Town of Cleveland
Wind Energy Facility Licensing Ordinance

Be it enacted by the Town Board of the Town of Cleveland as follows:

ORDINANCE NO. 2023-01

Section 1. Title.
This Ordinance may be cited as the Town of Cleveland Wind Energy Facilities Ordinance.

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

Section 2. Findings, Purpose and Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. Definitions.
As used in this Ordinance, the following terms shall have the meanings indicated. Words not defined in this Ordinance shall be given their ordinary and common meaning:

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

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

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

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

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

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

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

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

FAA: The Federal Aviation Administration or successor agency.

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

kW: Kilowatt

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

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

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

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

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

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

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

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

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

State: The State of Wisconsin

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

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

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

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

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

Wind Farm: A marketing term for a LWEF.

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

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

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

Section 4. License Required

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

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

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

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

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

4-6 License Exclusion.

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

(b) An Applicant for a WEF that qualifies as a SWEF may submit a short form application with a reduced fee, in the discretion of the Town Board. If the Board grants such a request, it shall specify the application requirements and fee for such SWEF.

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

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

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

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

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

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

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

5-4 Decision by the Town Board.

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

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

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

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

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

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

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

Section 6. Application.

6-1 WEF License Application Process.

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

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

6-1.2 Inventory. A tabulation describing the:

A: Specific number, types, and height of each wind turbine to be constructed, including their generating capacity.

B: Dimensions and respective manufacturers.

C. Appurtenant structures and/or facilities.

6-1.3 Vicinity map.

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

6-1.4 LWEF Site Plan.

A plan showing the:

A: Planned location of each wind turbine

B: All property lines within two (2) miles of the property lines of the proposed site.

C. Each turbine's setback distance from the closest LWEF boundary.

D. Access road and turnout locations.

E: Substation(s) and ancillary equipment, buildings, and structures, including permanent meteorological towers.

F: Electrical cabling from the WEF to the substation(s) and from the substation(s) to where the electricity will leave the site.

G: Associated transmission lines.

Conservation Areas, including natural areas protected by law, such as wetlands that meet the definition in the Clean Water Act; shoreland areas; water bodies; riparian buffers; populations of endangered or threatened species (Federal or State) or habitat for such species; flyways; archaeological sites, cemeteries, and burial grounds; important local historic sites; existing healthy, native forests consisting of at least one acre of contiguous area; individual existing healthy trees that are at least 100 years old; other significant natural features and scenic viewsheds; existing trails or corridors that connect the tract to neighboring areas.

I. Location of all structures and properties within the geographical boundaries of any applicable setback.

J. A landscaping plan that shows proposed screening and buffering of all buildings and other non- turbine structures on the site or sites.

K. Location of wells, abandoned and active, within a 0.5-mile radius of the project boundary.

L. The number, location, and purpose of any proposed new wells for the LWEF.

6-1.5 LWEF Misc.

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

A. A Stand-down Plan for high wind conditions.

B. Signed copies of all original leases/easements and agreements for this LWEF (not memorandums).

C. The type, size, and total installed height of all LWEFs.

D. The rotor material, rated power output, performance history, safety history, and noise characteristics of each make/model of LWEF turbine, tower, and all transmission equipment being used.

E. The typical length of service of the proposed components.

F. Any other materials needed to satisfy the requirements of this license.

6-1.6 WEF Air Space Impacts.

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

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

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

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

E. The Applicant shall provide a narrative description of all risks to

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

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

6-1.7 Noise Impacts.

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

6-1.8 Visual Impacts.

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

A. Pictorial representations of "before and after" views from 360-degree viewpoints within two (2) miles of the proposed WEF boundaries, including a drone perspective from the WEF. These will include, but not be limited to, major roads; State and local parks; other public lands; historic districts; preserves and historic sites. The Town Board will provide guidance concerning the appropriate key sites. The Applicant shall provide a map showing the locations of where the pictures were taken and the distance of each location from the proposed WEF.

B. If any portion of a proposed WEF will be located within one (1) mile of the right-of-way of a Federal or State-designated Scenic Route/By-way, the Applicant shall describe the proposed measures to be taken to minimize the visual impact of the proposed WEF (including shadow flicker and blade glint) upon a Scenic Route/By- way.

C. The Applicant shall not install any lighting that exceeds the minimum required by the FAA. If approved by the FAA, on-demand lighting (AVWS) is required.

6-1.9 LWEF Impacts on Other Town Municipalities.

