

**TOWN OF MORRISON  
WIND ENERGY SYSTEM ORDINANCE**

**1. TITLE AND AUTHORITY**

This Ordinance shall be known, cited and referred to as: the “Town of Morrison Wind Energy System Ordinance.” The Town of Morrison, by its Town Board, pursuant to Sections 60.22, 60.10(2)(c), 60.61, 66.0401 and 66.0403 of the Wisconsin Statutes: hereby repeals and recreates former Article XXIV entitled “Large, Medium, and Small Wind Energy System Ordinance” as adopted on May 13, 2008 and thereafter amended on July 13, 2010 and May 12, 2011; and hereby enacts the following Town of Morrison Wind Energy Ordinance which henceforth shall constitute Article XXIV of the Town of Morrison Code of Ordinances.

**2. PURPOSE AND APPLICATION**

The purpose of this Ordinance is to protect the health and safety of the public while not significantly increasing the cost or significantly decreasing the efficiency of wind energy systems in the Town of Morrison. The Town recognizes its responsibility to provide local administrative assistance to state and federal agencies charged with protecting the health, safety and welfare of the public. The Town of Morrison undertakes this responsibility while recognizing the limited number of county, state and federal agents assigned to protect the health and safety of the citizens of the Town of Morrison. This Ordinance shall at all times be administered in accordance with all state and federal statutes and regulations governing the subject of this Ordinance. This Ordinance applies to and requires that a WES License be issued before a Wind Energy System or an expansion of an existing or previously approved Wind Energy System is constructed. Provided however, the rules and regulations contained in this Ordinance are hereby deemed amended to provide the exemptions and modifications contained in PSC 128.60 and PSC 128.61 respectively, as to a “small wind energy system” as that term is defined at PSC 128.01(20).

**3. DEFINITIONS**

As used hereinbefore and hereinafter in this Ordinance, the following terms shall have the meanings indicated:

- 3.1 Commercial Communications shall mean and includes communications used by government and military entities for emergency purposes, licensed amateur radio service, and non-emergency communications used by agricultural, business, government, and military entities including aviation radar, commercial mobile radio service, fixed wireless service, global positioning, line-of-sight, microwave, personal communications service, weather radar, and wireless internet service.
- 3.2 Decommissioning and Decommission shall mean removal of all of the following: the above ground portion of the WES, including Wind Turbines and related WES facilities as defined in Section 3.13 below, except for access roads if removal has been waived by the property owner; and all below ground WES facilities as defined in Section 3.13 below except underground

collector facilities and those portions of concrete structures four (4) feet or more below grade.

- 3.3 FAA shall mean the Federal Aviation Administration.
- 3.4 Fee Schedule shall mean the separately promulgated and published document containing any standard per diem and any other standard cost or expense charge rates and charges constituting part of the reasonable reimbursable §7.7 Expense Charges payable to the Town relating to the Town's review and processing of an application for a Wind Energy System and any subsequent §7.7.4 "WES License Matter".
- 3.5 Hub Height shall mean, when referring to a Wind Turbine, the distance measured from ground level to the center of the turbine hub.
- 3.6 Licensee shall mean and include, depending upon the context of its use in this Ordinance: a person with a direct ownership interest in a WES, regardless of whether the person was involved in acquiring the necessary rights, permits, licenses and approvals or otherwise planning for the construction and operation of a WES; and/or at the time the WES is being developed, a person who is acting as a WES developer by acquiring the necessary rights, permits, licenses and approvals for or by planning for the construction and operation of a WES, regardless of whether the person will ultimately own or operate the WES. Thus Licensee includes both those persons who seek to obtain and those persons who ultimately hold a WES License issued pursuant to this Ordinance.
- 3.7 MET Tower shall mean a meteorological tower used for the measurement of wind speed.
- 3.8 Personal Communications shall mean and include wireless telecommunications, personal communications service, radio, television, wireless internet service, and other systems used for personal use purposes.
- 3.9 PSC shall mean the State of Wisconsin Public Service Commission.
- 3.10 PSC 128 shall mean and include State of Wisconsin Administrative Code Chapter PSC 128 and its particular provisions as expressly provided in the text of this Ordinance.
- 3.11 Public Hearing shall mean and include all Town Board meetings which include any consideration or discussion of a Wind Energy System application either as to its completeness or its approval or denial. Once an application has been filed the Town Board will not exercise any of its responsibilities, authority, power or any of the duties delegated to or vested in the Town Board by law concerning a WES application outside of a duly noticed Public Hearing. No aspect(s) of a WES application filing or notice of intent to file an application will be considered or addressed at any regular monthly or other special Town Board meeting which is not scheduled and expressly noticed as a Public Hearing or Public Meeting pursuant to Section 6.3 of this Ordinance.

- 3.12 Public Meeting shall mean the special Town Board meeting(s) conducted for the purpose of informing the public of the Town’s receipt of a pre-application notice or an application for a WES License, taking public comments, and if an application has been received then establishing a general public hearing schedule and resolution as required by Section 6.3 of this Ordinance. No aspect(s) of a WES application filing or notice of intent to file an application will be considered or addressed at any regular monthly or other special Town Board meeting which is not scheduled and expressly noticed as a Public Hearing or Public Meeting pursuant to Section 6.3 of this Ordinance.
- 3.13 Section or Sections when followed by a number shall mean the numbered section(s) or subsection(s) of this Ordinance.
- 3.14 Total Height shall mean, when referring to a Wind Turbine, the distance measured from ground level to the blade extended at its highest point.
- 3.15 Town shall mean Town of Morrison, Brown County, Wisconsin.
- 3.16 Town Board shall mean the Town of Morrison Town Board.
- 3.17 Wind Energy System and WES shall mean an electricity generating facility consisting of one or more Wind Turbines under common ownership or operating control, whose main purposes are to supply electricity to the site and/or to off-site customer(s). This definition includes all wind turbines, collector circuits, access roads, electric system interconnection facilities, operation or maintenance facilities, substations, MET towers, cables and wires and other buildings accessory and items ancillary to or part of any such System that converts and then stores or transfers wind energy into usable forms of electrical energy.
- 3.18 WES License shall mean the Town Board issued license necessary for the construction and operation of a wind energy system in the Town of Morrison.
- 3.19 Wind Turbine, Wind Turbines shall mean one (or more) small wind turbine(s) or large wind turbine(s), or a combination of both as part of the particular Wind Energy System.

#### 4. PSC CERTIFICATE WIND ENERGY SYSTEMS

Wind Energy Systems which are subject to the application filing and the certificate of public convenience and necessity requirements administered by the PSC (hereinafter referred to as a “PSC-WES”) shall nevertheless be subject to this Ordinance.

- 4.1 In the context of a PSC-WES, some but not all of the application requirements contained at Section 7.3 of this Ordinance apply to the PSC-WES applicant. The PSC-WES applicant shall submit to the Town a true, correct and complete copy of the original and all subsequent PSC-WES application(s) including but not limited to the final application which was submitted and determined to be complete by the PSC. The application information requirements of Section 7.3 of this Ordinance shall, upon the

Town's receipt of the complete PSC application, be amended to include: only those Section 7.3 application requirements not addressed in the complete PSC application; those Section 7.3 application requirements which could not have been considered by the PSC, under the PSC regulations, prior to or at the time the PSC made its final determination that the PSC-WES application was complete; and those requirements arising out of the powers delegated to the Town by Wisconsin Law which do not preclude or inhibit the installation or utilization of a WES which has been granted a certificate of convenience and necessity by the PSC.

- 4.2 Any WES License for a PSC-WES to be granted pursuant to this Ordinance:
  - 4.2.1 May be granted before, simultaneously, after, or subject to or conditioned upon the applicant acquiring a Certificate of Public Convenience and Necessity or a Certificate of Authority from the PSC (hereafter "Certificate").
  - 4.2.2 Shall not contain any term, condition, limitation or requirement which would preclude or inhibit the installation or utilization of a WES for which a Certificate has been issued by the PSC.
  - 4.2.3 Upon receiving a pre-application notice and thereafter, the Town shall actively participate in the PSC administrative process and may petition the Circuit Court for review of the PSC decision. The Town's participation in the PSC proceedings shall include: providing the PSC with information concerning the Town's comprehensive plan, land use and development; environmental; local roads; local infrastructure; archeological or historic concerns; endangered, threatened or special concerns for species or areas of the community; waterways and wetlands; storm water management; karst and other geological/hydro geological features; erosion control; agricultural; sewer and water; fire, EMS, law enforcement, security and traffic control; state and federal constitutional considerations; impacts upon the Town's budget, expenses, or costs; and taxes, payments in lieu of taxes and other anticipated revenue impacts.
  - 4.2.4 No term, condition, limitation or requirement contained in any WES License granted by the Town, shall more strictly govern the same subject matter that the PSC is required to consider and regulate in the granting of a Certificate to the PSC-WES applicant. This includes both: those matters which the PSC addresses; and those matters which by law the PSC could have addressed in the PSC administrative proceedings or PSC requirements in the Certificate granted to the PSC-WES applicant.
  - 4.2.5 When determining the Town WES License terms, conditions or provisions in the context of a PSC-WES pursuant to Section 7.6; as to any matter which was determined or could have been determined by the PSC in the Certificate, the Town's WES License considerations, terms, conditions and provisions shall be limited to: those that were not and could not have been addressed by the PSC; and those terms, conditions, limitations and restrictions contained in the PSC

certificate which may be adopted and incorporated by reference in the Town's WES License. Subject to the limitations set forth herein and in Sections 4.2.2 and 4.2.4, the Town's PSC-WES License may include:

