of the date the notice, order, or action under sub. (4) is served or within 30 days of the date of the approval or denial of a license or an application for a renewal. Upon receipt of the petition, the Town Clerk may set a time and place for a hearing before the Town Board and, if a hearing is scheduled, shall give the petitioner and other interested parties written notice thereof.
- B. After a hearing under par. A, the Town Board, by a majority vote of the members present, shall sustain, modify or withdraw the notice, order, or action, or grant or deny the license or license renewal, depending on its findings as to whether the provisions of this Ordinance have been complied with. The petitioner shall be notified within 10 days, in writing, of such findings.

- C. The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore, shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the case.

**9-2.4 Remedies.** The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance, including the following:

- A. Issue a stop work order.
- B. Issue a notice of violation and order that specifies the action to be taken to remedy a situation.
- C. Issue a citation.
- D. Refer the matter to legal counsel for consideration and commencement of legal action, including the assessment of forfeitures under sub. (6) and injunctive relief.
- E. Suspend or revoke the Wind Energy Facility License under sub. (5) in the event there are repeated exceedances of the standards or conditions incorporated into a Wind Energy Facility License or developer agreement.

**9-2.5 License Suspension or Revocation.** After giving notice and holding a hearing, the Town Board may suspend or revoke a Wind Energy Facility License for a violation under this Ordinance.

**9-2.6 Penalties:**

- A. Any person or entity who violates this Ordinance may be assessed a forfeiture of not less than \$500 per violation nor more than \$5,000 per violation and/or be subject to injunctive relief. Each day a violation exists is a separate violation.
- B. Any person or entity who violates this Ordinance shall pay court costs and reasonable attorney's fees associated with a forfeiture assessed under section 9-2.6A and for any action for injunctive relief sought by the Town. The remedies provided herein shall not be exclusive of other remedies.

**9-2.7 Non-Waiver.** A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present or future violation(s).

**Section 10. Severability, Interpretation, and Abrogation****10-1 Severability.**

- A. Should any section, clause, provision, standard, or portion of this Ordinance be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.
- B. If any application of this Ordinance to a particular parcel of land, WEF or project is adjudged unconstitutional or invalid by a final order of a court of competent jurisdiction, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment, unless specifically required by the court.

**10-1.2** The provisions of this Ordinance shall be liberally construed in favor of the Town and shall not be construed to limit or repeal any other power now possessed by or granted to the Town.

**10-1.3** This Ordinance is not intended to repeal, annul or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Ordinance.

**Section 11. Effective Date.** Following passage by the Town Board, this Ordinance shall take effect the day after the date of publication or posting as provided by Wis. Stat. § 60.80.

**Section 12. Applicability.** The requirements of this Ordinance shall apply to all WEFs proposed, operated, modified or constructed after the effective date of this Ordinance.

*Signatures appear on following page*

ADOPTED May 9, 2023

TOWN OF BRIGHTON

Mark Krause

Mark Krause, Town Board Chairperson

Robert Haas

Robert Haas, Supervisor

Recused

Steven Gropp, Supervisor

Attested to as of May 9, 2023

Nadine Willett

Nadine Willett, Town Clerk

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# EXHIBIT B

**Town of Eau Pleine  
Wind Energy Facility Licensing Ordinance**

**Be it enacted by the Town Board of the  
Town of Eau Pleine as follows:**

ORDINANCE NO. 2023-     

**Section 1. Title.**

This Ordinance may be cited as the Town of Eau Pleine Wind Energy Facilities Ordinance.

The Town of Eau Pleine, Marathon County, State of Wisconsin ordains as follows:

**Section 2. Findings, Purpose and Authority.**

**2-1 Findings.** Wind energy facilities ("WEFs"), while an increasingly important part of a renewable energy portfolio, can have certain adverse impacts. In this regard, the Town finds that the report issued by the National Research Council entitled "Impacts of Wind-Energy Projects," May 2007 ("2007 NRC Report"), addresses several important public health and safety issues relative to wind energy facilities that require regulation by the Town. The Town further finds that the provisions of the "Draft Model Wind Ordinance for Wisconsin: as promoted by the State of Wisconsin's Department of Administration, are inadequate to reasonably protect public health and safety, The Town also finds the Public Service Commission of Wisconsin's delay of the Wind Siting Council's 2019 report of special concern. The Wind Siting Council is expected to meet every five years. These concerns are in regard to the expectations of more recent studies possibly having been conducted in this five-year period that may bring to light more definitive conclusions regarding the health and safety of our community. Reference is made to the reference sheet attached hereto as Exhibit A. With these concerns in mind, the Town Board of the Town of Eau Pleine finds and declares that:

**2-1.1** The Wisconsin State Constitution legally obligates government officials to protect the health, safety and well-being of their community.

**2-1.2** Shortsighted planning has often resulted in the creation of problem industries that adversely affect public health and quality of life, compromise aesthetics, and degrade community character. Industrial WEFs are not exempt from those problems, and careful siting and protections are of paramount importance. This Ordinance will contribute to this effort.

**2-1.3** Regulation of the siting and installation of wind turbines is necessary for protection of the health, safety, and well-being of neighboring property owners, the general public the local economy, local ecosystems, and regional military facilities.

**2-1.4** The findings set forth in this section are cumulative and interactive, and they shall be liberally interpreted in conjunction with one another.

**2-1.5** Industrial WEFs have increased significantly in number and can potentially be sited without sufficient regard to their impact on the health, welfare, and safety of residents, especially in small, rural communities.

**2-1.6** While wind energy is a semi-renewable energy resource of electricity generation, and under some circumstances it may reduce the use of nonrenewable energy sources, the possible benefits must be balanced against potential negative impacts to local citizens, local economy, local ecosystems, and regional military facilities.

**2-1.7** WEFs represent significant potential negative aesthetic and environmental impacts because of their enormous size, lighting, and shadow flicker effects.

**2-1.8** WEFs are industrial by their nature and are not compatible with pastoral communities due to their disruption of views and skylines, especially in rural communities (like this) without many high, unnatural structures.

**2-1.9** This community has many scenic viewsheds, and some of these would be negatively impacted by industrial WEFs.

**2-1.10** This community is surrounded by other communities that share our agricultural and rural residential character.

**2-1.11** Construction of WEFs can create traffic problems and damage local roads.

**2-1.12** Portions of land within our community are designated as State-regulated wetlands

**2-1.13** This community's geology includes erodible soils and high-water tables. This community's geology may be incompatible with certain industrial development. Risks include aquifer and well water contamination via soil overburden infilling on shallow bedrock.

**2-1.14** If not properly regulated, installation of WEFs in areas with similar geology have the potential to create numerous additional drainage paths which might allow contaminated ground water to directly enter into the aquifer below. For instance, construction of miles of wide gravel access roads increases the number of drainage paths for the contaminated water to contaminate drinking water for our and other nearby communities.

**2-1.15** Installation of WEFs can create drainage problems through erosion and lack of sediment control of facilities and access road sites and harm farmlands through construction methods utilized.



**2-1.16** Independent experts have concluded that industrial wind energy turbines can adversely affect meteorology up to fifteen (15) miles away. The resulting changes like lower humidity levels can result in reduced regional agriculture yields.

**2-1.17** A WEF may be a significant source of noise and vibration for the community. These can have negative health impacts on nearby residents, particularly in quiet rural areas. These can also negatively affect the quiet enjoyment of the area, properties, and quality of life of residents. According to various medical experts and the World Health Organization, the infrasound component of such noise can be the most problematic.

**2-1.18** The WEF's noise and vibration may also negatively affect wildlife. Some noise and vibration impact on wildlife relate to predator-prey behaviors, mating opportunity, and other behaviors that can adversely impact wildlife populations and diversity.

**2-1.19** Our community boasts many species of birds and is a habitat for many species of wildlife, both year-round and seasonal.

**2-1.20** Independent experts (e.g., ornithologists) have concluded that Industrial Wind Turbines/ ("IWTs") kill large quantities of birds. Especially troublesome are the raptors that are destroyed.

**2-1.21** Independent experts (e.g., chiropterologists) have concluded that bats killed by IWTs can result in an appreciable reduction in regional agricultural yields. Estimates have been done for every U.S. County, and these experts have projected that this could adversely affect our local economy by more than 1.2 million dollars a year.

**2-1.22** WEFs can cause danger to humans, animals and ecosystems, resulting from ice throw, turbine collapse, oil contamination, and annoyance.

**2-1.23** In certain circumstances, WEFs can cause electromagnetic interference with various types of communications, including cell phones, radios, and televisions.

**2-1.24** Independent experts have concluded that IWTs can have other adverse health effects on wildlife, livestock, and domestic animals.