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

6-1.10 Maintenance Plan.

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

6-1.11 Decommissioning Plan.

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

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

6-1.12 Ancillary Materials.

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

6-1.13 Testament.

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

6-2 LWEF Economic Impact Study.

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

6-3 LWEF Environmental Impact Study.

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

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

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

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

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

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

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

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

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

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

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

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

6-5 LWEF Escrow Account.

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

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

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

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

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

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

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

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

Section 7 Installation and Design.

7-1 LWEF Power Collection.

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

7-2 Security.

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

A. Located, fenced, or otherwise secured so as to prevent unauthorized access.

B. Made inaccessible to individuals and constructed or shielded in such a manner that it cannot be climbed or collided with.

C. Installed in such a manner that it is readily accessible only to persons authorized to operate or service it.

D. The Applicant shall not install any video surveillance at a height exceeding 10 feet from ground level unless otherwise approved by the Town Board.

7-3 The WEF shall:

A. Be a non-obtrusive color (such as light blue, off-white, or light gray) that blends with the sky, as determined by the Town Board.

B. Not be artificially lighted, except to the extent required by the FAA or other applicable authority that regulates air safety.

C. Not contain any signs or other advertising (including flags, streamers or decorative items or any identification of the turbine manufacturer, WEF Applicant and operator). This does not include any identification plaques that might be required by the electric utility or a governmental agency.

D. Be sited and operated so as to not interfere with television, internet service, telephone (including cellular, broadband, and digital), microwave, satellite (dish), navigational, or radio reception in neighboring areas. The Applicant and/or operator of the WEF shall be responsible for the full cost of any remediation necessary to correct any problems or provide equivalent alternate service, within thirty (30) days of being given notice. This includes relocation or removal of problematic turbine(s), or any other equipment, transmission lines, transformers, and other components related thereto.

E. Have a leak containment system for oil, hydraulic fluids, and other non- solids that is certified by an expert (such as an engineer, turbine manufacturer, etc.) acceptable to the Planning Board that all such fluids will be captured before they reach the ground. The Applicant shall pay the cost(s) of the expert.

F. For LWEFs, prepare an incident response plan that ensures that local emergency responders have the necessary equipment and training to effectively handle emergencies such as oil spills, turbine fires, turbine structural damage (or collapse) of equipment, including access to heavy equipment needed for rescue of trapped

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

G. An Applicant shall notify the Town Board of the occurrence and nature of an LWEF emergency within 24 hours of an LWEF emergency.

H. An Applicant shall establish and maintain liaison with the Town Board and with fire, police, and other appropriate first responders serving the LWEF to create effective emergency plans that include all of the following:
A list of all the types of LWEF emergencies that require notification under Par. G,
Current emergency contact information for first responders and for the LWEF Applicant, including names and phone numbers.
Procedures for handling different types of LWEF emergencies, including written procedures that provide for shutting down the LWEF or a portion of the system as appropriate.
Duties and responsibilities of the Applicant and of first responders in the event of an LWEF emergency.
An emergency evacuation plan for the area within 0.5 mile of an LWEF, including the location of alternate landing zones for emergency services aircraft.

I. The Applicant shall review the emergency plan at least annually in collaboration with fire, police, and other appropriate first responders to update and improve the emergency plan as needed.

J. The Applicant shall distribute current copies of the emergency plan to the Town Board, fire, police, and other appropriate first responders as identified by the Town Board.

K. The Town Board shall require the Applicant to provide annual training for fire, police, and other appropriate first responders regarding responding to an LWEF emergency until the LWEF has been decommissioned.

L. An Applicant of an LWEF shall do all of the following:
1. Furnish its operator, supervisors, and employees who are responsible for emergency action a copy of the current edition of the emergency procedures established under this subsection to ensure compliance with those procedures.
2. Train the appropriate operating personnel to ensure they have knowledge of the emergency procedures and verify that the training is effective.
3. As soon as possible after the end of an LWEF emergency, review employee activities to determine whether the procedures were effectively followed.

7-4 LWEF Real Property Value Protection Plan.

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

7-5 LWEF Surety for Removal, when Decommissioned.

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

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

7-6 LWEF Liability Insurance.

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

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

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

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

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

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

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

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

7-7 LWEF Indemnification.

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

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

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

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

7-9 Town Board's License Provisions.

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

A. Information. Information about whether an Applicant has consulted with and received any non-binding recommendations for constructing, operating, or decommissioning the LWEF from a State or Federal agency, and whether the Applicant has incorporated such non-binding recommendations into the design of the LWEF.

