

Ordinance Number 2016-021

**Town of Ledgeview
Brown County, Wisconsin**

**AN ORDINANCE TO AMEND CHAPTER 135-ZONING ARTICLE XXIX
CONDITIONAL USE PERMITS FOR LARGE WIND-ENERGY FACILITY**

The Town Board of Supervisors of the Town of Ledgeview, Brown County, Wisconsin does ordain as follows:

Section 1: Chapter 135-Zoning, Article XXIX Conditional Use Permits for Large Wind-Energy Facility, of the Town of Ledgeview Code of Ordinances is hereby amended to read as follows:

WIND ENERGY FACILITY REGULATION

§ 135-270 Purpose.

The purpose of this article is to provide standards for the issuance of conditional use permits for wind-energy facilities in the Town of Ledgeview. The State of Wisconsin encourages the proliferation of clean renewable energy resources, however, despite the potential benefits of wind-energy facilities and their capacity for producing clean, renewable energy, large wind-energy facilities present serious potential health and safety hazards due to the nature of their size, motion and noise. This article is designed to protect public health and safety as well as impose other reasonable regulations for the general public welfare that do not significantly increase the cost of wind-energy facilities, do not decrease the efficiency of wind-energy facilities or will allow for alternative systems of comparable cost and efficiency in conformity with Wis. Stats. § 66.0401.

§ 135-271 Definitions.

As used in this article, the following terms shall have the meanings indicated:

A. "DECOMMISSIONING" shall mean removal of all of the following:

(a) The above ground portion of a wind energy system, including wind turbines and related facilities, except for access roads if removal has been waived by the property owner.

(b) All below ground facilities, except the following:

1. Underground collector circuit facilities.

2. Those portions of concrete structures 4 feet or more below grade.

B. "KARST FEATURE" shall mean an area or surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include areas with soils less than 60 inches thick over bedrock, caves, enlarged fractures, mine features,

exposed bedrock surfaces, sinkholes, springs, seeps, swallets, and depressional areas with no surface drainage.

- C. "MAXIMUM BLADE TIP HEIGHT" shall mean the nominal hub height plus the nominal blade length of a wind turbine, as listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in the wind turbine specifications, "maximum blade tip height" shall mean the actual hub height plus the blade length.
- D. "NON-PARTICIPATING PROPERTY shall mean real property that is not a participating property.
- E. "NON-PARTICIPATING RESIDENCE" shall mean a residence located on nonparticipating property.
- F. "OCCUPIED COMMUNITY BUILDING" shall mean a school, church or similar place of worship, daycare facility or public library.
- G. "OWNER" shall mean:
- (1) A person with a direct ownership interest in the wind energy system, regardless of whether the person was involved in acquiring the necessary rights, permits and approvals or otherwise planning for the construction and operation of a wind energy system.
 - (2) At the time a wind energy system is being developed, a person who is acting as a wind energy system developer by acquiring the necessary rights, permits and approvals or otherwise planning for the construction and operation of a wind energy system, regardless of whether the person will own or operate the wind energy system.
- H. "RESIDENCE" shall mean an occupied primary or secondary personal residence including a manufactured home as defined in s. 101.91 (2), Stats., a hospital, community-based residential facility, residential care apartment complex or similar facility, or a nursing home, a temporarily unoccupied primary or secondary personal residence.
- I. "SHADOW FLICKER" shall mean a pattern of moving shadows cast on a residence or an occupied community building caused by sunlight shining through moving wind turbine blades resulting in alternating changes in light intensity.
- J. "TOTAL HEIGHT" shall, when referring to a wind turbine, the distance measured from ground level to the blade extended at its highest point.

- K. “WIND-ENERGY FACILITY, LARGE” shall mean an electricity-generating facility consisting of one or more wind turbines under common ownership or operating control, and includes substations, meteorological towers, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity to off-site customers. It includes substations, meteorological towers, cables and wires and other buildings accessory to such facility.
- L. “WIND-ENERGY SYSTEM, SMALL” shall mean a wind-energy system that is used to generate electricity with a total height of 170 feet or less and ~~has a nameplate capacity of 100 kilowatts or less.~~ that has a total installed nameplate capacity of 300 kilowatts or less and that consists of individual wind turbines that have an installed nameplate capacity of not more than 100 kilowatts.
- M. “WIND ENERGY SYSTEM” shall have the meaning given in Sec. 66.0403(1)(m), Wis. Stats., and is used to convert wind energy to electrical energy.
- N. “WIND TURBINE” shall mean a wind-energy conversion system which converts wind-energy into electricity through the use of a wind turbine generator, and includes the turbine, blade, tower, base and pad transformer, if any, provided that such a system shall only be a wind turbine for purposes of this article if it both has a total height greater than 170 feet and nameplate capacity of greater than 100 kilowatts.