- 4.2.5.1 Provisions reasonable and necessary to protect Public health and safety in the Town;
- 4.2.5.2 Provisions which do not significantly increase the cost of the PSC-WES and do not significantly decrease its efficiency;
- 4.2.5.3 Provisions that address the applicant's financial responsibility for maintenance of the PSC-WES;
- 4.2.5.4 Provisions that address the Town's role in monitoring or inspecting the PSC-WES to assure its compliance with both the Certificate and the Town WES License terms and conditions;
- 4.2.5.5 Provisions that create communication and resolution methodologies for addressing Town resident concerns or complaints;
- 4.2.5.6 Provisions that address the PSC-WES applicant's responsibility for removal of the PSC-WES pursuant to Section 8 of this Ordinance;
- 4.2.5.7 Provisions that address the PSC-WES applicant's payment of all public utility distributions, taxes, and/or payments in lieu of taxes to or for the benefit of the Town;
- 4.2.5.8 The Town's WES License may adopt and incorporate by reference some or all of the Certificate's terms, conditions, limitations and restrictions. Provided, however, any such reference in the Town's WES License shall: adopt the Certificate term, condition, limitation and restriction verbatim without alteration; and specify whether it adopts all or some of the Certificate's terms, conditions, limitations and restrictions, and if the latter, clearly select and specifically state those which are incorporated into the Town's WES License.
- 4.2.5.9 No term, condition, limitation or restriction contained in the Town WES License shall be more restrictive than the same term, condition, limitation or restriction which is contained or could have been included in the Certificate issued by the PSC.

## 5. **ZONING**

Wind Energy Systems may be constructed and operated and may be considered either as a principal or accessory use of the property in any zoning district and any area of the Town except: the R-residential, E-R estate residential, E-A estate agricultural, and B-1 business zoning districts;

and those areas of the Town identified and planned for future residential or commercial development as shown upon Figure 2-9 entitled “Future Land Use” and described in the text of the Town’s Comprehensive Plan adopted September 6, 2005. No WES License shall be granted by the Town Board if the proposed Wind Energy System site is to be placed upon an existing residential or commercial use property or a property primarily designated for future residential or commercial development upon the Figure 2-9 Future Land Use map that was adopted as part of the Town’s Comprehensive Plan on September 6, 2005; or as shown upon any such Future Land Use map after December 31, 2015 as part of a Town comprehensive plan that is updated as required pursuant to Wis. Stats. §66.1001(2)(i). A different existing principal or accessory use on the same lot shall not preclude the installation of a Wind Energy System on such lot. Wind Energy Systems that are constructed and installed in accordance with the provisions of this Ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

## 6. **WES LICENSE GENERAL PRINCIPLES AND PROCESS**

- 6.1 **General.** The Town Board will rely on the facts presented in each individual application situation and make case by case determinations: as to whether to grant a WES License for any particular Wind Energy System(s) or Wind Turbine; and as to the determination of any restrictions or conditions applicable to any such License. The Town Board shall not unreasonably deny an application for a Wind Energy System or impose unreasonable conditions. All applications received shall be available for public review at the Town Hall, local library and upon the Town’s website. Written public comments may be submitted to the Town Clerk. All written public comments received shall: be reviewed at the public hearings conducted by the Town Board; and be made part of the record of decision pursuant to Section 6.3.1 of this Ordinance. Public comment and participation opportunities will be provided at both the preliminary Public Meeting(s) and subsequent Public Hearing(s). The Public Meeting(s) shall be conducted to inform the public and take public comments prior to commencement of the application Public Hearing. Thereafter at the Public Hearing relevant evidence regarding the application may be proffered by interested members of the public at the application hearing sessions.
- 6.2 **Case by Case.** The facts of the particular situation shall dictate what restrictions or conditions are: needed to protect Public health and safety; and those other alterations, modifications, additions, restrictions, limitations, conditions or provisions not related to health and safety which do not significantly increase the cost of the Wind Energy System and do not significantly decrease its efficiency. The Town may also impose a restriction which allows for an alternative system of comparable cost and efficiency. The facts relevant to the WES License application must be sufficiently developed and presented by the applicant.
- 6.3 **Preliminary Meeting and Subsequent Hearings, Record of Decision.** Through an open Public Hearing process the Town Board shall determine whether an application is complete and whether a WES License will be granted. Before conducting its first Public Hearing, the Town Board shall conduct at least one pre-application filing Public Meeting to inform the public about the anticipated filing of an application for the

proposed Wind Energy System and obtain public comments concerning scheduling, processes and procedures the Town Board will use when conducting the application completeness and application consideration/determination Public Hearings which will be begin after the application is filed. At the Public Meeting the Town Board shall not consider, discuss or determine anything about the merits or approval/denial of the anticipated WES application. The Public Meeting is only for the purposes of informing the public that the Town has received notice that a WES application will be filed, taking some preliminary public comments, and creating a written resolution which shall thereafter be posted: at the three places normally utilized by the Town when posting notices pursuant to Wis. Stats. §60.80; and upon the Town's website. The Public Meeting resolution shall address scheduling, the methods the Town will use in its effort to provide the Section 7.2.7 applicant's notice to the entire community, the processes and the procedures to be utilized for subsequent Public Hearings concerning application completeness and application approval/denial, including but not limited to whether the Town may pursue a joint application review process pursuant to Section 7.1 below. The Public Meeting resolution shall also contain the Town Board's initial determination and an itemized statement in support of any advance deposit amount which may be required to be paid by the applicant upon filing the application pursuant to Section 7.2 below. As provided in §4.2.3, if the applicant is also seeking a PSC Certificate, then the Public Meeting resolution shall also address the nature and extent of Town's intended participation in the PSC Certificate proceedings. As to both the Public Meeting and the Public Hearing, the Town Board may only go into closed session upon due prior notice and then only for those purposes permitted and pursuant to the mandated procedures in Wis. Stats. §19.85. All Public Meetings, Public Hearings and any other meetings which may involve any Town Board discussions or other action(s) regarding any WES License application shall be scheduled and conducted as special Town Board meetings and the WES License application shall be taken up by the Town Board as the first agenda item at any and all of those special meetings. No evidence presentation, fact finding, discussion, debate, deliberation, written or verbal public comments or other action(s) regarding a WES License application shall be considered or conducted outside of a duly noticed special Town Board Public Meeting or Public Hearing.

6.3.1 **Record of Decision.** The Town shall create a complete record of the Town Board's decision making on a WES License application. If the Town denies the application the record of decision shall be maintained for at least seven (7) years after the decision is made. If the Town grants the application and issues the WES License, then the record of decision shall be retained for at least seven (7) years after the year in which the Wind Energy System is decommissioned. The record of decision shall include all of the following:

6.3.1.1 The complete application and all additions or amendments to the application.

6.3.1.2 A copy of all of the notices issued by the Town or the Applicant including those notices issued between them, issued to the general Public, and those otherwise required by law, including but not limited to: the applicant's pre-application notice delivered to all landowners within one mile of a planned Wind Turbine host property;

the applicant's notice issued to property owners and residents located within one mile of the proposed location of any Wind Energy System facility on the same day the applicant files the application; the applicant's notice of the process for making complaints and obtaining mitigation measures issued to all residents and landowners within 0.5 mile of the planned Wind Energy System facility which is to be issued before construction of the WES begins.

6.3.1.3 A copy of any notice or correspondence which the Town issues related to the WES License application.

6.3.1.3 A record of any Public Meeting conducted pursuant to PSC 128.30(6)(c) and any Public Hearing related to the WES License application. The record may be an electronic recording, a transcript prepared from an electronic recording, or a transcript prepared by a court reporter or stenographer.

6.3.1.4 All documents or evidence submitted by meeting or hearing participants.

6.3.1.5 Copies of any correspondence or evidentiary material that the Town Board considered in relation to the WES License application, including but not limited to copies of all written public comments submitted under PSC 128.30(6)(b).

6.3.1.6 Copies of minutes of any Town Board or subcommittee meetings held to consider or act on the WES License application.

6.3.1.7 A copy of the Town Board's written decision issued pursuant to PSC 128.32(3)(a).

6.3.1.8 All other materials that the Town prepared to document its decision-making process.

6.3.1.9 A copy of the version of this Ordinance cited in or applicable to the decision.

6.3.2 **Town Board Actions.** At all times following the Town's receipt of a WES License pre-application notice, Town Board action shall be taken only by motion, at a duly noticed special Town Board meeting scheduled as a Public Meeting or Public Hearing. All motions shall be duly recorded in the minutes. The Town Board's final decision to grant or deny the WES License application shall be contained in a separate written document entitled "Decision". The Decision document shall include findings of fact supported by the evidence in the hearing record. If the WES License application is denied, then the Decision document shall include a statement of the specific reason(s) for denial. If the WES License application is approved, but approved with conditions, requirements or limitations, then a detailed written statement of the WES License terms, conditions, limitations and requirements shall be included in the Decision document.