B. Studies. Applicant to cooperate with any study of the effects of LWEFs coordinated by a State agency.

C. Monetary Compensation. Whether the Applicant of an LWEF has offered an agreement that includes monetary compensation to the owner of a nonparticipating residence, if that property suffers a loss in value as a result of the placement of the WEF.

D. Aerial Spraying. Whether the Applicant of an LWEF has offered an agreement that includes monetary compensation to a farm operator farming on a nonparticipating property located near a WEF for crop loss from such spray.

E. Permits. The Applicant must submit to the Town Board copies of all necessary State and Federal permits and approvals.

F. Annual reports. The Applicant to file an annual report with the Town Board documenting the operation and maintenance of the wind energy system during the previous calendar year.

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

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

A. Conflict with safety and safety-related codes and requirements.

B. The use or construction of a WEF that is contrary to an already-stated purpose of a specific zoning or land use designation.

C. The operation of an LWEF would be a net economic liability to the community.

D. The operation of an LWEF would create unacceptable health risks to the public.

E. The placement and operation of an LWEF that would create unacceptable risks to wildlife and/or regional ecosystems.

F. The placement and location of a WEF would result in a conflict with, or compromise, or significantly change, the nature or character of the surrounding area.

G. The operation of an LWEF would create unacceptable interference with any type of civilian or military radar systems.

H. Conflicts, as determined by the Town Board, with the military's unrestricted ability to use the Restricted Air Space, including no flight hazards and/or use limitations. In addition, the Planning Board will consider whether construction or operation of the proposed WEF would encroach upon or would otherwise have a significant adverse impact on the mission, training, or operations of any military installation or branch of military in the State, and possibly result in a detriment to continued military presence in the State.

I. Conflicts with any provisions of this Ordinance.

Section 8. WEF Post-License Approval Requirements.

8-1 WEF Certification.

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

8-2 Reservation of Authority to Inspect WEF.

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

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

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

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

8-3 WEF Construction Related Damage.

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

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

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

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

8-4 LWEF Noise Impacts.

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

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

8-5 LWEF Environmental Monitoring:

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

8-6 LWEF Decommissioning:

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

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

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

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

8-7 WEF Complaints:

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

8-8 LWEF Lease Agreements.

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

Section 9. Miscellaneous.

9-1 Fiscal Responsibility.

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

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

9-2 Inspection, Enforcement Procedures, and Penalties

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

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

A. Engaging in construction, installation, or operation of a WEF without a Wind Energy Facilities License granted by the Town Board or a developer agreement or both.

B. Failure to comply with the applicable minimum standards and other terms of this Ordinance.

C. Making an incorrect or false statement, including in the information and documentation submitted during the licensing process or during an inspection by the Town or its duly appointed representative, or a representative of another regulatory agency.

D. Failure to comply with any conditions of an approval or license, or any agreements entered into as a condition of approving a license.

E. Failure to take appropriate action in response to a notice of violation or citation, or other order issued by the Town.

9-2.3 Hearings.

A. Any person affected by a notice, order, or action under this Ordinance, or upon denial of an application for a license or license renewal, may request a hearing on the matter before the Town Board, provided such person files with the Town Clerk a written petition requesting the hearing and setting forth his or her name, address, telephone number, and a brief statement of the reason for requesting the hearing. Such petition shall be filed within 30 days of the date the notice, order, or action under sub. (4) is served or within 30 days of the date of the approval or denial of a license or an application for a renewal. Upon receipt of the petition, the Town Clerk may set a time and place for a hearing before the Town Board and, if a hearing is scheduled, shall give the petitioner and other interested parties written notice thereof.

B. After a hearing under par. A, the Town Board, by a majority vote of the members present, shall sustain, modify or withdraw the notice, order, or action, or grant or deny the license or license renewal, depending on its findings as to whether the provisions of this Ordinance have been complied with. The petitioner shall be notified within 10 days, in writing, of such findings.

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

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

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

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

9-2.6 Penalties:

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

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

Section 10. Severability, Interpretation, and Abrogation

10-1 Severability.

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

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

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

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

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

Signatures appear on following page

ADOPTED June 6th, 2023

TOWN OF CLEVELAND

Kurt Jochimsen, Town Board Chairperson

Lori Hollatz, Supervisor

Paul Drexler, Supervisor

Attested to as of June 6th, 2023

Alexandra Skaya, Town Clerk

EXHIBIT A

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