**2-1.25** WEFs, without proper setbacks, can adversely affect property values, which can cause economic hardship to property owners. Reductions in property values could reduce our community's tax base, resulting in a tax rate increase on all community property owners.

**2-1.26** Review of professional and legal literature demonstrates there can be serious legal and economic downsides for landowners entering into complicated and one-sided lease/easement contracts written by WEF developers not available for public review and discussion

**2-1.27** WEFs have the potential to adversely interfere with orderly development of our community, including single-family residences and small subdivisions, by making such development unappealing.

**2-1.28** The community and its citizens desire to maintain the pastoral, rural nature of this region. WEFs are in conflict with the culture and character of this community,

**2-1.29** WEFs need to be regulated for proper removal when no longer in operation.

**2-1.30** Due to the unusually broad array of potentially problematic findings, and the lack of scientifically proven net benefits, the Precautionary Principle dictates that our community be particularly conservative and cautionary in its regulation of industrial wind energy and its granting of a license.

**2-1.31** In formulation of this Ordinance, many studies have been reviewed and taken into consideration. Other energy ordinances through the U.S. have been analyzed. Experiences of other communities with industrial wind energy have been studied by Members of the Town Board.

**2-2** The purpose of this Ordinance is to require the operator of a proposed WEF to be located in the Town of Eau Pleine to obtain a license from the Town prior to beginning construction activities in order to protect public health and safety, to minimize or prevent potential adverse off-site impacts from on-site and off-site operations, and to promote the general welfare of the people and communities within the Town of Eau Pleine.

**2-3** This Ordinance is adopted under the powers granted to the Town of Eau Pleine by Wis. Stat. §§ 60.10, 60.22(3), and 61.34, its authority under§ 66.0401 and§ 66.0403, and other authority under the statutes, and its adoption of village powers under§ 60.10(2) (c). Any amendment, repeal or recreation of the statutes relating to this Ordinance made after the effective date of this Ordinance is incorporated into this Ordinance by reference on the effective date of the amendment, repeal, or recreation.

**2-4** Wisconsin Courts have recognized that the evaluation of an application for local approval of a WEF requires a case-by-case approach. The Town must receive information about the specifics of a particular proposed WEF and then decide whether a restriction is warranted. Town ordinances may not arbitrarily set a one size fits all scheme of requirements for any WEF.

**Section 3. Definitions.**

As used in this Ordinance, the following terms shall have the meanings indicated. Words not defined in this Ordinance shall be given their ordinary and common meaning:

**Accessory building:** A building that is located on the Wind Energy Facility ("WEF") property.

**Accessory Equipment:** Any equipment serving or being used in conjunction with a Large Wind Energy Facility ("LWEF"). The term includes utility or transmission equipment, power supplies, generators, batteries, equipment buildings, and storage sheds, shelters or similar structures.

**Administrative Approval:** The Town of Eau Pleine has the right to review applications and the right to approve or disapprove applications submitted by the Wind Energy Facility.

**Blade Glint:** The intermittent reflection of the sun off the surface of the blades of one or more wind turbines.

**Board:** This refers to the Town Board for the Town of Eau Pleine , Marathon County, State of Wisconsin.

**Conservation Area:** Such areas include natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act 33 USC Sec..1251 et seq,; shoreland areas; water bodies; riparian buffers; populations of endangered or threatened species or habitat for such species; archaeological sites, cemeteries, and burial grounds; important historic sites; other significant natural features and scenic viewsheds; and existing trails or corridors that connect the tract to neighboring areas.

**dBA:** A-weighted decibels, abbreviated dBA (or dBa or dB(a)), is an expression of the relative loudness of sounds in air as perceived by the human ear. With A-weighting, the decibel levels of low frequencies are reduced compared to the middle and high frequencies (A-weighted energy equivalent sound level). Unless specified otherwise, in this Ordinance dBA means LAeq (energy equivalent sound level).

**Electrical Transmission Tower:** An electrical transmission structure used to support high- voltage overhead power lines. The term shall not include any utility pole.

**FAA:** The Federal Aviation Administration or successor agency.

**Infrasound:** Low frequency sounds that are not ordinarily hearable by humans. All sounds are energy waves, so humans can be affected by infrasound despite not being aware of its presence. The World Health Organization has concluded that health effects due to low frequency components in noise are estimated to be more severe than for community noise in general.

**kW:** Kilowatt

**LWEF (Large Wind Energy Facility):** A WEF that has a rated capacity of 100 kW or more.

**Maintenance:** The cleaning, painting, repair, or replacement of defective parts (including plumbing, electrical, or mechanical work that might require a building permit) in a manner that does not alter the basic design or composition of a structure, such as a wind turbine.

**Meteorological Measuring Device:** An instrument, such as an anemometer, that measures wind speed. This is often on a tower, typically located at hub-height of the anticipated turbines.

**Modification or Modify:** Any change, addition, removal, swap-out, exchange, and the like that does not qualify as "Repairs and/or Maintenance" as defined herein is a Modification. Also included is any change, addition, swap-out, exchange, and the like that requires or results in changes and/or upgrades to the structural integrity of a turbine.

**Necessary:** What is technologically required for the equipment to function as designed by the manufacturer. Anything less will restrict or inhibit the provision of service as intended and described in the Application. Necessary does not mean what may be desired or preferred technically.

**Ordinary Maintenance:** Actions that ensure that the WEF is kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity and structural integrity. Ordinary Maintenance does not include Modifications.

**Person:** An individual, trustee, executor, receiver, other fiduciary, corporation, firm, partnership, association, organization, club, etc., acting as an entity.

**Repair:** The replacement of existing work with the same kind of material used in the existing work, not including additional work that would change the structural safety of the structure or that would affect or change required existing facilities, a vital element of an elevator, plumbing, gas piping, wiring, or heating installations, or that would be in violation of a provision of law or this Ordinance. The term "Repair" or "Repairs" shall not apply to any change in construction.

**Shadow Flicker:** The visual effect that results when the blades of an operating wind energy turbine pass between direct and indirect light from the sun and an observer and cast an observable, moving shadow on a person or property in the vicinity.

**State:** The State of Wisconsin

**SWEF (Small Wind Energy Facility):** A WEF that has a rated capacity of less than 100 kW. Such a facility is used primarily for on-site consumption, is an accessory use, and consists of no more than one wind turbine and any associated tower, control and/or conversion electronics.

**Temporary:** Something intended to exist or does exist for fewer than 180 days, except for an anemometer or other meteorological measuring device that is used to test the wind conditions, which are considered temporary when it exists for two years or less.

**Utility Pole:** A structure owned and/or operated by a public utility, municipality, electric membership corporation, or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

**WEF (Wind Energy Facility):** An electricity-generating facility whose primary purpose is to supply electricity. This consists of one or more wind turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines, and other appurtenant structures and/or facilities.

**Wind Energy:** Wind turbines convert the kinetic energy of moving air (wind) into mechanical power. Note that the term "wind energy" is more technically correct than saying "wind power".

**Wind Farm:** A marketing term for a LWEF.

**Windmill:** A wind-driven machine that does not produce electricity.

**Wind Turbine:** A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator. Such a system might include a nacelle, rotor, tower, pad transformer, and other appurtenant structures and/or facilities.

**Wind Turbine Height:** The distance measured from the lowest adjacent grade to the highest point of the structure, including any attachments, such as a lightning protection device or a turbine rotor or tip of the turbine blade when it reaches its highest elevation.

#### **Section 4. License Required**

**4-1 License Requirement.** Except as provided in Section 4-6(a), a Person is prohibited from commencing construction activities on a WEF or operation of a WEF in the Town without first obtaining a license from the Town Board ("WEF license"). The requirements for applying for a WEF license is provided in Section 5.

**4-2 License Term.** An initial license term may be approved for a maximum of 15 years. A license renewal may be for a term of up to 10 years.

**4-3 License Amendment.** If the Town has issued a WEF license, the operator may request an amendment to that license during the license term, using the same process as applies to an original license application.

**4-4 License Transfer.** A WEF license may be assigned or transferred in the manner set forth in Section 9-1.2 hereof.

4-5 License Revocation. A WEF license may be suspended or revoked under the procedures in Section 9-2.4(E).

4-6 License Exclusion.

- (a) Temporary towers may be erected to use a meteorological measuring device to test the wind conditions on the proposed LWEF site. Such towers do not require approval of a WEF License. However, each such temporary pole or tower shall comply with the dimensional requirements stipulated by the Town Board. A copy of an FAA determination report as a result of filing the FAA Form 7460-1, "Notice of Proposed Construction or Alteration of an Object that may Affect the Navigable Airspace," shall be submitted prior to submission of any building permits for such a temporary tower. The temporary pole or tower may be any approved height but it must be set back from all property lines, vacant or occupied dwelling units, rights-of-way, and access easements by a distance that is greater than 1.5 times its height. The temporary pole or tower may not have any signs; may not be illuminated (except as required by the FAA or Department of Defense); and must be completely removed within two (2) years of the date that it is erected, unless the Town Board grants a single one (1) year extension.
- (b) An Applicant for a WEF that qualifies as a SWEF may submit a short form application with a reduced fee, in the discretion of the Town Board. If the Board grants such a request, it shall specify the application requirements and fee for such SWEF.