6.4 **General Limitation.** The terms and conditions incorporated into the WES License shall be limited to those which: (1) serve the preservation and protection of Public health and safety; or (2) do not significantly increase the cost of the Wind Energy System and do not significantly decrease its efficiency; or (3) allow for an alternative energy system of comparable cost and efficiency.

6.5 **Presumption.** Generally, the laws of the State of Wisconsin favor granting a WES License. This Ordinance shall be administered to promote the State of Wisconsin's



interest in developing and maintaining its Wind Energy System based renewable energy resources while preserving and protecting public health and safety in the Town.

- 6.6 **Decision Distribution.** The Town Clerk shall provide a certified duplicate copy of the Town Board's final Decision document to both the applicant and the PSC. If the Decision approves the WES License application the Town Clerk shall provide the applicant with two certified duplicate copies of the Town Board's Decision. The applicant is required to record one of the duplicate certified copies with the Brown County Register of Deeds.
- 6.7 **Post-Construction Filing Requirement.** Within ninety (90) days of the date a Wind Energy System commences operation, the WES License holder shall file with the Town and PSC an as-built description of the WES, an accurate map of the WES showing the location of all Wind Turbines and other WES facilities, geographic information system information showing the location of all Wind Turbines and other WES facilities, and current information identifying the owner of the Wind Energy System. In these filings the WES License holder shall label each Wind Turbine location with a unique identifier consistent with the information posted at the Wind Turbine location under PSC 128.18 (1) (g).
- 6.8 **Modifications To An Approved Wind Energy System.** A WES License holder shall not make a material change to the approved design, location or construction of a Wind Energy System without prior written approval granted pursuant to a resolution of the Town Board. The WES License holder shall submit an application for material change to the Town Clerk. Before conducting a Public Hearing on a modification application, the Town Board shall duly notice and conduct at least one Public Meeting to: obtain comments on and inform the public about a proposed material change to an approved Wind Energy System; determine the Public Hearing schedule; and determine any deposit for reimbursement to the Town for any actual and necessary expenses incurred by the Town as provided in Sections 7.2 and 7.7 below. The Public Hearing concerning the material change application shall be conducted by the Town Board pursuant to Sections 6.1-6.7 above. The Town Board shall not reopen the merits of its earlier approval; instead the hearing shall consider only those issues relevant to the proposed material change. Subject to the limitations in PSC 128.35, the application for material change shall: be submitted containing only the relevant material change information required pursuant to Section 7.3 below; be subject to the relevant application issues provisions of Section 7.4; be subject to the notice requirement of Section 7.2.7; be subject to the relevant considerations and provisions of Sections 7.6, 7.6.1 and 7.6.2; and contain all information necessary to understand the requested material change.

## **7 PROCEDURE AND FEE SCHEDULE**

- 7.1 **Pre-application/Joint Application Review.** Upon receiving a PSC 128.105 pre-application notice, the Town Board shall schedule a special Town Board meeting to inform the public of the notice received and the content of the notice. If the proposed Wind Energy System is proposed to be located in more than one political subdivision, then the issue of conducting joint application review and consideration hearings with another affected political subdivision shall also be considered. Regardless of whether the applicant has requested joint application review in the pre-application notice, the Town Board shall begin the process of considering whether the public interest may be best served by jointly conducting some portion(s) or all of the application review process. Subsequent hearings concerning joint application review may be conducted. If the applicant has requested joint application review then the Town Board shall pass a resolution approving or denying the applicant's request within sixty (60) days of the Town's receipt of the applicant's pre-application notice. If the Town Board elects to attempt to proceed with joint application review, then the process for joint application review must be established and agreed upon by and between the Town and other political subdivisions participating in the joint application review process within ninety (90) days of the Town's receipt of the applicant's pre-application notice. The joint application review process may be a process adopted by agreement of the Town and other political subdivisions or may involve an agreement between the Town and other political subdivisions to follow the review process of the Town or another political subdivision when conducting the review process concurrently. If the Town Board has passed a resolution electing joint application review with another political subdivision, the applicant shall file a joint review application and the application review and determination will be conducted consistent with the joint review process adopted by the Town and other participating political subdivisions. The resolution electing joint application review shall also include the required establishment of a joint monitoring committee to oversee resolution of complaints concerning the WES pursuant to PSC 128.41(3).
- 7.2 **Application Filing and Post Filing.** Unless otherwise provided by law, the application shall contain and include the information required pursuant to §7.3 below. The original application and all supporting documents along with five (5) complete and legible copies of the non-electronic application and all supporting documents shall be submitted to the Town Clerk. To enable free Public access to the documentation submitted, the original and one of the copies shall be retained by the Clerk at the Town Hall, and another copy shall be made available at the local library identified in the notice published pursuant to Section 7.2.1 below. The other three (3) copies of the documentation shall be immediately delivered to the Town Board. The applicant shall also simultaneously file an electronic version of the entire application with the Town Clerk and that electronic copy shall be posted upon the Town's website. Upon filing a WES application, the applicant shall deposit any required advance deposit sum with the Town Clerk. Any such required advance deposit shall be: determined by the Town Board as part of the Town Board Public Meeting resolution passed pursuant to Section 6.3 above; held in trust by the Town; and utilized as provided in Section 7.7 below to

reimburse the Town for the Town's initial reasonably foreseeable estimated expenses relating to the Town's initial review and processing of the application to determine whether the application is complete. Before the application is determined to be complete or at any time thereafter, if the applicant withdraws the application or declines to proceed with the application then any amount of the initial advance deposit not subject to set off by the Town for reimbursement of the Town's reasonable expenses relating to the Town's review and processing of the application shall be refunded to the applicant by the Town.

**7.2.1 Clerk Notice Publication.** As soon as possible after receiving the application, the Town Clerk shall publish a class 1 notice under Wisconsin Statutes Chapter 985, stating that an application for approval has been filed with the Town. That notice shall also include: a brief description of the proposed Wind Energy System and its proposed location; the locations where copies of the application are available for public viewing (the Town Hall, local library and at the Town's website); the method(s), time period(s) and processes for the submission and Town Board's consideration of public comments (including both documentary and hearing testimony submissions); and the approximate schedule for review of the application both as to its completeness and the process for determining whether the application will be granted or denied. The notice shall also inform the public whether there is more than one political subdivision which has jurisdiction over the proposed Wind Energy System and if so, whether the Town has received, approved or denied the applicant's request asking for joint application hearings or whether the Town may consider by its own motion conducting any joint application review hearings with any such other jurisdiction.

**7.2.2 Time Limit Application Completeness.** Within forty five (45) days of the date the application and supporting documents are filed with the Clerk, the Town Board shall review the submitted documents and commence the Public Hearing to determine whether the application is complete. An application is considered filed the day the applicant notifies the Town Clerk in a separate writing that all of the application materials have been filed.

**7.2.3 Application Completeness Determination.** The Town Clerk shall issue a written notification document to the applicant concerning the Town Board's determination of the completeness or incompleteness of the WES License application. If the Town Board determines that the application is incomplete, the notice document issued to the applicant shall state the reasons for such determination. An additional 45 day completeness review period shall begin the day after the Town receives the applicant's responses to all items cited as reasons for Town Board's initial determination that the application is incomplete. If the Town Board determines that the application is complete, then a written notice document shall be issued to and inform the applicant of that completeness finding and the date, time and place when and where the WES License phase of the Public Hearing will commence. Upon appeal, if the PSC determines that the Town has unreasonably withheld its determination that an application is complete, then the PSC may treat the Town's application completeness decision as a decision to disapprove the WES License application.

7.2.4 **Application Supplementation and Re-filing.** An applicant may supplement and re-file an application that the Town Board has determined to be incomplete. There is no limit to the number of times that an applicant may re-file an application for a WES License. The Town shall not determine an applicant's minor modification to an application to constitute a new application for purposes of this Ordinance. Provided however, in all instances of supplementation and re-filing the applicant shall submit both the modified document and a separate compare version showing/highlighting the modified elements of and all changes made to the previously filed application.

7.2.5 **Application Completeness Dispute.** If the applicant disagrees with the Town Board's initial determination or wishes to deviate from the application requirements stated in this Ordinance the applicant shall proceed pursuant to Section 7.4 below.

7.2.6 **Application Completeness Default.** If the Town Board fails to determine and issue a written notice regarding whether an application for a WES License is complete within forty five (45) days after the application is filed with the Town Clerk, then the application shall be considered automatically by operation of law to be complete.

7.2.7 **Application Notice by Applicant.** On the same day an applicant files a WES License application with the Town Clerk, the applicant shall use commercially reasonable methods to provide written notice of the application filing to all property owners and residents located within one (1) mile of the proposed location of the Wind Energy System. The content of the applicant's notice shall include: a complete description of the WES, including the number and size of the Wind Turbines; a map showing the locations of all proposed components of the WES; the proposed timeline for construction and operation of the WES; locations where the application is available for public review; and the applicant's contact information. The applicant shall provide a copy of the applicant's notice to the Town Clerk at the time the application is filed. The Town Clerk shall then: provide a copy of the applicant's notice to the local media as a press release from the Town; post the applicant's notice upon the Town's website; post the applicant's notice at the three locations in the Town utilized for the posting notice of Town Board meetings; and thereafter provide such other and further notice of the application filing or copies of the applicant's notice as determined by the Town Board in the Section 6.3 Public Meeting resolution.

