

**AN ORDINANCE REPEALING AND RECREATING SECTION 3.12,
LARGE WIND ENERGY SYSTEMS, OF THE ZONING
CODE OF THE TOWN OF SHEBOYGAN,
SHEBOYGAN COUNTY, WISCONSIN**

WHEREAS, pursuant to Wis. Stat. § 60.10(2), 60.22(3), 61.34, 62.23 and 66.0401, the Town of Sheboygan Town Board has authority to enact regulations for the installation or use of a wind energy system that are no more restrictive than the regulations established by the Wisconsin Public Service Commission (PSC) under the authority of Wis. Stat. § 196.378; and

WHEREAS, the PSC established rules for wind energy systems in Wisconsin Administration Code PSC Chapter 128; and

WHEREAS, on July 10, 2012 the Plan Commission reviewed the herein proposed ordinance and recommended its approval; and

WHEREAS, the Town Board held a public hearing, after publication of a Class 1 notice under Wis. Stat. § ch. 985; and

WHEREAS, the Town Board has determined that the regulations set forth herein serve to preserve or protect the public health or safety, and do not significantly increase the cost of the wind energy system or decrease its efficiency in accordance with Wis. Stat. § 66.0401(1m).

NOW, THEREFORE, the Town Board of the Town of Sheboygan does hereby ordain as follows:

Section 1. **Repealing Code**. Section 3.12 of the Zoning Code of the Town of Sheboygan entitled "Interim Zoning: Wind Turbines" is hereby repealed in its entirety.

Section 2. **Recreating Code**. Section 3.12 of the Zoning Code of the Town of Sheboygan is hereby recreated as follows:

"Section 3.12 Large Wind Energy Systems

a. **Applicability**. This Ordinance applies to all wind energy systems, as defined by Wis. Stat. § 66.0403(1)(m), used to convert wind energy to electrical energy, except for small wind energy systems, as defined in Wis. Admin. Code § PSC 128.01(20). This Ordinance applies to the construction of a wind energy system or the expansion of an existing or previously approved wind energy system.

b. **Definitions**. The definitions set forth in Wis. Admin. Code Chapter PSC 128 are incorporated herein.

c. Permitted Uses. Wind energy systems are permitted uses in all zoning districts, except in areas that are primarily designated for future residential or commercial development, as shown on the Town's comprehensive plan that was in existence as of June 2, 2009, or as shown in such maps after December 31, 2015, as part of a required update to a comprehensive plan. This paragraph shall apply only to wind energy systems having a total nameplate capacity of at least one megawatt (1000 kilowatts).

d. Owner Requirements. The owner requirements specified in Wis. Admin. Code PSC 128.13-128.19 related to the following are hereby incorporated in their entirety:

- (1) siting criteria, including setback and height requirements;
- (2) noise criteria;
- (3) shadow flicker;
- (4) signal interference;
- (5) stray voltage;
- (6) construction and operation, including physical characteristics; and
- (7) decommissioning.

e. Application and Notice Requirements.

- (1) At least 90 days before an owner files an application to construct a wind energy system, an owner shall provide written notice of the planned system to all of the following:
 - (a) landowners within one (1) mile of a planned wind turbine host property;
 - (b) the Town Clerk;
 - (c) emergency first responders and air ambulance providers servicing the Town;
 - (d) the Wisconsin Department of Transportation;
 - (e) the Public Service Commission; and
 - (f) the Wisconsin Department of Natural Resources.
- (2) At least 90 days after filing the notice required under Paragraph 1, above, an owner shall file with the Town Clerk twelve (12) copies of an application to construct a wind energy system. Such application shall include the information specified in Wis. Admin. Code § PSC 128.30(2). The owner shall also provide documentation showing that the real property owners consent to the installation of the proposed wind energy system on their property and copies of any wind energy system easements that have been recorded in the Register of Deeds Office. The owner shall ensure that all information contained in the application is correct.

- (3) On the same day an owner files an application with the Town Clerk, the owner shall provide written notice of the filing to property owners and residents located within one (1) mile of the proposed location of the wind energy system facility. Such notification shall meet the requirements of Wis. Admin. Code § PSC 128.30(5)(a).
- (4) As soon as possible after receiving the application for a wind energy system, the Town Clerk shall publish a Class 1 Notice, under Wis. Stat. Chapter 985, stating that an application for a wind energy system has been filed with the Town. The Notice shall include the following:
 - (a) brief description of the proposed wind energy system and its proposed location;
 - (b) the locations where the application is available for public review;
 - (c) the method and time period for public comments; and
 - (d) the approximate schedule for reviewing the application by the Town.
- (5) Within 45 days of receiving an application, the Plan Commission shall determine whether the application is complete and notify the applicant as to the determination. An application is complete if it meets the requirements of Paragraph 2, above. If the Plan Commission determines that the application is incomplete, it shall provide notice to the owner stating the reason for the determination, and the owner shall provide the information necessary to complete and re-file the application. There is no limit on the number of times an applicant may supplement and refile an application. If the Plan Commission fails to make a determination as to the completeness within 45 days after the application is filed, it shall be deemed complete. Each time an owner supplements an incomplete application, an additional 45-day completeness review period shall begin the day after the owner re-files the application.
- (6) The Town Clerk shall make an application for a wind energy system available for public review at the Town Hall and at the Mead Public Library, 710 North 8th Street, Sheboygan, Wisconsin 53081.
- (7) The Plan Commission shall review and make a recommendation as to the approval of the application. At the Town Board's option, the public meeting may be held by the Town Plan Commission.
- (8) The Town Board or Plan Commission may request additional information necessary to understand the wind energy system after the Plan Commission has determined an application is complete. An owner shall provide additional information in response to all reasonable requests in a timely, complete and accurate manner.