§ 135-272 Applicability.

This article is adopted and made applicable within the Town pursuant to the provisions of Sec. PSC 128.10, Wis. Admin. Code. This article shall apply to all large wind-energy facilities. Large wind-energy facilities for which a required permit has been properly issued prior to the effective date of this article shall not be required to meet the requirements of this article; provided, however, that any such preexisting large wind-energy facility which does not provide energy for a continuous period of 12 months shall meet the requirements of this article prior to recommencing production of energy. No substantial modification or alteration to an existing large wind-energy facility shall be allowed without full compliance with this article.

§ 135-273 Permit application.

Applicants for a conditional use permit for as wind-energy facility, in addition to any other information generally required for conditional use permits shall submit the following:

- A. The name, address, legal corporate status and telephone number of the applicant responsible for the accuracy of the application and site plan.

- B. The name, address, legal corporate status and telephone number of the owner of the proposed large wind-energy facility. Should a permit be issued, this information shall be immediately updated with the Town Clerk upon any change during the life of the permit, and failure to do so shall be considered a violation of the conditional use permit.
- C. A signed statement indicating that the applicant has legal authority to construct, operate, and develop the wind-energy system(s) under state, federal and local laws and regulations, including Federal Aviation Administration (FAA), state and local building codes.
- D. The applicant shall also provide copies of the certificate of authority from the Public Service Commission of Wisconsin and the Public Service Commission of Wisconsin Environmental Assessment, if applicable.
- E. A description of the number and kind of wind-energy facilities to be installed.
- F. A description of the height and design of the facility, including a cross section, elevation, and diagram of how the wind-energy facility will be anchored to the ground.
- G. A site plan, drawn to a scale of not less than one inch to 50 feet, showing the parcel boundaries and a legal description, two-foot contours for the subject site and 100 feet beyond the subject site, Karst features, support facilities, access, proposed landscaping and fencing.
- H. A detailed overview map, including parcel lines, of the precise location for all large wind turbine towers as part of the proposed project in the Town of Ledgeview.
- I. Photo exhibits visualizing the proposed wind-energy facility.
- J. A statement from the applicant that all wind-energy facilities will be installed in compliance with manufacturer's specifications, and a copy of those manufacturer's specifications.
- K. A copy of the lease with the landowner if the applicant does not own the land ~~for~~ upon which the proposed large wind-energy facility(ies) is proposed to be located. A statement from the landowner of the leased site that he/she will abide by all applicable terms and conditions of the conditional use permit, if approved.
- L. A statement indicating what hazardous materials will be used and stored on the site and how those materials will be stored.
- M. A statement describing all lighting for the large wind-energy facility, including an explanation demonstrating that lighting is the minimum necessary for safety or security purposes as well as a description of all techniques used to minimize glare. A signed copy of the Federal Aviation Administration (FAA) approval shall be supplied to the Town.
- N. Any other information requested by the Town Board deemed reasonably necessary to evaluate the conditional use application, including, but not limited to, an avian risk study.

§ 135-274 Pre-Application ~~public meeting~~ Proceedings.

A. Pre-Application Notice.

- (1) Pre-Application Notice. At least ninety (90) days before an Owner files an application to construct either a Large Wind Energy Facility or a Small Wind Energy System, the applicant shall use commercially reasonable methods to provide written notice of the planned wind energy system to all of the following and shall provide the Town with confirmation of such notice:
 - (a) All land owners within one (1) mile of a planned wind turbine host property.
 - (b) The Town of Ledgerview
 - (c) Emergency first responders and air ambulance service providers serving the Town.
 - (d) All state and federal regulatory agencies identified in Sec. PSC 128.105(1), Wis. Admin. Code.
- (2) Pre-Application Notice Requirements. The Owner shall include all of the following information in the Pre-Application Notice provided in Subparagraph A(1) hereof:
 - (a) A complete description of the proposed wind energy system including the number and size of the planned wind turbines.
 - (b) A map showing the planned location of all wind energy system facilities.
 - (c) Contact information for the Owner.
 - (d) A list of all potential permits or approvals the Owner anticipates will be necessary for the construction of the proposed wind energy system.
 - (e) Whether the Owner is requesting a joint application review process with the Commission and the Town under Sec. PSC 128.30(7), Wis. Admin. Code.