7.2.8 **Requests ForAdditional Information.** The Town Board may request additional information necessary to understand the Wind Energy System even after determining that an application is complete. The applicant shall provide additional information in response to all reasonable requests received from the Town. The applicant's response to all requests for information made subsequent to the determination that the application is complete, shall be timely, accurate and a complete response.

7.3 **Application Information.** The following information shall be provided by the applicant as and for the application and shall be submitted by the applicant with the

applicant's written assurance that the information contained in the application is accurate:

- 7.3.1 the name(s), mailing address(es), and telephone number(s) of the applicant;
- 7.3.2 the street address, parcel number(s) and the legal description of the proposed WES site;
- 7.3.3 if the applicant is an entity, then the names, addresses and telephone numbers of all equity holders, officers, registered and authorized agents shall be provided;
- 7.3.4 a statement describing the general character, features, process and timetable for completion of construction and the commencement of operation of the WES;
- 7.3.5 a general development plan showing: the tract boundaries and a statement of the total acreage of the tract, significant physical features of the tract, what if any expert studies have been or may be conducted regarding the tract to identify significant physical features of the tract (e.g. depth of soil to bedrock, elevations, Karst, wetland and water features), and zoning districts adjacent to the proposed project as depicted on an accurate map (prepared by a registered surveyor when necessary and appropriate under the circumstances) of the project area drawn to scale no less than 1/16<sup>th</sup> inch equals one foot, showing the nature, use and character of abutting properties;
- 7.3.6 Wind Energy System description, maps showing the locations of all proposed Wind Energy System components, and all construction plans;
- 7.3.7 a detailed operations plan describing both regular and emergency operating plans developed in collaboration with appropriate first responders, provided that these plans may be filed using confidential filing procedures as necessary;
- 7.3.8 a complete WES maintenance plan;
- 7.3.9 a technical description of the Wind Turbines and Wind Turbine sites, and the specifications concerning any ancillary equipment utilized to operate, monitor and control the Wind Turbines and the interconnection of the Wind Energy System to the utility grid system;
- 7.3.10 a written statement issued by an engineer of the interconnecting utility or other licensed qualified engineer stating that the WES to be installed and the applicant's operating and maintenance plans for the WES provide safeguards for the health and safety of the applicant, the applicant's employees and agents and the public which are consistent with the best current reasonably available practices to protect the safety and health of the public, and exemplify the best current industry standard health and safety practices as to the design, construction, equipment and operation of the WES;

- 7.3.11 a general outline of the organizational structure of the entity(ies) that will own and operate the WES;
- 7.3.12 an economic feasibility statement detailing and demonstrating the economic viability of the WES venture;
- 7.3.13 information concerning the financial responsibility of the proposed WES License holder and the applicant's proposal for providing the required financial assurance and proof of the applicant's ability to pay for the necessary cost to decommission the WES;
- 7.3.14 a decommissioning and site restoration plan showing that the WES License holder will be able to comply with PSC 128.19;
- 7.3.15 a representative copy of all notices issued by the applicant pursuant to PSC 128.30(5), PSC 128.105(1)(a) and PSC 128.42(1).
- 7.3.16 information regarding the planned use and modification of roads within the Town during construction, operation and decommissioning of the Wind Energy System, including a process for assessing road damage caused by WES activities and for conducting road repairs at the applicant's expense;
- 7.3.17 a list of all county, state and federal permits required to construct and operate the Wind Energy System;
- 7.3.18 information regarding the anticipated effects of the Wind Energy System on both existing line-of-sight Commercial Communications and Personal Communications and those reasonably anticipated to be in use in the Town when the WES begins operation;
- 7.3.19 information regarding anticipated impact(s) of the Wind Energy System on local infrastructure;
- 7.3.20 information regarding noise anticipated to be attributable to the Wind Energy System;
- 7.3.21 information regarding any shadow flicker or ice shedding anticipated to be attributable to the Wind Energy System;
- 7.3.22 information regarding the anticipated effects of the Wind Energy System on existing land uses within 0.5 mile of the WES;
- 7.3.23 information regarding the anticipated effects of the Wind Energy System on airports and airspace;

7.3.24 information about whether applicant has consulted with and received non-binding recommendations for constructing, operating or decommissioning the proposed Wind Energy System from a state or federal agency, and whether the applicant has incorporated such non-binding recommendations into the design of the wind energy system; and

7.3.25 any other information necessary to understand the construction, operation and decommissioning of the proposed Wind Energy System.

7.3.26 information identifying all interconnecting utility(ies) and a summary or copy(ies) of any interconnection agreements with any interconnecting utility(ies).

7.4 **Applicant Request For Application Exceptions.** If any requirement of Section 7.3 of this Ordinance as to the number of copies of any particular aspect of the applicant's submission, or as to any information requested from the applicant pursuant to Section 7.3 is viewed by the applicant as unreasonable in the context of the Wind Energy System's particular circumstance(s); or if there is a dispute as to whether the application submitted by the applicant is complete; then the applicant may, upon filing the application or at any time thereafter, make a separate written request addressed to the Town Board seeking an exception to any such information request, or a determination that the application is complete as is.

7.4.1 The applicant's written request shall specify in detail and document where possible both: the nature of the information exception(s) requested or the matters of dispute; and all of the reasons supporting the applicant's request.

7.4.2 The Town Board shall schedule and place the applicant's request upon the agenda of the next Town Board Public Meeting (if request or dispute arises pre-application filing) or Public Hearing (if request or dispute arises post-application filing).

7.4.3 The Town Board shall allow or deny the applicant's requests by a specific motion recorded in the minutes addressing each applicant request as the Town Board deems appropriate under the circumstances.

7.5 **Public Hearing Time Limits.** The Town Board shall commence a Public Hearing and approve or disapprove an application for a WES License no later than ninety (90) days following issuance of the application completeness determination by the Town Board, unless the time for approval or disapproval is extended as provided in Section 7.5.1 below. Provided however, nothing precludes the applicant and the Town Board from agreeing to any extension(s) deemed necessary to make a full, complete hearing record. Any extension agreed upon by the applicant and Town Board shall be in a separate writing signed by the applicant's authorized representative and the Town Chairperson.

7.5.1 Any combination of the following extensions may be granted by the Town Board, provided that the total of these extensions shall not exceed ninety (90) days:

7.5.1.1 An extension of up to 45 days if the Town Board needs additional time to determine whether to approve or deny the WES License application.

7.5.1.2 An extension of up to 90 days if the applicant makes a material modification to the WES License application.

7.5.1.3 An extension of up to 90 days for good cause specified in writing by the Town Board.

7.6 **Considerations For Determination and Content of WES License.** When determining any terms, conditions or provisions to be included in a WES License, the Town shall consider the information provided in the application and adduced at the Public Hearing, in the context of the standards and criteria set forth in Sections 7.6.1 and 7.6.2 below. To be clear, Sections 7.6.1 and 7.6.2 are basic lists of examples of information, analysis and WES License considerations and contents which may or may not be relevant to a particular WES License application, depending upon the particular circumstances. The following lists at Sections 7.6.1 and 7.6.2 below: contain information and considerations that don't apply in some cases; are not exclusive or exhaustive of any other legitimate considerations; and are not intended as a litmus test whereby any application or WES License must necessarily contain, address or satisfy all of the following. Generally the Town may not 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 PSC in PSC 128. However, under individual exceptional or unusual situations, requirements or restrictions which are otherwise consistent with law may be applied to an individual Wind Energy System or Wind Turbine that may be more restrictive, greater or different from those provided in PSC 128. To be lawful, a Town imposed restriction directly or indirectly on the installation or use of a WES must satisfy one of the following conditions: it serves to preserve or protect public health or safety; it does not significantly increase the cost of the system or significantly decrease its efficiency; or it allows for an alternative system of comparable cost and efficiency. This Ordinance offers the following considerations and guidelines for both the applicant and the Town Board's assistance respectively when applying for and considering granting a WES License:

7.6.1 Considerations for Determination. The applicant and Town Board may address and consider:

7.6.1.1 what the Town's Comprehensive Plan recommends for the area in question;

7.6.1.2 the existing uses of property within the general area of the property in question;