- (9) The Town Board shall hold at least one public meeting prior to making a decision on the application to inform the public about the proposed wind energy system and to obtain public comments thereon. At least one business day prior to the public meeting, the public may submit written comments to the Town Clerk during the Clerk's regular office hours, by mail, or at the drop-box at the Town Hall.
- (10) The Town Board shall approve or disapprove an application no later than 90 days after the day on which the Plan Commission notifies the applicant that the application is complete. If the Town Board fails to act within the 90 days, or within the extended review period, the application is considered approved. The review period may be extended if within the initial 90-day review period, the Town Board authorizes in writing any combination of the following extensions, except that the total amount of time for all extensions granted hereunder may not exceed 90 days:
- (a) up to 45 days if the Town Board needs additional information to determine whether to approve or deny the application;
 - (b) up to 90 days if the owner makes a material change to the application for approval;
 - (c) up to 90 days for other good cause specified in writing by the Town Board.
- (11) If the wind energy system is proposed to be located in more than one political subdivision, the Town may conduct a joint application review process in accordance with Wis. Admin. Code § PSC 128.30(7).

f. Conditions of Approval. The Town Board may place conditions on the approval of a wind energy system application or require any of the provisions as outlined in Wis. Admin. Code § PSC 128.33.

g. Written Decision.

- (1) The Town Board shall issue a written decision to grant or deny an application for a wind energy system. The decision shall include findings of fact supported by evidence in the record. Any denial shall specify the reason for denial.
- (2) The Town Clerk shall provide the written decision to the owner and to the Public Service Commission. If approved, the Town shall provide the owner with a duplicate original of the decision, and the owner shall record such original with the Sheboygan County Register of Deeds Office.

- (3) Change in ownership does not affect the approval of a wind energy system. The owner shall provide not less than 90 days prior written notice to the Town Clerk advising of the transfer of ownership.

h. Compliance Monitoring. The Town Board, or their designees, shall act as a monitoring committee to determine compliance with any condition established as a condition of approval or to assess when wind energy system facilities are not maintained in good repair and operating condition. The monitoring committee may establish a compliance monitoring procedure including timelines, provide for payment of reasonable fees, and notice requirements, as it deems appropriate.

i. Post-Construction Filing Requirements. Within 90 days of the date a wind energy system commences operation, the owner shall file with the political subdivision and the Public Service Commission an as-built description of the wind energy system, an accurate map of the wind energy system showing the location of all wind energy facilities, geographic information system showing the location of all wind energy systems and current information identifying the owner of the wind energy system. Each wind turbine location shall be labeled with a unique identifier.

j. Modifications. An owner may not make a material change in the approved design, location or construction of a wind energy system without the prior written approval of the Town. The owner shall submit an application for the material change, along with the appropriate fee, to the Town Clerk. The application and notice requirements, except the pre-application notice, the conditions of approval, and the written decision requirements of this Ordinance shall apply to any application for a material change.

k. Complaint Process. The complaint process and notice requirements set forth in Wis. Admin. Code § PSC 128.40 and 128.42 are incorporated herein.

l. Fees.

(1) An owner shall submit a non-refundable application fee as set forth in the Town of Sheboygan Zoning Fee Resolution, which may be amended from time to time by Town Board Resolution.

(2) An owner shall be responsible for all reasonable fees and costs incurred by the Town Board for any services necessary to review an application, which may include the costs of services provided by outside engineers, attorneys, planners, environmental specialists, and other consultants or experts of the Town's choosing. The owner shall be responsible for third-party inspection fees regarding compliance with approved construction requirements.

(3) An owner shall deposit 1% of the total estimated project cost, or an amount as otherwise determined by the Town Board, with the Town Clerk, which represents 50% of the total estimated amount of reimbursement for the Town's review of the application. Such amount shall be paid before the Town issues a written decision on the application. The Town shall hold the estimated fees in a non-interest bearing account, and shall refund any overpayment of estimated fees to the owner one year after the wind energy system commences operation. Any fees or costs that remain unpaid for more than 30 days after written demand by the Town shall result in the application being denied. The owner shall be responsible for the difference between the deposited amount and the Town's actual fees. Any fees that remain unpaid after 30 days shall accrue interest at a rate of 12% per annum and may be assessed against the property as a special charge.

m. Administrative Code References. All references to the Wis. Admin. Code Chapter 128 are to the 2011 version. Any amendments to Chapter 128 shall be incorporated herein."

Section 3. Severability. Should any portion of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder shall not be affected.

Section 4. Effective Date. This Ordinance shall take effect the day after publication or posting.

Enacted this 17 day of July, 2012.

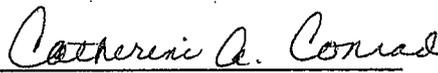
TOWN OF SHEBOYGAN

By:


DANIEL W. HEIN, Chairperson

CERTIFICATE OF ENACTMENT

I hereby certify that the foregoing Ordinance was duly enacted by the Town Board of the Town of Sheboygan on the 17th day of July, 2012.


CATHERINE A. CONRAD, Clerk

Published/Posted this 21st day of July, 2012.

R:\CLIENT\08272\00001\00052713.DOCX