**Section 5. Requirement for Applying for a WEF license or Renewal of a WEF Approval.**

5-1 Application for a WEF License. The Applicant shall submit an application that contains all required documentation required under Section 6 to the Town Clerk.

5-2 Application for Renewal of a License. The operator shall make a written request to the Town Clerk for a renewal of the license no later than October 1 of the year in which the license will expire.

5-3 Preliminary Review, Preliminary Hearing, and Proposed Decision.

- (a) Preliminary Review. The Town Clerk shall forward an application or a request for renewal to the Town Board for initial review to determine if additional information or expertise is necessary to properly evaluate the application.
- (b) Additional Information. The Town Board may request that the Applicant submit additional information if the Town Board determines that the application or request for renewal is incomplete, or if the Town Board determines that additional information is needed to determine whether the requested approval will meet the requirements of this Ordinance.

(c) Proposed Decision. Upon completion of its review of the application and a review of any report from retained experts, the Town Board shall issue a proposed decision on whether to grant a wind license, with or without conditions, or to deny the application or request.

**5-4 Decision by the Town Board.**

(a) Notice and Hearing; Proposed Decision. Upon the issuance of a proposed decision under Section 5-3(c), the Town Clerk shall place the preliminary decision of the Town Board on the Town's website and make it available for public inspection at the Town Hall. The Town Board shall set a date for a public hearing on the preliminary decision and, for an application for a WEF license, give Class II public notice and post the notice in the designated posting places at least 15 days prior to the date scheduled for the hearing, and mail the notice to all neighboring landowners. At the public hearing, the Town Board shall take public comment on the proposed decision.

(b) Town Board Final Decision. Following the receipt of public comments at the public hearing and any submitted written comments, the Town Board may make a final decision whether to grant a WEF license or to renew a license, or set a date for a subsequent Town Board meeting during which the Town Board will make a final decision.

(c) Basis of Proposed and Final Decisions. The Town Board shall base its proposed and final decisions on a review of the application, any available retained experts' reports, public comments and information provided at the public hearing, and other relevant information at the discretion of the Town Board, including, without limitation, the items described in Section 7-9 of this Ordinance.

(d) Initial Application. In the case of an application for a WEF license, the Town Board shall grant the license if it determines that the operation of the WEF will be consistent with the standards and the purposes of this Ordinance.

(e) Renewal. In the case of a request for renewal of a license, the Town Board shall grant the request for renewal if it finds that there have been no material violations of the Ordinance or the license which have not been appropriately remedied, the operator has not received multiple or recurring citations or orders for violations of the WEF license or this Ordinance.

(f) Denial. If the Town Board denies an application for a WEF license or denies a request for renewal of a license, the Town Board shall notify the Applicant in writing.

**5-5 Developer Agreement**. The Town Board may enter into a developer agreement with an Applicant that supersedes in whole or in part the requirements of this Ordinance.

## **Section 6. Application.**

### **6-1 WEF License Application Process.**

Throughout the license process, the Applicant shall promptly notify the Town Board of any changes to the information contained in the license application. Changes that do not materially alter the initial site plan may be administratively accepted. The application for a WEF shall be an electronic digital filing that contains at least the following:

**6-1.1 Summary.** A narrative overview of the WEF, including its generating capacity.

**6-1.2 Inventory.** A tabulation describing the:

- A: Specific number, types, and height of each wind turbine to be constructed, including their generating capacity.
- B: Dimensions and respective manufacturers.
- C: Appurtenant structures and/or facilities.

**6-1.3 Vicinity map.**

Identification of the property on which the proposed WEF will be located

**6-1.4 LWEF Site Plan.**

A plan showing the:

- A: Planned location of each wind turbine
- B: All property lines within two (2) miles of the property lines of the proposed site.
- C: Each turbine's setback distance from the closest LWEF boundary.
- D: Access road and turnout locations.
- E: Substation(s) and ancillary equipment, buildings, and structures, including permanent meteorological towers.
- F: Electrical cabling from the WEF to the substation(s) and from the substation(s) to where the electricity will leave the site.
- G: Associated transmission lines.  
Conservation Areas, including natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act; shoreland areas; water bodies; riparian buffers; populations of endangered or threatened species (Federal or State) or habitat for such species; flyways; archaeological sites, cemeteries, and burial grounds; important local historic sites; existing healthy, native forests consisting of at least one acre of contiguous area; individual existing healthy trees that are at least 100 years old; other significant natural features and scenic viewsheds; existing trails or corridors that connect the tract to neighboring areas.
- I. Location of all structures and properties within the geographical boundaries of any applicable setback.



- J. A landscaping plan that shows proposed screening and buffering of all buildings and other non-turbine structures on the site or sites.
- K. Location of wells, abandoned and active, within a 0.5-mile radius of the project boundary.
- L. The number, location, and purpose of any proposed new wells for the LWEF.

#### **6-1.5 LWEF Misc.**

The Applicant shall provide the following information to the Town Board:

- A. A Stand-down Plan for high wind conditions.
- B. Signed copies of all original leases/easements and agreements for this LWEF (not memorandums).
- C. The type, size, and total installed height of all LWEFs.
- D. The rotor material, rated power output, performance history, safety history, and noise characteristics of each make/model of LWEF turbine, tower, and all transmission equipment being used.
- E. The typical length of service of the proposed components.
- F. Any other materials needed to satisfy the requirements of this license.

#### **6-1.6 WEF Air Space Impacts.**

A. For all portions of the WEF more than 200 feet tall, the Applicant shall provide a copy of an FAA determination as a result of filing the FAA Form 7460-1, "Notice of Proposed Construction or Alteration of an Object that may Affect the Navigable Airspace."

B. If any portion of a LWEF will be located within five (5) miles of any civilian or military airport runway, or heliport, the Applicant shall demonstrate compliance with all local County, State and Federal airport related laws.

C. The Applicant shall establish to the satisfaction of the Town Board that the LWEF will not adversely impact the restricted air space in the area.

D. The Applicant shall forward this application to the Commanding Officers of all military bases located within 150 miles of the LWEF, in order to provide for review and comment concerning any possible impacts on the operations and mission of each military base. These comments are separate from whatever is in the DOD Clearinghouse documents. This application will not be deemed completed until such time as said review is completed and written comments are received.

- E. The Applicant shall provide a narrative description of all risks to
  - 1. Civil air navigation (including civilian radar).
  - 2. Military air navigation routes, military air traffic control areas, military training routes, military special-use airspace, military radar or other potentially affected military operations, and shall further include documentation that addresses any potential adverse impact on military operations and readiness as identified by the DOD Clearinghouse and any remediation action agreed to by the Applicant.

3. NEXRAD weather radar systems.
4. Hot Air Balloon rides available to the public within twenty (20) miles of the WEF.
5. Emergency Medical Helicopters.

#### **6-1.7 Noise Impacts.**

Applicant will provide a post-construction noise monitoring plan which shall, at a minimum, provide verification from a qualified party that at the WEF boundaries and at proximate residences, WEF noise does not exceed 35 dBA for more than five (5) consecutive minutes during a representative range of operating and atmospheric conditions. Instrumentation to verify this shall meet ANSI or IEC Type 1 standards, and measurement procedures shall comply with relevant portions of ANSI S12.9, Part 3. Each report will include the SCADA/ Power output data at the time of the testing.

#### **6-1.8 Visual Impacts.**

The Applicant shall furnish a visual impact assessment to the Town Board, which shall include:

- A. Pictorial representations of "before and after" views from 360-degree viewpoints within two (2) miles of the proposed WEF boundaries, including a drone perspective from the WEF. These will include, but not be limited to, major roads; State and local parks; other public lands; historic districts; preserves and historic sites. The Town Board will provide guidance concerning the appropriate key sites. The Applicant shall provide a map showing the locations of where the pictures were taken and the distance of each location from the proposed WEF.
- B. If any portion of a proposed WEF will be located within one (1) mile of the right-of-way of a Federal or State-designated Scenic Route/By-way, the Applicant shall describe the proposed measures to be taken to minimize the visual impact of the proposed WEF (including shadow flicker and blade glint) upon a Scenic Route/By-way.
- C. The Applicant shall not install any lighting that exceeds the minimum required by the FAA. If approved by the FAA, on-demand lighting (AVWS) is required.