- 7.6.1.3 the zoning classification of the property within the general area of the property in question (i.e. adjacent zoning districts);
- 7.6.1.4 the trend of development, if any, in the general area of the property in question, including recent zoning changes which have taken place in the immediate area, if any;
- 7.6.1.5 whether the property in question is suitable for the proposed use considering any existing Karst, wetlands, water, geological, topographical or any other particular or peculiar natural features of the property or existing improvements upon the property;
- 7.6.1.6 the effect granting the WES License will have on adjacent properties;
- 7.6.1.7 the effect granting the WES License may have on the Town's infrastructure;
- 7.6.1.8 whether there are any proposed public improvements which may affect the property;
- 7.6.1.9 what, if any, conditions should be attached to the granting of the requested WES;
- 7.6.1.10 whether a solar system or other available alternative Wis. Stats. §196.38 (1) (h) "renewable resource" system, of comparable cost and efficiency, should instead be permitted in lieu of the WES applied for;
- 7.6.1.11 whether the applicant has made reasonable efforts to ascertain and accommodate any land use or commercial enterprise located on a nonparticipating property within 0.5 mile of a proposed Wind Turbine site;
- 7.6.1.12 whether the design of the Wind Energy System reasonably minimizes the conversion of land from agricultural use;
- 7.6.1.13 whether the design of the Wind Energy System satisfies the applicable height and setback requirements contained at PSC 128.13 including but not limited to those which require the applicant to work with the Town and owners of participating and nonparticipating properties to site the Wind Turbines to minimize individual hardships;
- 7.6.1.14 whether the design of the Wind Energy System minimizes shadow flicker at a residence or occupied community building to the extent reasonably practicable;

- 7.6.1.15 whether the design of the Wind Energy System and the location of the Wind Turbines shows that the applicant: has used reasonable efforts to avoid causing interference with Commercial Communications and Personal Communications in use; and has completely avoided constructing Wind Energy System facilities within existing line-of-sight communication paths used by government or military entities to provide services essential to protect public safety;
  - 7.6.1.16 whether the stray voltage testing and protocol requirements of PSC 128.17 have been met;
  - 7.6.1.17 whether the construction, operation and maintenance plan for the Wind Energy System minimizes soil compaction, topsoil mixing and damage to drainage systems on agricultural land;
  - 7.6.1.18 whether the applicant has obtained all required driveway and culvert permits from the Town;
  - 7.6.1.19 whether the design and operational plan for the WES complies with the noise standards of PSC 128.14 under the WES's planned operating conditions;
  - 7.6.1.20 whether the design and operational plan for the WES addresses and minimizes the risks of damage or loss attributable to ice shedding; and
  - 7.6.1.21 such other and further considerations as may be relevant under the circumstances concerning the WES or any particular Wind Turbine.
- 7.6.2 **Considerations For WES License Content.** Terms, conditions and provisions which may be appropriate for inclusion into a WES License are limited to those which either: serve the preservation and protection of Public health and safety; or do not significantly increase the cost of the WES and do not significantly decrease its efficiency. Those may include, but are not limited to:
- 7.6.2.1 the materials, colors, textures, and screening as to: the Wind Turbines; any buildings or structures; and landscaping related to the WES; all in consideration of the natural setting and existing neighboring environment;
  - 7.6.2.2 maintenance of the WES Wind Turbines;
  - 7.6.2.3 maintenance of the buildings, structures, ancillary equipment and appurtenances related to the WES;

- 7.6.2.4 assuring that all WES lighting complies with the standards established by the FAA but does not go beyond that lighting which may be required by the FAA; and requiring that shielding or control systems approved by the FAA are in place to reduce visibility of WES lighting to individuals on the ground;
- 7.6.2.5 affixing signs for identification or advertising upon the WES or in the area of the WES;
- 7.6.2.6 WES speed controls, braking and backup systems;
- 7.6.2.7 code compliant electrical components;
- 7.6.2.8 electrical controls, control wiring and their nature and location (wireless, underground, above ground, etc.);
- 7.6.2.9 the applicant's insurance coverage(s) and limit(s) for general liability arising from the construction, operation or decommissioning of the WES, including property damage or bodily injury and naming the applicant and the property owner as named insured persons under the policy;
- 7.6.2.10 whether construction of the WES may require repairs or reconstruction of public roads, culverts or natural drainage ways, and if so, to whom the responsibility for any such repair or reconstruction costs should be assigned;
- 7.6.2.11 any disruption of private or public drain tile fields and who bears responsibility for the repair and reconnection or diversion necessary to restore the drainage of the properties in the area to its original state;
- 7.6.2.12 setback and separation of the WES in the context of human occupied structures, public road rights of way, adjoining improvements and property lines;
- 7.6.2.13 noise generated by the WES;
- 7.6.2.14 Total Height, Hub Height and ground clearance from the blade tip of any Wind Turbine;
- 7.6.2.15 interference with electromagnetic Commercial Communications and Personal Communications, including the requirements that: initially the owner shall use reasonable efforts to avoid causing interference with Commercial Communications and Personal Communications in use when the WES begins operation; and subsequent to beginning operation of the WES, the applicant use reasonable and commercially

available technology to both mitigate interference with Personal Communications that were not in use when the Wind Energy System began commercial operation if the WES is causing the interference and the Personal Communications interference occurs at a location at least 0.5 mile from the Wind Turbine and to mitigate interference with Commercial Communications, and that if a new mitigation solution becomes commercially available before the WES is decommissioned then as to Personal Communications and/or Commercial Communications the new mitigation solution may be required to be implemented as to qualified properties if the original mitigation solution that was implemented is only partially effective;

- 7.6.2.16 shadow flicker mitigation as to any qualifying non participating residence or occupied community building as required by PSC 128.15(3);
- 7.6.2.17 ice shedding;
- 7.6.2.18 climb ability of the Wind Turbine tower(s);
- 7.6.2.19 security regarding access to the Wind Turbine tower(s), electrical equipment, buildings and/or structures related to the WES;
- 7.6.2.20 warning signage designed to protect the Public;
- 7.6.2.21 regular inspections and maintenance of the WES: by whom; how often; what, if any, documentation is required; inspection and maintenance documentation creation, delivery, retention and access;
- 7.6.2.22 availability of assistance in the event of an emergency concerning the WES and any requirement for emergency contact(s) to be utilized by the Town in the event of an emergency;
- 7.6.2.23 recordkeeping policies, practices and procedures concerning inspection and testing records, repair and maintenance records, complaints, claims, incidents, including, but not limited to, occurrences which give rise to any insurance claim;
- 7.6.2.24 recordkeeping regarding operational interruptions or disruptions;
- 7.6.2.25 specifications, drawings, manuals, designs and other documents containing information regarding the WES installed upon the premises including all ancillary equipment and interconnecting cables, wires and apparatus;

- 7.6.2.26 all utility interconnection applications, agreements and other documents regarding the WES and the interconnecting utility;
- 7.6.2.27 authorization and consent granted by the applicant to the Town Board or the Town Board's authorized agent to inspect, copy and procure copies, duplicates or other reproductions of all records pertaining to the WES, including without limitation all information as may be contained in the records of the interconnecting utility;
- 7.6.2.28 verification that the design, construction and operation of the WES will be in full compliance with all state and federal laws, including but not limited to: the national electric safety code, Wisconsin Administrative Code PSC 119 and PSC 128, the Wisconsin Electrical Safety Code, and the requirements of the interconnecting utility;
- 7.6.2.29 whether as to the design, construction and operation of the WES, the applicant is engaging in the best current industry practice(s) which are available, commercially feasible and reasonably necessary to assure the safety, protection and health of the public;
- 7.6.2.30 written verification from the interconnecting utility that the protective equipment settings and anti-islanding testing, including all anti-islanding and power quality protective systems, have been examined, tested and certified as suitable for approval and interconnection of the WES to the interconnecting utility consistent with protection of the health and safety of the public;
- 7.6.2.31 require that the construction, operation and maintenance plans and the execution of those plans for the WES minimize: soil compaction, topsoil mixing and damage to drainage systems on agricultural land;
- 7.6.2.32 require the applicant to establish and maintain liaison with the Town, its fire department and the Brown County Sheriff's department and other appropriate first responders serving the WES to create effective emergency plans that include: a list of the types of wind energy emergencies that require notification to the Town, the public and others; current emergency contact information for first responders and for the applicant including names and phone numbers, procedures for handling different types of WES emergencies, including written procedures that provide for shutting down the wind energy system or a portion of the system as appropriate; duties of the applicant and of first responders in the event of a WES emergency; an emergency evacuation plan for the area within 0.5 mile of any WES, including the location of alternate landing zones for emergency services aircraft; and require that current copies of the emergency plan be distributed to the Town, fire, police and other first responders as identified by the Town;