B. Pre-Application Public Meeting. An applicant for a large wind-energy facility may request, at the applicant's expense, a pre-application public meeting with the Town Board and Planning Commission, at which no official Town action shall be taken. A pre-application public meeting may be held in order for the applicant to:

- (1) Inform Town residents of the project.

- (2) Provide informational displays of the areas of the Town that meet the requirements of the Town ordinance and are likely locations for a wind turbine tower.
 - (3) Provide answers to Town resident questions.
 - (4) Solicit input from Town residents regarding locations for wind turbine towers within the areas of the Town that meet the requirements of the Town ordinance, so that exact locations of wind turbine towers may be identified on the conditional use application by the applicant when submitted to the Town.
- B. Town residents not able to attend the meeting shall have the option to provide written comments or questions to the applicant.
- C. In no instance shall this meeting take the place of a formal public hearing for the conditional use permit.

§ 135-275 General conditions.

The following conditions shall be attached to all conditional use permits under this section:

- A. A building permit shall be obtained from the Town Building Inspector prior to construction. Separate permits shall be required for each wind turbine.
- B. Building permit issuance shall be conditioned upon submittal and approval of a site grading, erosion control and storm water drainage plan by the Town Engineer.
- C. Any other required permits to construct and operate a wind-energy facility must be obtained.
- D. Offices, vehicle storage, or other outdoor storage shall not be permitted. One accessory storage building may be permitted per wind turbine if specifically authorized by the Town Board. All accessory structures shall be constructed with a precast concrete roof to withstand ice that may fall off the towers. The size and location of any proposed accessory building shall be shown on the site plan. No other structure or building is permitted unless used for the express purpose of the generation of electricity.
- E. A certificate of insurance with a liability coverage of a minimum of \$2,000,000 per incidence, per occurrence, shall be filed with the Town Clerk prior to construction, naming the Town of Ledgeview as additional insured. Each renewal period will require a copy of the certificate of insurance be provided to the Town of Ledgeview. An expired insurance certificate or an unacceptable liability coverage amount is grounds for revocation of the conditional use permit.
- F. An irrevocable letter of credit, bond, or cash escrow, held in trust in favor of the Town of Ledgeview, to recover the costs associated with removal of a use terminated wind generator and appurtenant facilities shall be filed with the Town Clerk prior to construction. The

amount of the irrevocable letter of credit, bond, or cash escrow shall be set by the Town Board prior to conditional use permit approval and shall remain in effect until released by the Town or the wind-energy facility is completely dismantled and removed from the site.

- G. Construction shall commence within 12 months of conditional use permit issuance and be completed within 36 months of conditional use permit issuance, unless an alternate timeline is approved by the Town Board. Upon request of an applicant, and for good cause, the Town Board may grant an extension of time.
- H. Copies of all as-built plans including structural engineering and electrical plans for all towers following construction to the Town to use for removal of the large wind-energy facility, if the large wind-energy facility owner or its assigns fail to meet the requirements of this article.
- I. The owner of a large wind-energy facility shall defend, indemnify, and hold harmless the Town of Ledgeview and its officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever, including attorney fees arising out of the acts or omissions of the operator concerning the operation of the large wind-energy facility without limitation, whether said liability is premised on contract or tort.
- J. Any other conditions to ensure safety and a proper land use fit to the surrounding area.

§ 135-274 Design, siting and installation conditions and criteria.

The following design, siting and installation conditions and criteria shall be conditions of the conditional use permit.

- ~~A. Wind turbines shall be painted a non-reflective, nonobtrusive color, such as grey, white, or off-white.~~
- ~~B. The blade tip of any wind turbine shall have a minimum ground clearance of 75 feet at its lowest point.~~
- ~~C. The design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the large wind-energy facility to the natural setting and existing environment.~~
- ~~D. All landscaping shall be properly maintained, including grass cutting.~~
- ~~E. Wind energy facilities shall not be artificially lighted, except to the extent required by the Federal Aviation Administration.~~
- ~~F. No form of advertising visible from any public right of way or neighboring property shall be allowed on the pole, turbine, blades, or accessory buildings or facilities associated with the use of the large wind-energy facility.~~