#### **6-1.9 LWEF Impacts on Other Town Municipalities.**

If the proposed WEF is within two (2) miles of other neighboring municipalities, the Applicant shall provide written notification of this application to those municipalities.

#### **6-1.10 Maintenance Plan.**

The Applicant shall detail the triennial, storm follow-up, and other actions that will be taken to keep the WEF operating quietly, efficiently, and not polluting land, water, or air. This will include (but not limited to) the minimization of: audible sounds, infrasound, vibrations, blade glint, and fluid leaks. The Applicant shall conduct preventive maintenance inspections at least once every year and after any wind event defined gale force (39mph) or greater. Each inspection shall look for such things as metal fatigue, nut loosening, and other potential failures that might impact the public health and safety. Such inspection reports shall be provided to the Town Board within thirty (30) days of the inspection.

**6-1.11 Decommissioning Plan.**

A description of how the structural and turbine materials will be disposed of and how the site will be restored, as well as:

- A. Anticipated life of the WEF.
- B. Estimated decommissioning costs including contingency costs of at least 20% (in current dollars), as provided by an appropriately experienced licensed engineer.
- C. A verifiable means of determining whether the decommissioning plan needs to be activated due to cessation of use, such as a letter from the electric utility stating that it will notify the Town Board within ten (10) business days if electricity is not received from any turbine within the WEF for any thirty (30) consecutive days.
- D. Method for ensuring that funds will be available for decommissioning and restoration as set forth in 6-7.

**6-1.12 Ancillary Materials.**

Other relevant studies, reports, certifications, and approvals as may be reasonably requested by the Town to ensure compliance with this Ordinance, or to protect the health, safety and well-being of the Town's citizens or local ecosystems. The inputs of local citizens will be solicited in at least one (1) public hearing on this application.

**6-1.13 Testament.**

The Applicant will agree to abide by the provisions of this Ordinance.

**6-2 LWEF Economic Impact Study.**

The Town may hire independent experts (paid for from the Escrow Account: (see 6-5) who will do a thorough, conservative assessment of the LWEF's net economic impact on the community. This will include possible tourism reduction, reduced agricultural yields due to bat takings, property devaluations (and the commensurate loss in tax base), cost to the community due to adverse health effects, higher cost of electricity, etc. This will be compared to any guaranteed incomes from the LWEF.

**6-3 LWEF Environmental Impact Study.**

An Environmental Impact Study (EIS) may be conducted that includes review comments from citizens in the Town, independent experts, as well as all applicable State and Federal agencies, including at least the:

- A. WI Department of Health,
- B. WI Department of Transportation,
- C. WI Department of Natural Resources,
- D. U.S. Fish and Wildlife Service, and
- E. U.S. Army Corps of Engineers.

As a minimum the EIS shall include the potential impacts on: (i) humans (such as audible and inaudible sounds, vibrations, electromagnetic fields/ ("EMFs"), shadow flicker, blade glint, ice throw, component liberation due to major storms, etc.), (ii) wildlife, livestock and domestic animal populations, including migratory flyways and corridors (same concerns as with humans), (iii) land and vegetation (such as agricultural effects), (iv) wetlands, water bodies, flowing water sources and groundwater (including aquifer impacts due to turbine foundations, etc.), and (v) air (such as changes in humidity). The study area shall include the proposed LWEF, as well as the area at least two (2) miles surrounding the proposed LWEF.

All costs and expenses incurred related to the Environmental tests for the LWEF shall be paid from the Escrow Account (see 6-5). The Town may use the Escrow Account funds to hire independent qualified experts, as needed, to do the following:

1. Provide the location and full description of any of the following: open drainage courses, streams, vernal pools, wetlands, and other important natural areas and site features, including, but not limited to, floodplains, deer wintering areas, Essential Wildlife Habitats, Significant Wildlife Habitats, livestock, Scenic or Special Resources, habitat of rare and endangered plants and animals, natural communities of endangered species (federal or state), unique natural areas, sand and gravel aquifers, wells, and historic and/or archaeological resources.
2. The Applicant must provide a written report from all appropriate State and Federal agencies detailing their evaluation of the proposed LWEF.
3. The Applicant must demonstrate, to the satisfaction of the Town, that the proposed LWEF will not have undue hydro-geological consequences (e.g. with surface or subterranean water resources and storm water runoff), or adverse effects on geological stability; rare, threatened, or endangered wildlife; Significant Wildlife Habitat; Essential Wildlife Habitat; Raptor Habitat; livestock; threatened or endangered plants; and rare or exemplary natural plant communities and ecosystems.
4. The Applicant must provide a cumulative-impact assessment of the LWEF in the context of any other LWEFs within twenty-five (25) miles, including migratory bird, bat and large mammal corridors, and demonstrate that the LWEF is not located in an area that will result in degradation of important wildlife corridors or flyways.
5. Pre-construction and post-construction field studies shall be conducted using the most advanced techniques available. If the pre-construction field studies demonstrate significant adverse effect to birds, bats, game animals, water resources, habitat fragmentation or other ecosystem degradation, the LWEF Applicant shall propose a remediation plan, subject to the Town's approval. The Applicant accepts that some environmental impacts cannot be satisfactorily resolved, and that such situations will be factored into the Town's decision regarding the net benefits of the LWEF.
6. In determining the nature and effectiveness of such remediation plans, the Town will be guided by inputs of its citizens, its own consultants, the appropriate State & Federal agencies, and applicable state and federal laws and regulations. The LWEF Applicant will be responsible for the full cost of implementing any approved remediation plan, under the supervision of the Town and its designated agents.

7. After implementation of any remediation plan, the Town will review the situation to determine its effectiveness. Should the Town find the remediation efforts inadequate, the LWEF Applicant will be given sixty (60) days from that finding to resolve the deficiencies. In the absence of a successful resolution, the Town (at its sole discretion) shall have the right to deny the LWEF license.

8. A computer-generated "zone of visibility map" (covering at least a one [1] mile radius from the proposed LWEF) shall be created to illustrate locations from which the proposed installation may be seen, with and without foliage.

**6-4 WEF Dimensional Requirements.** To provide for at least minimal operational safety for persons and property located outside of a WEF, all WEFs shall comply with the minimums and maximums contained in the following table:

Type of Wind Energy Facility	Minimum Wind Turbine Setback from any Property Line, Public or Private Right of Way and/or Access Easement*	Maximum Wind Turbine Height**
SWEF (up to 100kW)	1.5 feet for each foot of height from any property line and any vacant or occupied dwelling unit on the same property. If the TownBoard determines there will be no significant impact on abutting properties or those across a stream, lake, or other body of water, no such setback is required from the waterward propertyline for a turbine placed in a body of water, or on a dock or pier.	75 feet
LWEF (100kW or more)	One (1) mile or 10x the turbine height, from facility property lines, whichever is greater.	76 feet or higher

\* Such minimum setbacks for a WEF shall be measured from its outermost extension (whether blade tip, nacelle/turbine housing, or tower/pole edge) that is nearest the WEF property line, public or private right-of-way, and access easement.

\*\* Height is measured from the lowest adjacent grade to the highest point of the structure, including any attachments (such as a lightning protection device or a turbine rotor or tip of the turbine blade when it reaches its highest elevation). No portion of any wind turbine blade shall be closer than 25 feet to any portion of the ground that surrounds any WEF.

**6-4.1** No LWEF wind turbine shall be permitted to be within five (5) miles of any operating or proposed radar facility (NEXRAD, military, commercial, etc.).

**6-5 LWEF Escrow Account.**

The Applicant shall pay to the Town a non-refundable Application Fee (see 7-8). The Town Board and/or Planning Commission reserve the right to obtain engineering, economic impact, environmental impact, or other professional services to aid it in the review of any submitted WEF application. These costs (and other expenses incurred by the Town) are reimbursable only from the Escrow Account, not the Application Fee.

**6-5.1** The Applicant shall reimburse the Town for all oversight expenses incurred relating to the LWEF, from application through decommissioning.

**6-5.2** These LWEF-related oversight expenses include (but are not limited to) amounts required for Building Permits, Licensing, Re-Licensing, and Decommissioning e.g., administration, engineering, expert health and wildlife evaluations, handling complaints, legal, etc. "Legal" includes reasonable attorney fees for the Town.

**6-5.3** Any Escrow Account interest shall stay with the account and be considered new principal.

**6-5.4** This Escrow Account will be set up by the Applicant at the time of the LWEF license Application. This Escrow Account will be at a financial institution approved by the Town, solely in the name of the Town, to be managed by the Town Treasurer (or designee). The Applicant will make an initial deposit of \$10,000. An LWEF License Application will not be processed until proof of deposit has been provided by the Applicant. A LWEF License Application determination will not be made until all costs incurred by the Town to date have been reimbursed by the Applicant.