- 7.6.2.33 require that the applicant establish and provide annual training for the Town's fire, police and other appropriate first responders regarding responding to a WES emergency, until the WES has been fully Decommissioned;
- 7.6.2.34 require that the emergency plan created pursuant to Section 7.6.2.32 be reviewed at least annually to update and improve the plan as needed;
- 7.6.2.35 require that all applicants/WES Licensees and their successors and assigns provide reasonably acceptable financial assurance: of their ability to pay for the actual and necessary costs to Decommission the Wind Energy System; and to ensure that all funds necessary for the actual and necessary costs of Decommissioning are in place and will remain available to fully finance Decommissioning throughout the life of the WES through to the completion of all required Decommissioning activities after the WES has reached the end of its useful life, has been abandoned or otherwise is no longer lawfully allowed to remain in place. The applicant/WES Licensee shall provide reasonably acceptable financial assurance of the required ability to pay before commencing any major civil construction activities such as blasting or foundation construction. The financial assurance shall be provided as a bond, deposit, escrow account, irrevocable letter of credit, or some combination of those financial assurances that will ensure the availability of funds for Decommissioning throughout the expected life of the WES and through to the completion of all required Decommissioning activities. The financial assurance shall place the Town in a secured position and require that any secured funds will only be used for Decommissioning the WES until either the Town Board has determined that all required Decommissioning activities have been completed or until the Town Board passes a resolution approving the release of the secured funds, whichever is earlier. The financial assurance shall also allow the Town to access funds for the purpose of Decommissioning the WES if the applicant fails to perform all required Decommissioning activities in the manner or when required. The amount of financial assurance shall be the estimated actual and necessary cost to perform and complete all required Decommissioning activities. That estimated cost shall be the average of the three cost estimates of the actual and necessary cost to Decommission the WES. Three Decommissioning cost estimates shall be obtained from responsible, reliable, professional contactors selected and approved by both the applicant and Town Board. In addition to the foregoing, any WES License granted shall also expressly require that during the useful life of the WES, the Town Board may periodically, but not more than once every five years, request information from the WES Licensee regarding industry costs for

Decommissioning. If the Town Board finds that the future anticipated cost of Decommissioning the licensed WES is at least ten percent (10%) more or less than the amount of the financial assurance which has been provided, then the Town Board may conduct a Public Hearing pursuant to Section 11.3 below and by resolution modify the WES License to correspondingly increase or decrease the amount of financial assurance required for the WES. The WES License shall also provide that the Town Board may require a substitute financial assurance of the WES Licensee's choosing if an event occurs that raises material concerns regarding the viability of the existing financial assurance. The WES License shall also require that the responsible party identified in Section 8.4 of this Ordinance notify the Town Clerk when the Wind Energy System has been completely Decommissioned and removed and that the Town Board after inspection shall by resolution determine whether the required Decommissioning activities have all been completed;

7.6.2.36 require that the WES License holder provide timely notice of any change of management, control or ownership of the WES Licensee to the Town Clerk;

7.6.2.37 require the WES Licensee to cooperate with any study of the effects of Wind Energy Systems coordinated by a state agency;

7.6.2.38 require the WES License holder to offer an agreement that includes annual monetary compensation to the owner of a non-participating residence (hereafter "non-participating owner"), if the residence is located within 0.5 mile of a constructed Wind Turbine. The agreement shall provide for compensation to the non-participating owner of not less than the compensation provided at PSC 128.33 and shall clearly notify the non-participating owner that signing an agreement and accepting PSC 128.33 compensation does not by operation of law or otherwise automatically require the non-participating owner to surrender any rights or convert the property to "participating property" status under PSC 128. If any such agreement is to involve the surrender of any of the non-participating owner's rights under PSC 128, then the agreement shall clearly specify any waiver or surrender of the non-participating owner's right(s) under PSC 128. The agreement shall also clearly expressly state whether by signing the compensation agreement, the non-participating owner has additionally freely chosen to establish the non-participating owner's land as a "participating property" under PSC 128. If the agreement converts the non-participating owners property to "participating property" status under PSC 128, then the agreement shall also state that non-participating owner is aware of and understands the rights the non-participating landowner is waiving, surrendering or giving up by agreeing to have the non-participating property converted to the status of a "participating property".

7.6.2.39 require the WES Licensee to provide the Town with documentation of all other necessary Town, county, state and federal permits and approvals.

7.6.2.40 require the WES Licensee to file an annual report with the Town documenting the operation and maintenance of the Wind Energy System during the previous calendar year.

- 7.6.2.41 require the WES Licensee to provide written notice of the process for making complaints and obtaining mitigation measures to all residents and landowners within 0.5 mile of any element of the WES before construction of the WES begins. The written notice shall include: the requirements under PSC 128.40(1) for submitting a complaint to the Licensee, a form petition for review by the Town and an appeal to the PSC, and shall include a contact person and telephone number for the Licensee for receipt of complaints or concerns during construction, operation, maintenance and Decommissioning. A copy of this notice shall be simultaneously delivered to the Town Clerk and the Licensee shall at all times keep the contact person and telephone number current and on file with the Town Clerk.
- 7.6.2.42 whether a monitoring committee to oversee resolution of complaints regarding the WES will be established and empowered as provided at Section 12 below.

## **7.7 Reimbursable Expense Charges and Terms of Payment.**

- 7.7.1 **Expense Charges.** The applicant shall reimburse the Town for all reasonable and necessary expenses incurred, including those paid or payable by the Town, relating to the following activities: preparation for receiving a duly noticed application; reviewing and processing an application filed for a WES License; monitoring the Licensee's compliance with WES License conditions during construction; assessing and performing inspections to determine that the WES is being maintained in good repair and operating condition during the term of the WES License; and assessing and monitoring the Decommissioning of the WES ("WES License Related Activities"). The term "Expense Charges" shall hereinafter mean and include all reasonable and necessary expenses incurred by the Town for WES License Related Activities. All Expense Charges shall be periodically billed to and payable by the applicant. If the Town holds an advance deposit, all Expense Charges shall be set off against any such deposit. If the Town holds no advance deposit or if the deposit is insufficient, then the applicant shall timely pay all billed Expense Charges to the Town. All Expense Charges billed shall be based on the Town's actual and necessary costs of WES License Related Activities including: the receiving, preparing, reviewing, processing, assessing, inspecting and monitoring activities described in this subsection immediately above; and the engineering, legal, planning, environmental specialist and other consultant or expert services out of pocket costs the Town deems necessary to prepare for and thereafter review the application, issue its decision(s) on the WES License application, and monitor/enforce the terms of a granted WES License. Expense Charges may also include standardized per hour or per diem fees for the Town Clerk, Town Chair, Town Supervisors and other Town employee services related to: preparing for, reviewing and determining the completeness of any WES License application; determining whether to grant and establishing the terms of any WES License; and subsequent WES License enforcement activities as provided in the Fee Schedule. The entire Fee



Schedule of per diem and any other standard costs or expenses shall be published by the Town Board as a separate document, which by this reference is incorporated herein. The Town Board hereby notifies applicants that an applicant is required to pay the total amount of all Expense Charges billed and owing to the Town before a final decision is issued to the applicant.

7.7.2 **Expense Charge Advance Deposit.** Within ten (10) days of the date the Town Board determines by resolution (as provided in Sections 6.3 and 7.2) that a costs or expenses advance deposit is required, the Town Clerk shall deliver written notice to the applicant in the form of a copy of the Town Board's Public Meeting resolution determining the Expense Charge advance deposit amount required. Notwithstanding any Section 6.3 initial deposit resolution, the Town Board may issue subsequent resolutions requiring that subsequent additional Expense Charge advance deposits be made by the applicant during the processing of the application if the applicant defaults by failing to timely pay any reimbursement amount billed to the applicant. Any such subsequent Expense Charge advance deposit resolution shall be based upon the Town's reasonable estimate of the amounts likely payable as reimbursement for the Town's actual and necessary costs and expenses incurred up to the next scheduled billing date. For the avoidance of doubt, the subsequent advance deposit shall not exceed the sum of the default amount plus the estimated Expense Charge amount payable upon the next scheduled Expense Charge billing date.

7.7.3 **Payment Terms.** The final itemized billed Expense Charge reimbursement amount must be paid to the Town before the Town Board will issue its final decision on the WES License application. The Town shall make and keep complete records of all actual and necessary costs and expenses. On a weekly, bi-weekly, semi-monthly or monthly basis determined by the Town Board, the Clerk shall deliver to the applicant an itemized billing statement showing: the reimbursable costs and expenses incurred by the Town during the stated billing period; the amount set off by the Town against any advance Expense Charge deposit amount on hand; and if any advance Expense Charge deposit amount is not sufficient to cover the amount of reimbursement owed, then presenting the Expense Charge reimbursement balance due which shall in any event be paid in full by the applicant to the Town within ten (10) days of the billing statement date. During the Town's review and processing of the application, if the applicant defaults as to any Expense Charge reimbursement billed and owing to the Town, the Town may by resolution suspend its review and processing of the application and may elect to either: (a) issue an initial or subsequent required Expense Charge deposit resolution to cover the default amount due and an additional advance deposit amount equivalent to the Expense Charge reimbursement(s) reasonably anticipated during the upcoming billing period; or (b) upon full payment of the default amount due and the applicant's presentation of other adequate assurance of future timely Expense Charge payment performance by the applicant, continue to bill the applicant for any reimbursable costs and expenses thereafter and not require any advance deposit.

7.7.4 **Post Licensure Expense Charges.** Following the issuance of any WES License, the Licensee shall also reimburse the Town for all reasonable actual and necessary Expense Charges incurred by the Town related to a “WES License Matter”. The term “WES License Matter” is hereby defined as: any renewal or transfer of any WES License; or any Town activity relating to the enforcement of the terms of any WES License. WES License Matter reimbursement amounts shall be based on the actual and necessary costs and expenses attributable to the investigation of the circumstances, the cost of engineering, legal, planning, environmental specialist and other consultant or expert services the Town deems necessary to review the situation, issue its decision on the WES License Matter, and/or modify or subsequently monitor/enforce the terms of the WES License. Reimbursable Expense Charges payable by a Licensee may also include standardized per hour or per diem fees as provided in the Fee Schedule for the Town Clerk, Town Chair, Town Supervisors and other Town employee services related to the investigation and determination of any such WES License Matter.

7.8 **Adoption of PSC Owner Requirements.** The Town hereby incorporates and renders applicable to the WES Licensee each and every owner requirement set forth in Wisconsin Administrative Code PSC 128 Subchapter II, pursuant to PSC 128.10(1), as though they were fully set forth herein.

## 8. **DECOMMISSIONING OF WIND ENERGY SYSTEM**

8.1 The Wind Turbines and all WES related above ground improvements shall be Decommissioned and the property shall be restored following: (a) the date the WES reaches the end of its useful life, (b) the date the WES has been Abandoned, (c) the termination of any landowner lease under which the WES has been allowed to remain in place, or (d) the revocation of the WES License granted pursuant to this Ordinance. The Decommissioning shall commence within 360 days after the earlier of the dates specified at 8.1(a)-(d) above and be completed within 540 days after the earlier of the dates specified at Section 8.1 (a)-(d) above.

8.1.1 Here, the term “Abandoned” at Section 8.1(b) may mean: the relinquishing of the right to operate the WES; or the failure to operate any particular Wind Turbine; or failure to restore any particular inoperable Wind Turbine to a fully operational state of repair for a continuous period of more than 360 days, unless an extension has been granted as provided in this Section 8.1.2 below. In the WES instance, the Abandonment shall be deemed to have occurred as to the entire WES. In the Wind Turbine instance, the Abandonment shall be deemed to have occurred only as to the particular Wind Turbine(s) that have not been operated or have been inoperable and have not been restored to a fully operational state of repair as required by this Ordinance.

8.1.2 Provided however, upon application by a responsible party identified at Section 8.4 below, the Town shall grant an extension of time of one or more 180 day periods for returning the WES or Wind Turbine to service if the responsible party demonstrates it is likely that the WES or Wind Turbine will operate again in the future and any of the following occur: (i) the responsible party submits a plan to the Town that demonstrates an ongoing good faith effort to return the WES or Wind Turbine to service and outlines the steps and schedule for returning the WES or Wind Turbine to service in a reasonable period of time, including by repairing, replacing or repowering as necessary to generate electricity; (ii) the responsible party demonstrates that the WES or Wind Turbine is part of a prototype or other demonstration project being used for ongoing research and development purposes; or (iii) the responsible party demonstrates that the WES or Wind Turbine is being used for educational purposes.

8.1.3 The Town may deny a request for extension following the first 180 day extension if the WES or Wind Turbine has not generated any electricity for a continuous period of 540 days or more and the Town finds that the responsible party is not capable of returning the WES or Wind Turbine to service within a reasonable period of time.

8.2 The nature and extent of the Decommissioning and restoration shall include those activities: specified in PSC 128 and/or the WES License; and/or those thereafter reasonably determined by the Town Board on a case by case basis pursuant to an agreement reached with the responsible party(ies) or a Town Board determination and order made at a due process hearing conducted using the procedure provided in Section 11.3 of this Ordinance.

8.3 As to any concrete foundation used for a Wind Turbine required to be removed by this Ordinance, the concrete foundation shall be removed to the closer to grade level of: (i) four (4) feet below grade, or (ii) the level below grade at which the base of the concrete foundation hits bedrock. The applicant shall cause the area above said foundation to be filled with dirt. If reasonably requested by the Town Board, the applicant shall remove the gravel or paved surface of any access road(s) and replace such gravel or pavement surface with an appropriate reasonable quality and depth of topsoil sufficient to restore the property to its prior use.

8.4 The obligation for WES or Wind Turbine Decommissioning (and reclamation of the site) is jointly and severally the obligation of the original Licensee (unless fully released from this obligation by written resolution of the Town Board), the Licensee's successors and assigns, and the owner of the property whereupon the WES is located.

8.5 If the Licensee, the Licensee's successor or assign, or property owner fail to timely Decommission the WES and/or restore the WES site, the Town Board may retain contractors to perform the required Decommissioning and restoration of the WES site. All Decommissioning and restoration costs and expenses incurred by the Town, and other related costs and expenses incurred by the Town including but not limited to, any Town attorney's fees incurred in the course of effecting such Decommissioning and

restoration, shall be chargeable as and for an assessment against the property and shall be collectible and payable as a charge against the real property which shall be included in the current or next tax roll for collection and settlement under Chapter 74 Wis. Stats.

**9. ASSIGNMENT**

Any WES License granted pursuant to this Ordinance may not be assigned by the original Licensee without the express written consent of the Town Board. The Town reserves the right to grant only a partial assignment whereby the original Licensee may remain jointly and severally liable with the assignee of the WES License for performance of the terms and conditions of the License, including but not limited to Decommissioning responsibilities. Any WES License granted pursuant to this Ordinance is not assignable or transferable to any other person, firm or entity, whether by operation of law or otherwise, without the express prior written consent of the Town Board. The Town Board's consent to any assignment or transfer shall not be unreasonably withheld.

**10. PUBLIC UTILITY DISTRIBUTION, TAXES AND PAYMENTS IN LIEU OF TAXES**

As may be currently or at anytime permitted or required by law, Licensees shall do all things required of Wisconsin WES local permit holders to cause timely payment to the Town of any and all public utility distributions, taxes and/or payment(s) in lieu of taxes then allowed or provided under Wisconsin law. It is understood, that certain payments may be allocated or apportioned between or among the State, Brown County and the Town as provided by law. The payments shall be payable in the amounts and manner prescribed by the law of the State of Wisconsin. As to all Wind Energy Systems for which any such payment may be payable to the Town either currently, or thereafter during the original term and any extension of a WES License, the WES License shall be deemed automatically amended as of the effective date of any such law to provide that the Town receive the greatest available remuneration as an express requirement included in all WES Licenses in all cases and at all times subsequent to that amendment.

**11. WES LICENSE TERM, RENEWAL, MONITORING, SUSPENSION, REVOCATION, FORFEITURES**

**11.1 INITIAL TERM**

The initial WES License term shall be for a period of twelve (12) years from the date of issuance of the WES License.

**11.2 RENEWAL**

The WES License granted pursuant to this Ordinance may be renewed at the request of the applicant or the applicant's assignee for an additional ten (10) years, provided that the application for renewal shall be submitted to the Town Board not less than six (6) months

prior to the expiration of the current WES License. The Town Board shall conduct a Public Hearing concerning any WES License renewal request. Any WES License renewal request shall include the applicant's consent and agreement to reasonably upgrade the WES equipment, monitoring or testing systems and operational practices related to public health and safety, to the current best reasonably available utility and industry practices and standards.

### **11.3 MONITORING COMPLIANCE**

To monitor the Licensee's compliance with the terms and conditions of the WES License and to assess that the Wind Energy System is being maintained in good repair and operating condition, both regular and event-generated inspections of the Wind Energy System shall be conducted by the third party inspector designated by the Town to monitor and assess the Licensee's compliance (hereinafter individually and collectively "Inspector"). The Inspector shall be selected by the Town and may be a fully qualified firm or a designated qualified individual or group of designated qualified individuals. The Town shall provide the Licensee with a copy of the Town's resolution designating its Inspector. The Inspector shall perform scheduled quarterly, semi-annual or annual inspections and may perform unscheduled additional inspections in response to events evoking reasonable cause for an interim or additional inspection as determined by the Town Board. The protocol for all such inspections shall be as determined by separate written agreement between the Town and the Licensee. The inspection protocol shall address what, when, where and how inspections will be conducted. If the Town and Licensee are unable to agree: that a scheduled or unscheduled inspection is reasonably required; or upon the inspection protocol for either a scheduled or unscheduled inspection, then such matters may be determined by the PSC as provided in Section 13 of this Ordinance. If an unscheduled inspection and all follow-up inspections to that unscheduled inspection have been performed and completed proximate to a regular scheduled inspection, the Town Board upon the advice of the Inspector may forgo that next scheduled inspection. The Inspector shall prepare and submit an inspection report to the Town and the Town shall provide copies of inspection reports to the Licensee, PSC and to any state agency or member of the public who requests a copy. Upon receipt of each inspection report, the Town Clerk shall post public notice, in the three usual Town places utilized for notice postings pursuant to Wisconsin Statutes §60.80 and upon the Town's website, notifying the public of the availability of that inspection report for viewing and copying at the Town Hall or upon the Town's website. The Licensee shall reimburse the Town for the reasonable costs and expenses of conducting an assessments and inspections pursuant to this Section 11.3 as provided in Section 7.7 of this Ordinance.