**6-5.5** If the LWEF Application is denied, all Escrow Account funds will be returned to the Applicant, less related expenses incurred by the Town. The money will be returned, along with a statement as to these costs, within 30 days of the Application being formally denied, or receipt of a Letter of Withdrawal. License Fees are non-refundable.

**6-5.6** This Escrow Account will be funded during the life of the LWEF by the Applicant/Operator. The Applicant/Operator will replenish any Escrow funds used by the Town within 14 days of being sent written notification (and explanation) of said withdrawals. Failure to maintain the Escrow Account at \$10,000 (within 30 days of being given notice) shall be cause for revocation (or denial of renewal) of the LWEF License.

**6-5.7** Once the Applicant believes that the Applicant has satisfactorily complied with the decommissioning conditions specified herein, the Applicant will send the Town written notification. The Town then has sixty (60) days to verify to its satisfaction that all decommissioning conditions have been complied with. If there is material non-compliance, the Town will so notify the Applicant and the process starts over. Otherwise, the Town will return all Escrow Account funds to the Applicant, less related expenses incurred by the Town, along with an explanatory statement.

## **Section 7 Installation and Design.**

### **7-1 LWEF Power Collection.**

The electrical connection system from the turbines to a collection point or substation shall, to the maximum extent possible, be placed underground. The power from that collection point or substation may use overhead transmission lines if approved by the Town Board.

### **7-2 Security.**

The Applicant shall submit design plans to verify that the WEF is:

- A. Located, fenced, or otherwise secured so as to prevent unauthorized access.
- B. Made inaccessible to individuals and constructed or shielded in such a manner that it cannot be climbed or collided with.
- C. Installed in such a manner that it is readily accessible only to persons authorized to operate or service it.
- D. The Applicant shall not install any video surveillance at a height exceeding 10 feet from ground level unless otherwise approved by the Town Board.

### **7-3 The WEF shall:**

- A. Be a non-obtrusive color (such as light blue, off-white, or light gray) that blends with the sky, as determined by the Town Board.
- B. Not be artificially lighted, except to the extent required by the FAA or other applicable authority that regulates air safety.
- C. Not contain any signs or other advertising (including flags, streamers or decorative items or any identification of the turbine manufacturer, WEF Applicant and operator). This does not include any identification plaques that might be required by the electric utility or a governmental agency.
- D. Be sited and operated so as to not interfere with television, internet service, telephone (including cellular, broadband, and digital), microwave, satellite (dish), navigational, or radio reception in neighboring areas. The Applicant and/or operator of the WEF shall be responsible for the full cost of any remediation necessary to correct any problems or provide equivalent alternate service, within thirty (30) days of being given notice. This includes relocation or removal of problematic turbine(s), or any other equipment, transmission lines, transformers, and other components related thereto.
- E. Have a leak containment system for oil, hydraulic fluids, and other non- solids that is certified by an expert (such as an engineer, turbine manufacturer, etc.) acceptable to the Planning Board that all such fluids will be captured before they reach the ground. The Applicant shall pay the cost(s) of the expert.
- F. For LWEFs, prepare an incident response plan that ensures that local emergency responders have the necessary equipment and training to effectively handle emergencies such as oil spills, turbine fires, turbine structural damage (or collapse) of equipment, including access to heavy equipment needed for rescue of trapped

personnel. The Escrow Fund will be used to reimburse all local emergency responders for any necessary equipment or training required.

- G. An Applicant shall notify the Town Board of the occurrence and nature of an LWEF emergency within 24 hours of an LWEF emergency.
- H. An Applicant shall establish and maintain liaison with the Town Board and with fire, police, and other appropriate first responders serving the LWEF to create effective emergency plans that include all of the following:
  - A list of all the types of LWEF emergencies that require notification under Par. G,
  - Current emergency contact information for first responders and for the LWEF Applicant, including names and phone numbers.
  - Procedures for handling different types of LWEF emergencies, including written procedures that provide for shutting down the LWEF or a portion of the system as appropriate.
  - Duties and responsibilities of the Applicant and of first responders in the event of an LWEF emergency.
  - An emergency evacuation plan for the area within 0.5 mile of an LWEF, including the location of alternate landing zones for emergency services aircraft.
- I. The Applicant shall review the emergency plan at least annually in collaboration with fire, police, and other appropriate first responders to update and improve the emergency plan as needed.
- J. The Applicant shall distribute current copies of the emergency plan to the Town Board, fire, police, and other appropriate first responders as identified by the Town Board.
- K. The Town Board shall require the Applicant to provide annual training for fire, police, and other appropriate first responders regarding responding to an LWEF emergency until the LWEF has been decommissioned.
- L. An Applicant of an LWEF shall do all of the following:
  - 1. Furnish its operator, supervisors, and employees who are responsible for emergency action a copy of the current edition of the emergency procedures established under this subsection to ensure compliance with those procedures.
  - 2. Train the appropriate operating personnel to ensure they have knowledge of the emergency procedures and verify that the training is effective.
  - 3. As soon as possible after the end of an LWEF emergency, review employee activities to determine whether the procedures were effectively followed.

#### **7-4 LWEF Real Property Value Protection Plan.**

The LWEF Applicant shall assure the Town that there will be no loss in real property value, resulting from the installation of the LWEF, within two miles of each wind turbine within their LWEF. To legally support this claim, the Applicant may be asked to consent in writing to a Real Property Value Protection Agreement ("Agreement") as a condition of approval for the LWEF. This Agreement shall provide assurance to non-participating real property owners (i.e., those with no turbines on their property) near the LWEF that they have some protection from LWEF-related real property values losses.



**7-5 LWEF Surety for Removal, when Decommissioned.**

The applicant shall place with the Town an acceptable letter-of-credit, bond, or other form of security that is sufficient to cover the cost of removal at the end of each WEF turbine's useful life, as detailed in the decommissioning plan. Such surety shall be at least \$200,000 for each wind turbine; provided, however, the Town Board may approve a reduced surety amount that is not less than 125% of a cost estimate that is certified by an engineer, salvage company, or other expert acceptable to the Town Board. This calculation will not take into account any estimated salvage values.

The Town shall use this surety to assure the faithful performance of the decommissioning terms and conditions of the Applicant's plan and this law. The full amount of the bond or security shall remain in full force and effect until all necessary site restoration is completed to return the site to a condition comparable to what it was prior to the WEF, as determined by the Town Board. The Applicant will be responsible for assuring that any subsequent Assigns of the LWEF will provide acceptable surety to the Town prior to any transfer of ownership

**7-6 LWEF Liability Insurance.**

**7-6.1** The holder of a license for an LWEF shall agree to secure and maintain for the duration of the license public liability insurance, as follows:

A. Commercial general liability covering personal injuries, death and property damage: \$2,500,000 per occurrence (\$5,000,000 aggregate), which shall specifically include the Town and its officers, councils, employees, committee members, attorneys, agents and consultants as additional named insureds.

B. Umbrella coverage: \$5,000,000.

**7-6.2** The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with at least a Best's rating of "A".

**7-6.3** The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days prior written notice in advance of a cancellation.

**7-6.4** Renewal or replacement policies shall be delivered to the Town at least 15 days before the expiration of the insurance that such policies are to renew or replace.

**7-6.5** No more than 15 days after the grant of the license and before construction is initiated, the license holder shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

**7-6.6** A certificate of insurance that states that it is for informational purposes only, and does not confer sufficient rights upon the Town, shall not be deemed to comply with this Ordinance.

**7-7 LWEF Indemnification.**

The granting of the Town's LWEF License shall contain an indemnification provision. This clause shall require the Applicant to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town (and affected municipalities), and its officers, Board members, committees, councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by delivery, construction, erection, modification, location, equipment's performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said LWEF, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town or its employees or agents. With respect to the penalties, damages, or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

**7-8 Fees.** Non-refundable Fees shall be as follows.

**7-8.1** The initial application fee for a WEF shall be \$2,500.00 which shall reimburse the Town for reasonable expenses relating to the review and processing of an application for a wind energy system; provided, however, the fee amount could increase based on the nature and review of the application. The Board may waive part or all of the application fee, in its discretion, for a SWEF.

**7-8.2** The Town's fee or reimbursement requirement under Section 7-8.1 shall be based on the actual and necessary cost of the review of the wind energy system application, and shall include the cost of services necessary to review an application that are provided by outside engineers, attorneys, planners, environmental specialists, and other consultants or experts.

**7-9 Town Board's License Provisions.**

The following are considerations for approval of an application to construct an LWEF.

- A. Information. Information about whether an Applicant has consulted with and received any non-binding recommendations for constructing, operating, or decommissioning the LWEF from a State or Federal agency, and whether the Applicant has incorporated such non-binding recommendations into the design of the LWEF.
- B. Studies. Applicant to cooperate with any study of the effects of LWEFs coordinated by a State agency.

- C. Monetary Compensation. Whether the Applicant of an LWEF has offered an agreement that includes monetary compensation to the owner of a nonparticipating residence, if that property suffers a loss in value as a result of the placement of the WEF.
- D. Aerial Spraying. Whether the Applicant of an LWEF has offered an agreement that includes monetary compensation to a farm operator farming on a nonparticipating property located near a WEF for crop loss from such spray.
- E. Permits. The Applicant must submit to the Town Board copies of all necessary State and Federal permits and approvals.
- F. Annual reports. The Applicant to file an annual report with the Town Board documenting the operation and maintenance of the wind energy system during the previous calendar year.

#### **7-10 Standards for the Town Board's WEF License Application Decision.**

The Town Board may disapprove a WEF License Application for a variety of reasons, including but not limited to, the following:

- A. Conflict with safety and safety-related codes and requirements.
- B. The use or construction of a WEF that is contrary to an already-stated purpose of a specific zoning or land use designation.
- C. The operation of an LWEF would be a net economic liability to the community.
- D. The operation of an LWEF would create unacceptable health risks to the public.
- E. The placement and operation of an LWEF that would create unacceptable risks to wildlife and/or regional ecosystems.
- F. The placement and location of a WEF would result in a conflict with, or compromise, or significantly change, the nature or character of the surrounding area.
- G. The operation of an LWEF would create unacceptable interference with any type of civilian or military radar systems.
- H. Conflicts, as determined by the Town Board, with the military's unrestricted ability to use the Restricted Air Space, including no flight hazards and/or use limitations. In addition, the Planning Board will consider whether construction or operation of the proposed WEF would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any military installation or branch of military in the State, and possibly result in a detriment to continued military presence in the State.
- I. Conflicts with any provisions of this Ordinance.

### **Section 8. WEF Post-License Approval Requirements.**

#### **8-1 WEF Certification.**

Prior to operation of any approved and constructed WEF, the Applicant must provide a certification that the project complies with applicable codes, industry practices and conditions of approval (where applicable).

## **8-2 Reservation of Authority to Inspect WEF.**

In order to verify that the holder of a license for a WEF and any and all lessees, renters, and/or licensees of it, have placed and constructed such facilities in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, Ordinances and regulations and other applicable requirements, the Town may inspect all facets of said license holders, renter's, lessee's or licensee's placement, construction, and maintenance of such facilities, including all turbines, towers, buildings, and other structures constructed or located on the site.

**8-2.1** WEFs shall not begin operation until all approvals required under this Ordinance shall have been obtained and all required certifications are provided.

**8-2.2** Following the issuance of any approval required under this Ordinance, the Town Board or its designee shall have the right to enter onto the Site upon which a WEF has been placed, at reasonable times, in order to inspect such WEF and its compliance with this Ordinance.

**8-2.3** After undertaking such inspection, the Town Board or its designated representative shall provide notice of any non-compliance with the terms of this Ordinance or the conditions of approval of any license issued hereunder and shall provide the Applicant or Applicant with a reasonable time frame to cure such violation, such time frame to be determined based upon the seriousness of the violation, its actual and/or potential impact upon public safety, and the actual and/or potential impact of the violation upon Town residents and/or local ecosystems.

## **8-3 WEF Construction Related Damage.**

The Applicant of any permitted WEF shall, to the extent practicable, repair or replace all real or personal property, public or private, damaged during the WEF construction.

The Applicant shall reimburse the WI DOT and/or Town (as appropriate) for any and all repairs and reconstruction to roads that are necessary due to the construction or decommissioning of the LWEF. A qualified independent third party or other qualified person, agreed to by the WI DOT and/or Town (as appropriate) and the Applicant, shall be hired to pre-inspect the roadways to be used during construction and/or decommissioning. This third party shall be hired to evaluate, document, and rate the road's condition prior to construction or decommissioning of the LWEF and again 30 days after the WEF is completed or removed.

A. Any road damage during construction that is done by the Applicant and/or one or more of its subcontractors that is identified by this third party shall be repaired or reconstructed to the satisfaction of the WI DOT and/or Town (as appropriate) at the Applicant's expense, prior to the final inspection. In addition, the Applicant shall pay for all costs related to this third-party pre-inspection work prior to receipt of the final inspection.

B. The surety for removal of a decommissioned WEF shall not be released until the Town Board is satisfied that any road damage that is identified by this third party during and after decommissioning that is done by the Applicant and/or one or more of its contractors or subcontractors has been repaired or reconstructed to the satisfaction of the WI DOT and/or Town at the Applicant's expense. In addition, the Applicant shall pay for all costs related to work of this third party's inspection prior to receipt of the release of the surety.

#### **8-4 LWEF Noise Impacts.**

Independent acoustical experts have determined that 35 dBA is a reasonable proxy to protect nearby citizens from harmful infrasound. As such, no part of the LWEF shall produce noise above 35 dBA LAeq for more than five (5) consecutive minutes, as measured at any WEF property line or residence. Each occurrence by individual turbines shall be a separate violation of this Ordinance, and the penalties (see 9-2) shall be cumulative.

If noise levels exceed 35 dBA for more than five (5) consecutive minutes, as measured at any WEF property line or residence, the problem turbine(s) shall be shut down within one business day of being directed to do so by the Town Board or their designee. The problem turbine(s) shall remain shut down until it can be demonstrated to the satisfaction of the Town Board (or their designee) that those turbines can be operated so as to not exceed 35 dBA for more than five (5) consecutive minutes, as measured at all WEF property lines, or proximate residences.

#### **8-5 LWEF Environmental Monitoring:**

The Applicant will permit post-construction environmental studies deemed appropriate by the Town Board. These will be funded by the Escrow Account. Post-construction field studies will include scientific assessments of regional nesting failures, and territory abandonment of special status species like raptors species, within two (2) miles of the LWEF. When these assessments are being done, only researchers involved with these studies will be legally allowed to touch carcasses. LWEF personnel who move carcasses without written Town approval will be subject to a fine pursuant to this Ordinance, as wind turbines do kill endangered and other highly protected species. During the life of the project every bird or bat carcass, or crippled bird or bat found anywhere within the LWEF, must be reported to the Town by the Applicant within seven (7) days.

#### **8-6 LWEF Decommissioning:**

The Town Board will review the projected Decommissioning costs every five (5) years. The LWEF Applicant will adjust their security to any changes from the original calculation. If the State Building Codes official condemns any portion of an LWEF, or if no electricity is generated from any turbines for three (3) consecutive months, the LWEF Applicant and/or property owner shall have three (3) months to remedy the safety issues or complete the decommissioning of the WEF, according to the approved plan.

**8-6.1** The Town Board may grant extensions of time for repair and/or maintenance, for good cause, such as the need to back-order parts that are not currently available from the supplier or the need to repair an LWEF damaged by a storm.

**8-6.2** Decommissioning shall include the complete removal of turbines, buildings, electrical components, cabling, roads, and any other associated facilities and/or structures, including below-ground items (e.g., foundations), to a depth of eight (8) feet below grade.

**8-6.3** Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

**8-7 WEF Complaints:**

The Town shall set up a procedure for filing and handling WEF complaints. The WEF Applicant shall initially be given a reasonable opportunity to resolve all complaints. The cost of such resolution shall be borne by the WEF Applicant. If resolution is not made in a reasonable time (as determined by the Town), the Town may utilize its Escrow Account to attempt to resolve any LWEF issues. The Town may establish a monitoring committee to oversee resolution of complaints regarding LWEFs.

**8-8 LWEF Lease Agreements.**

The Applicant shall legally file the entire lease document and a record of all signed leases shall be maintained by the Town Board.

**Section 9. Miscellaneous.**

**9-1 Fiscal Responsibility.**

**9-1.1** The Town Board may, at its discretion, request the most recent annual audited financial report of the licensee prepared by a duly licensed Certified Public Accountant during the review process. If such a report does not exist, the Town Board may, in its sole discretion, require a suitable alternative to demonstrate the financial responsibility of the Applicant and its ability to comply with the requirements of this Ordinance.

**9-1.2** No transfer of any LWEF, or license, or the sale of more than 30 percent of the stock of such entity (not counting sale of shares on a public exchange) shall occur without written acceptance by such entity of the obligations of the licensee under this Ordinance and the terms of the license and any related Developer's Agreement. Any such transfer shall not eliminate the liability of any entity for any act occurring during its ownership or status as licensee.

## **9-2 Inspection, Enforcement Procedures, and Penalties**

**9-2.1** Inspection. The Town Board, a retained expert, or another authorized representative of the Town, may make inspections or undertake other investigations to determine the condition of a WEF in the Town to safeguard the health and safety of the public and to determine compliance with this Ordinance, upon showing proper identification and providing reasonable notice.