#### **11.4 SUSPENSION/REVOCAION/MODIFICATION/ORDERED DECOMMISSIONING**

A WES License may be suspended, revoked or modified by the Town Board or Decommissioning may be ordered by the Town Board; but only after due notice and pursuant to a Public Hearing. The determination as to any WES License suspension, revocation or modification; or as to the imposition of any order mandating Decommissioning or certain particular conduct concerning any Decommissioning shall only be made pursuant to a duly noticed Public Hearing before the Town Board. The Public Hearing shall be a due process hearing commenced upon not less than ten (10) days' prior written notice delivered by regular mail to the Licensee's mailing address contained in the Town's records. A full record of decision shall be made as provided in Section 6.3 and Subsections 6.3.1 through 6.3.2 of this Ordinance. The Licensee has the continuing duty to provide the Town Clerk with the Licensee's current mailing address and contact information for the individual authorized to receive notice for the Licensee. The hearing shall be commenced and may be adjourned and conducted in multiple continued proceedings until such time as all of the relevant evidence has been presented. The Town Board shall make written findings of fact and issue its written decision within ten (10) days of the conclusion of the Public Hearing.

#### **11.5 FORFEITURE FOR VIOLATION OF ORDINANCE**

In addition to the suspension, revocation or modification of the WES License provided hereinabove, any person who: has failed to comply with the owner requirements contained in Wisconsin Administrative Code PSC 128, begins to construct or operates a WES without first obtaining or maintaining a WES License required pursuant to this Ordinance; or operates a WES in violation of the provisions of the WES License, PSC 128 or this Ordinance; or fails to timely Decommission a WES or restore the property as required under this Ordinance; or otherwise violates any provision of this Ordinance; shall be subject to a forfeiture of not less than five hundred dollars (\$500.00) and not more than twenty five thousand dollars (\$25,000.00). Each violation of this Ordinance involving a particular Wind Turbine or any other separate WES facility component shall be considered a separate offense. Any violation continuing more than one (1) day shall be considered a separate offense for each day the violation continues. In addition to the forfeiture(s) provided herein, the Town shall be entitled to recover its costs of prosecution, including its Town attorney's fees and other costs.

### **12. COMPLAINT PROCESS**

An aggrieved person may make a complaint regarding failure of the Licensee to comply with an obligation under PSC 128, but that complaint must first be made to the Licensee pursuant to the written complaint process which has been developed by the Licensee pursuant to PSC 128 Subchapter IV. Upon receiving a complaint, the Licensee shall provide the person(s) complaining with a copy of the PSC 128.42(1) notice. The Licensee shall investigate complaints regarding a WES at its own expense and shall use reasonable efforts to resolve the complaint.

The Licensee shall provide an initial response to the complainant within 30 days of receiving a complaint. The Licensee shall make a good faith effort to resolve complaints within 45 days of receiving the complaint and shall issue a notice to the Town Clerk notifying the Town of any complaint not resolved within that 45 day period. The Licensee shall maintain a log of all complaints received regarding the WES. The complaint log shall include the name and address of each complainant, the nature of each complaint, and the steps taken to resolve each complaint. The Licensee shall deliver a copy of the complaint log monthly to the Town Clerk. An aggrieved person who has filed a complaint, may petition the Town Board for review of the complaint, if the Licensee has failed to resolve the complaint within 45 days of the Licensee's receipt of the original complaint. The Town Board shall conduct a Public Hearing and attempt to resolve the complaint, provided that any Town Board decision concerning the complaint is appealable as provided in Section 13 below. As part of the application approval/denial determination process the Town Board shall on a case by case basis determine whether a monitoring committee to oversee resolution of complaints regarding the licensed WES will be established and empowered pursuant to PSC 128.41 as an intermediate body charged with making recommendations to the Town Board concerning the Town Board's ultimate review of any complaint not resolved between the Licensee and the complainant. As provided by PSC 128.41(3), if the WES is located in more than one political subdivision and the Town has elected to proceed with a joint application process pursuant to Section 7.1 above and the participating political subdivisions have elected to establish a monitoring committee, then the jointly established monitoring committee shall oversee resolution of complaints regarding the entire Wind Energy System.

### **13. ADMINISTRATIVE REVIEW, ASSISTANCE AND APPEAL**

**13.1 Administrative Review Process.** For the purpose of avoiding the time and expense of unnecessary PSC appeals, the Town Board may elect to sequentially make both a preliminary decision and a subsequent final decision in the course of making any Town Board determination as to: the completeness or requirements of the application; or issuance or non-issuance of a WES License; or as to any complaint received pursuant to Section 12 above; or as to any term or condition contained in a WES License issued by the Town; or as to any action by the Town to enforce a restriction contained in a WES License; or as to other matters within the authority or purview of the PSC's review authority. The Town Board's election to make a preliminary decision as opposed to a final decision shall be clearly expressed as part of the Town Board's initial written determination document stating: that the decision rendered is a "preliminary decision subject to the Town's further administrative review process"; and that "the preliminary Town Board decision becomes a final decision deemed accepted by the Licensee as non-appealable, if the Licensee fails to timely file a written objection to the Town Board's preliminary decision within ten (10) days". The Licensee's objection(s) to a preliminary decision shall be written. The Licensee's written objection shall: be filed with the Town Clerk within ten (10) days of the Town Board's preliminary decision resolution; and the written objection document shall contain clear statements of the Licensee's objections and the reasons for and evidence supporting the objection(s). If no written objection is timely received from the Licensee, then the Licensee shall be deemed to fully agree with the Town Board's preliminary decision and both the Licensee and Town shall thereafter proceed in accordance with the

preliminary decision. The Licensee shall not invoke its PSC appeal rights unless the Licensee has filed a timely objection to the Town Board's preliminary decision with the Clerk and until the Licensee has exhausted the administrative remedy provided by this Section. If a timely objection to the preliminary decision is received, the Town Board shall review the Licensee's objection at a Public Hearing and may thereupon receive further counsel and consultation from its experts or from those with expertise within the PSC or other State agencies before rendering the Town Board's final decision. The Town Board's final decision regarding the Licensee's objections shall be rendered in a separate written document delivered to the Licensee within twenty (20) days of receipt of the Licensee's objections. Only final Town Board decisions are appealable pursuant to Wis. Stats. §66.0401(5). For the avoidance of doubt, a Licensee's failure to timely object to a preliminary Town Board decision does not under any circumstance cause that preliminary decision to become an appealable final decision. No court action shall be commenced by an applicant or Licensee until or unless the Town Board has been given the opportunity to render a final decision.

**13.2 Assistance/Time Limits.** The Town Board may at anytime enlist the assistance, expertise or seek counsel from the PSC or other State agencies with expertise concerning matters involving a proposed, operating or Decommissioning Wind Energy System. Good faith requests for everything from information to mediation assistance diligently pursued by the Town Board or its designee, for assistance from State agency employees with expertise to aid the Town Board's final decision making, shall in all instances be deemed part of the Town's administrative appeal process. The time limits for the Town Board rendering a final decision where reasonable State agency assistance is being pursued diligently and in good faith shall in all instances be extended for the reasonable time that the Town's administrative process is extended due to the limited availability or temporary unavailability of such PSC or other State agency assistance to the Town.

**13.3 Appeal.** No appeal to the PSC may be filed later than thirty (30) days after the Town has issued a final decision or completed its administrative review process, whichever is later. Unless otherwise agreed between the Town and the Licensee in a separate writing, if the Town fails to complete its entire administrative review process within ninety (90) days after the Licensee has commenced the Town's administrative review process by filing a written objection as provided at Section 13.1 above, then the administrative review process as a matter of law pursuant to Wis. Stats. §66.0401(5)(b) is deemed to be completed on the 90<sup>th</sup> day after it was commenced. The Town Clerk shall deliver to the PSC the number (not exceeding five) complete certified copy(ies) of the Record of Decision created pursuant to Section 6.3 and Subsections 6.3.1 and 6.3.2 above, within thirty (30) days after receiving a notice of appeal from the PSC requesting those copies. The PSC may request additional Town records and certified copies of those records shall be provided to the PSC within thirty (30) days after receipt of such request. The Town Board by resolution may determine that the PSC should review information or materials not contained in either the Record of Decision or any PSC requested submission, and if so that resolution and all accompanying information and materials shall be submitted to the PSC for the PSC's consideration. Upon being served with a copy of the petition filed for appeal with the PSC, the Town Clerk shall: make one copy of the petition available for public inspection at the Town Hall; post the petition on the Town's website; and post a notice in the three usual places utilized for notice of Town Board meetings informing the public of the Town's receipt of the



appeal petition and the petition's availability for public review at the Town Hall and upon the Town website. The PSC decision upon any appeal will be issued within ninety (90) days unless the PSC extends the time for decision for good cause. If the PSC determines that the Town's decision or enforcement action does not comply with PSC 128 or is otherwise unreasonable, the Town's decision shall be superseded by the PSC decision and the PSC may order an appropriate remedy.

14. **SEVERABILITY**

In consideration of recent Wisconsin Appellate Court decisions and current Wisconsin Legislature activity concerning the subject matter of this Ordinance, any provision of this Ordinance determined by a court to be unenforceable shall: be deemed severable from the remainder of this Ordinance; and shall be deemed either excised or revised by the court's or Legislature's decision to thereupon automatically cause this Ordinance to remain in full compliance with current law at all times.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

\_\_\_\_\_  
Todd Christensen, Chairman

\_\_\_\_\_  
Kevin Collins, Supervisor

\_\_\_\_\_  
Tim Harmann, Supervisor

Approved, Attested By:  
\_\_\_\_\_  
Colleen Magley, Town Clerk