**9-2.2** Violations. The following are violations under this Ordinance:

- A. Engaging in construction, installation, or operation of a WEF without a Wind Energy Facilities License granted by the Town Board or a developer agreement or both.
- B. Failure to comply with the applicable minimum standards and other terms of this Ordinance.
- C. Making an incorrect or false statement, including in the information and documentation submitted during the licensing process or during an inspection by the Town or its duly appointed representative, or a representative of another regulatory agency.
- D. Failure to comply with any conditions of an approval or license, or any agreements entered into as a condition of approving a license.
- E. Failure to take appropriate action in response to a notice of violation or citation, or other order issued by the Town.

**9-2.3** Hearings.

- A. Any person affected by a notice, order, or action under this Ordinance, or upon denial of an application for a license or license renewal, may request a hearing on the matter before the Town Board, provided such person files with the Town Clerk a written petition requesting the hearing and setting forth his or her name, address, telephone number, and a brief statement of the reason for requesting the hearing. Such petition shall be filed within 30 days of the date the notice, order, or action under sub. (4) is served or within 30 days of the date of the approval or denial of a license or an application for a renewal. Upon receipt of the petition, the Town Clerk may set a time and place for a hearing before the Town Board and, if a hearing is scheduled, shall give the petitioner and other interested parties written notice thereof.
- B. After a hearing under par. A, the Town Board, by a majority vote of the members present, shall sustain, modify or withdraw the notice, order, or action, or grant or deny the license or license renewal, depending on its findings as to whether the provisions of this Ordinance have been complied with. The petitioner shall be notified within 10 days, in writing, of such findings.

- C. The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore, shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every notice and order issued in connection with the case.

**9-2.4 Remedies.** The Town Board may take any appropriate action or proceeding against any person in violation of this Ordinance, including the following:

- A. Issue a stop work order.
- B. Issue a notice of violation and order that specifies the action to be taken to remedy a situation.
- C. Issue a citation.
- D. Refer the matter to legal counsel for consideration and commencement of legal action, including the assessment of forfeitures under sub. (6) and injunctive relief.
- E. Suspend or revoke the Wind Energy Facility License under sub. (5) in the event there are repeated exceedances of the standards or conditions incorporated into a Wind Energy Facility License or developer agreement.

**9-2.5 License Suspension or Revocation.** After giving notice and holding a hearing, the Town Board may suspend or revoke a Wind Energy Facility License for a violation under this Ordinance.

**9-2.6 Penalties:**

- A. Any person or entity who violates this Ordinance may be assessed a forfeiture of not less than \$500 per violation nor more than \$5,000 per violation and/or be subject to injunctive relief. Each day a violation exists is a separate violation.
- B. Any person or entity who violates this Ordinance shall pay court costs and reasonable attorney's fees associated with a forfeiture assessed under section 9-2.6A and for any action for injunctive relief sought by the Town. The remedies provided herein shall not be exclusive of other remedies.

**9-2.7 Non-Waiver.** A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any present or future violation(s).



**Section 10. Severability, Interpretation, and Abrogation****10-1 Severability.**

- A. Should any section, clause, provision, standard, or portion of this Ordinance be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.
- B. If any application of this Ordinance to a particular parcel of land, WEF or project is adjudged unconstitutional or invalid by a final order of a court of competent jurisdiction, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment, unless specifically required by the court.

**10-1.2** The provisions of this Ordinance shall be liberally construed in favor of the Town and shall not be construed to limit or repeal any other power now possessed by or granted to the Town.

**10-1.3** This Ordinance is not intended to repeal, annul or interfere with any easements, covenants, deed restrictions or agreements created prior to the effective date of this Ordinance.

**Section 11. Effective Date.** Following passage by the Town Board, this Ordinance shall take effect the day after the date of publication or posting as provided by Wis. Stat. § 60.80.

**Section 12. Applicability.** The requirements of this Ordinance shall apply to all WEFs proposed, operated, modified or constructed after the effective date of this Ordinance.

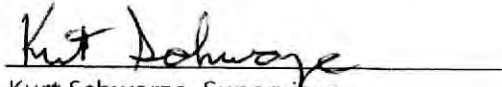
*Signatures appear on following page*

ADOPTED June 13<sup>th</sup>, 2023

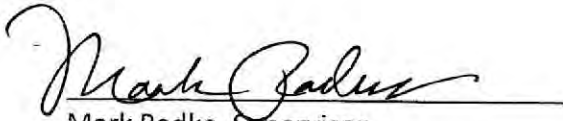
TOWN OF EAU PLEINE



Mark Landwehr, Town Board Chairperson



Kurt Schwarze, Supervisor



Mark Radke, Supervisor

Attested to as of June 13<sup>th</sup>, 2023



Deanna Landwehr, Town Clerk

This ordinance is effective upon posting and publication as required under s.60.80, Wisconsin statutes

This ordinance was posted at the Town Hall and on the Town Website on June 19<sup>th</sup>, 2023. It was published in The Record Review on June 21<sup>st</sup>, 2023.

EXHIBIT A

## References

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- "World Health Organization Sleep Disturbance" (<http://www.who.int/docstore/pch/noise/guidelines2.>)

# EXHIBIT C



FOLEY &amp; LARDNER LLP

## ATTORNEYS AT LAW

SUITE 5000  
 150 EAST GILMAN STREET  
 MADISON, WI 53703-1482  
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 MADISON, WI 53701-1497  
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 WWW.FOLEY.COM

WRITER'S DIRECT LINE  
 608.258.4203  
 mdlee@foley.com

CLIENT/MATTER NUMBER  
 121527-0106

September 5, 2023

Via Personal Service

Ms. Nadine Willett  
 Town Clerk  
 Town of Brighton  
 210433 State Highway 13  
 Spencer, WI 54479

**Re: Notice of Injury and Claim Against The Town of Brighton Pursuant to Wis. Stat. § 893.80**

Dear Clerk Willett:

**PLEASE TAKE NOTICE** that Marathon Wind Farm LLC (including and on behalf of itself and its affiliates, "MWF") hereby gives written notice of the circumstances giving rise to its claims against the Town of Brighton and its Town Board (collectively, the "Town"), MWF's claims against the Town, and an itemized statement of relief sought pursuant to Wis. Stat. § 893.80. MWF is a Delaware corporation with its principal place of business at 1501 McKinney Street, Suite 1300, Houston, TX, 77010.

MWF develops and maintains renewable energy systems, including wind energy systems. Its systems bring clean, low-cost energy to citizens of Wisconsin and other states. It has developed plans to establish wind energy systems in rural Marathon County, possibly including within the Town of Brighton.

On or about May 9, 2023, the Town enacted the "Town of Brighton Wind Energy Facility Licensing Ordinance," or Ordinance No. 17 (the "Wind Ordinance"). The Wind Ordinance is unlawful, causes severe damage to wind energy systems providers like MWF, and must be repealed immediately.

Section 66.0401(1m) of the Wisconsin Statutes states, "No political subdivision may place any restriction, either directly or in effect, on the installation or use of a wind energy system that is more restrictive than the rules promulgated by the commission . . ." "Political subdivision" is defined as "a city, village, town, or county." Wis. Stat. § 66.0401(1e)(c). The Town is therefore a political subdivision subject to the limitations of Wis. Stat. § 66.0401(1m).

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The term “commission” in Wis. Stat. § 66.0401(1m) means the Wisconsin Public Service Commission (the “PSC”). The PSC has adopted detailed regulations relating to wind energy systems. These are codified in the Wisconsin Administrative Code Chapter PSC 128 (“PSC 128”). Relevant to this discussion, PSC 128 states, “A political subdivision may not place any restriction, either directly or in effect, on the installation or use of a wind energy system except by adopting an ordinance that complies with this chapter and [Wis. Stat. §] 66.0401, and is not more restrictive than this chapter.” Wis. Admin Code § PSC 128.03.

On its face, the Wind Ordinance is more restrictive than PSC 128. Here are some examples of the Wind Ordinance’s excessive restrictions (this list is not exhaustive):

	<b>Wind Ordinance</b>	<b>PSC Chapter 128</b>
<b>Noise Limits (Maximum)</b>	35 decibels (Section 6-1.7), enforceable through shutdown orders (Section 8-4)	50 decibels (6am-10pm) 45 decibels (10pm-6am)  (PSC 128.14(3))
<b>Minimum Setbacks</b>	From the property line, the greater of: One mile; or Ten times the turbine height.  (Section 6-4)	From occupied community buildings or nonparticipating residences, the lesser of: 1,250 feet or 3.1 times the maximum blade tip height  From participating residences, nonparticipating property lines, public rights-of-way, and overhead communication/transmission lines: 1.1 times the maximum blade tip height.  (PSC 128.13)
<b>Monetary Compensation</b>	Wind Energy System (“WES”) Applicant must guarantee there will no loss in value to any real property within <u>2</u> miles of the WES, and must provide assurances to property	A WES operator must provide annual compensation to a nonparticipating residence within <u>0.5</u> miles of the facility. Assuming the facility has three or more turbines, the annual



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	<b>Wind Ordinance</b>	<b>PSC Chapter 128</b>
	owners that will have protection from losses. (Section 7.4)	payment to each residence must \$1,000 plus an inflation factor.  (PSC 128.33(3))
<b>Liability Insurance</b>	Town and its officers, employees, agents, etc., must be included as additional insureds on the WES's required general liability policy.  (Section 7-6)	Only turbine host property owners must be named as additional insureds on the required general liability policy.  (PSC 128.18(3)(c))
<b>Environmental Impact Statement</b>	Requires an Environmental Impact Study (EIS), with comments solicited from the WDNR, WDOT, WDHS, USFWS, and USACE.  (Section 6-3)	PSC 128 does not require any EIS for projects subject to municipal approval, since the Wisconsin Environmental Policy Act (WEPA) only applies to state agencies and all WDNR permits required for the project are "integrated actions" not requiring an EIS pursuant to Wis. Admin. Code NR 150.20.
<b>Design Criteria</b>	Prohibition on signage (Section 7-3.C)  Siting requirements regarding interference with television and other broadcasts, and requirements to move turbines if found to cause interference (Section 7-3.D)	No similar prohibition  Requires use of reasonable and "commercially available" means to remedy any interference with commercial or private communications  (PSC 128.16)
<b>Indemnification of Town Board</b>	Requires applicant to indemnify Town for the construction, operation, maintenance, repair, removal etc. of the WES.	A WES is only required to indemnify the owners of the property on which the facility is located for any damages or injury caused by the construction,





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	<b>Wind Ordinance</b>	<b>PSC Chapter 128</b>
	(Section 7-7)	operation, or decommissioning of the facility.  (PSC 128.11(2))
<b>Criteria for Permit Issuance</b>	Includes subjective criteria related to whether WES is contrary to a zoning designation, presents a net economic liability to the community, presents risks to public health, presents risks to wildlife or regional ecosystems, changes the character of an area, impacts radar systems, impacts use of restricted air space or a military installation.  (Section 7-10)	If application complete, a political subdivision may not unreasonably deny an application for a wind energy system, or impose unreasonable conditions as a part of an approval of a wind energy system.  (PSC 128.32(2))
<b>Construction Damage</b>	Requires reimbursement to the Wisconsin DOT and Town for damage to roads caused by construction or decommissioning of WES  (Section 8-3)	No similar provisions in PSC 128.
<b>Environmental Monitoring</b>	Requires post-construction studies funded by Applicant through Escrow Account as well as reporting requirements  (Section 8-5)	No similar provisions in PSC 128.
<b>Decommissioning</b>	Requires decommissioning based on condemnation by “state building codes official” or after 3 consecutive months of non-	No condemnation provision: decommissioning only required after 540 days of continuous non-generation or within 360 days of the



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	<b>Wind Ordinance</b>	<b>PSC Chapter 128</b>
	generation; decommissioning required within 3 months  (Section 8-6)	end of useful life of a wind generation system.  (PSC 128.19)

Thus, many key provisions of the Wind Ordinance violate both Wis. Stat. § 66.0401(1m) and Wis. Admin Code § PSC 128.03. The violations render the entire Wind Ordinance unlawful. Controlling Wisconsin case law supports this result. *See Ecker Bros. v. Calumet County*, 2009 WI App 112, 321 Wis. 2d 51, 772 N.W.2d 240 (Wis. Stat. § 66.0401 “is a state legislative restriction that expressly forbids political subdivisions from regulating . . . wind energy systems”).

The Wind Ordinance is not saved by virtue of the Town having granted itself “village powers” before enacting the ordinance. Wisconsin courts have long held that villages have “no power to deal by way of chapter ordinance with matters which are primarily of state-wide concern.” *Van Gilder v. City of Madison*, 222 Wis. 58, 83, 267 N.W. 25 (1936). If the state legislature has determined that a matter is of state-wide concern, that determination “is entitled to great weight.” *City of Fond du Lac v. Town of Empire*, 273 Wis. 333, 338, 77 N.W.2d 699 (1956).

MWF is directly harmed by the Wind Ordinance. The Wind Ordinance makes it effectively, if not literally, impossible to establish a wind energy system in the Town of Brighton. This contravenes state law in violation of the above authority and unlawfully restricts MWF’s ability to do business in the Town.

In light of these facts and the clear unenforceability of the Wind Ordinance, MWF has a claim for, and intends to file an action seeking, a declaratory judgment to enjoin enforcement of the Wind Ordinance and to strike it from the Town’s ordinances. The Town did not have the authority to enact the Wind Ordinance and thus cannot enforce it.

MWF therefore seeks the following relief:

- 1) A declaration enjoining enforcement of the Wind Ordinance.
- 2) A declaration striking the Wind Ordinance from the Town’s ordinances.
- 3) Reimbursement of all costs allowed under applicable law.



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Ms. Nadine Willett  
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Town of Brighton  
September 5, 2023  
Page 6

Please be aware that MWF is required to submit this notice to preserve its legal rights under Wisconsin law. MWF's strong preference is to find a solution that makes further legal action unnecessary and it would very much like to meet with the Town to discuss possible resolutions. For example, MWF is willing to work with the town on amending the Wind Ordinance so it complies with Wisconsin law in a manner similar to Marathon County Ord. Ch. 17.405. Please do not hesitate to reach out to me if the Town is interested in starting that dialogue. We hope that this matter may be resolved without further delay and expense.

Sincerely yours,

A handwritten signature in blue ink that reads 'Matthew D. Lee'.

Matthew D. Lee

# EXHIBIT D



FOLEY &amp; LARDNER LLP

## ATTORNEYS AT LAW

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 150 EAST GILMAN STREET  
 MADISON, WI 53703-1482  
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 608.257.5035 TEL  
 608.258.4258 FAX  
 WWW.FOLEY.COM

WRITER'S DIRECT LINE  
 608.258.4203  
 mdlee@foley.com

CLIENT/MATTER NUMBER  
 121527-0106

September 5, 2023

Via Personal Service

Deanna Landwehr  
 Town Clerk  
 Town of Eau Pleine  
 111630 Equity Street  
 Stratford, Wisconsin 54484

**Re: Notice of Injury and Claim Against The Town of Eau Pleine Pursuant to Wis. Stat. § 893.80**

Dear Clerk Landwehr:

**PLEASE TAKE NOTICE** that Marathon Wind Farm LLC (including and on behalf of itself and its affiliates, "MWF") hereby gives written notice of the circumstances giving rise to its claims against the Town of Eau Pleine and its Town Board (collectively, the "Town"), MWF's claims against the Town, and an itemized statement of relief sought pursuant to Wis. Stat. § 893.80. MWF is a Delaware corporation with its principal place of business at 1501 McKinney Street, Suite 1300, Houston, TX, 77010.

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On or about June 13, 2023, the Town enacted the "Town of Eau Pleine Wind Energy Facility Licensing Ordinance," or Ordinance No. 2023-1 (the "Wind Ordinance"). The Wind Ordinance is unlawful, causes severe damage to wind energy systems providers like MWF, and must be repealed immediately.

Section 66.0401(1m) of the Wisconsin Statutes states, "No political subdivision may place any restriction, either directly or in effect, on the installation or use of a wind energy system that is more restrictive than the rules promulgated by the commission . . ." "Political subdivision" is defined as "a city, village, town, or county." Wis. Stat. § 66.0401(1e)(c). The Town is therefore a political subdivision subject to the limitations of Wis. Stat. § 66.0401(1m).

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<b>Monetary Compensation</b>	Wind Energy System (“WES”) Applicant must guarantee there will no loss in value to any real property within <u>2</u> miles of the WES, and must provide assurances to property	A WES operator must provide annual compensation to a nonparticipating residence within <u>0.5</u> miles of the facility. Assuming the facility has three or more turbines, the annual



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	<b>Wind Ordinance</b>	<b>PSC Chapter 128</b>
	owners that will have protection from losses. (Section 7.4)	payment to each residence must \$1,000 plus an inflation factor.  (PSC 128.33(3))
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	<b>Wind Ordinance</b>	<b>PSC Chapter 128</b>
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	<b>Wind Ordinance</b>	<b>PSC Chapter 128</b>
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Sincerely yours,

A handwritten signature in blue ink that reads 'Matthew D. Lee'.

Matthew D. Lee