- ~~G. All wind energy facilities shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for overspeed protection.~~
- ~~H. Large wind energy facilities shall comply with all applicable building, electrical and other codes and standards,~~
- ~~I. Electrical controls, control wiring, and power lines shall be wireless or not above ground except where wind farm collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network.~~
- ~~J. The applicant shall reimburse the relevant governmental entity (e.g., the Town for Town roads and Brown County for county highways) for any and all repairs and reconstruction to the public roads, culverts, and natural drainageways resulting from the construction of the large wind energy facility. A qualified independent third party, agreed to by the relevant governmental entity and permittee, and paid for by the permittee, shall be hired to inspect the roadways to be used during construction. This third party shall be hired to evaluate, document, videotape, and rate road conditions prior to the construction of the large wind energy facility and again within 30 days after the large wind energy facility project is completed. Any road damage done by the applicant or subcontractors shall be repaired or reconstructed at the applicant's expense.~~
- ~~K. Where large wind energy facility construction cuts through a private or public drain tile field, the drain tile shall be repaired and reconnected to properly drain the site to the satisfaction of the landowner.~~
- ~~L. Any recorded access easement across private lands to a large wind energy facility shall in addition to naming the large wind energy facility owner as having access to the easement shall also name the Town of Ledgeview as having access to the easement for purposes of inspection or decommissioning with twenty-four hour advance notice to the property owners and large wind energy facility owner.~~
- ~~M. The owner of a large wind energy facility shall reimburse the Town of Ledgeview for any and all legal notices, meeting fees, and reasonable fees for consulting, legal advice, and engineering. The Town shall submit copies of all related Town-paid invoices to the large wind energy facility owner for repayment to the Town.~~

Design Conditions and Criteria.

- (1) Wind turbines shall be painted a non-reflective, nonobtrusive color, such as grey, white, or off-white.
- (2) The blade tip of any wind turbine shall have a minimum ground clearance of 75 feet at its lowest point.

- (3) The design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the large wind-energy facility to the natural setting and existing environment.
- (4) All landscaping shall be properly maintained, including grass cutting.
- (5) Wind-energy facilities shall not be artificially lighted, except to the extent required by the Federal Aviation Administration.
- (6) No form of advertising visible from any public right-of-way or neighboring property shall be allowed on the pole, turbine, blades, or accessory buildings or facilities associated with the use of the large wind-energy facility.
- (7) All wind-energy facilities shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for overspeed protection.
- (8) Large wind-energy facilities shall comply with all applicable building, electrical and other codes and standards.
- (9) Electrical controls, control wiring, and power lines shall be wireless or not above ground except where wind farm collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network.

B. Siting Conditions and Criteria.

- (1) The Owner shall design and construct the wind energy system using the wind turbine setback distances prescribed in TABLE 1 of Sec. PSC 128.13(1)(a), Wis. Admin Code and the provisions of Sec. 135.277 of this Code.
- (2) The Owner shall measure the wind turbine setback distances as a straight line from the vertical centerline of the wind turbine tower to the nearest point on the permanent foundation of a building or residence or to the nearest point on the property line or feature, as applicable.
- (3) The Owner shall work with the Town and the owners of participating and non-participating properties to site wind turbines to minimize individual hardships.
- (4) The owner of a non-participating residence or occupied building may waive the applicable wind turbine setback distances prescribed in TABLE 1 of Sec. PSC 128.13(1)(a), Wis. Admin Code for those structures to a minimum setback distance of 1.1 times the maximum blade tip height. The owner of a non-participating property may waive the applicable wind turbine setback distances prescribed in TABLE 1 of Sec. PSC 128.13(1)(a), Wis. Admin Code from a non-participating property line.

C. Installation Conditions and Criteria.

- (1) The applicant shall reimburse the relevant governmental entity (e.g., the Town for Town roads and Brown County for county highways) for any and all repairs and reconstruction to the public roads, culverts, and natural drainageways resulting from the construction of the large wind-energy facility. A qualified independent third party, agreed to by the relevant governmental entity and permittee, and paid for by the permittee, shall be hired to inspect the roadways to be used during construction. This third party shall be hired to evaluate, document, videotape, and rate road conditions prior to the construction of the large wind-energy facility and again within 30 days after the large wind-energy facility project is completed. Any road damage done by the applicant or subcontractors shall be repaired or reconstructed at the applicant's expense.
- (2) Where large wind-energy facility construction cuts through a private or public drain tile field, the drain tile shall be repaired and reconnected to properly drain the site to the satisfaction of the landowner.
- (3) Any recorded access easement across private lands to a large wind-energy facility shall in addition to naming the large wind-energy facility owner as having access to the easement shall also name the Town of Ledgeview as having access to the easement for purposes of inspection or decommissioning with twenty-four-hour advance notice to the property owners and large wind-energy facility owner.
- (4) The owner of a large wind-energy facility shall reimburse the Town of Ledgeview for any and all legal notices, meeting fees, and reasonable fees for consulting, legal advice, and engineering. The Town shall submit copies of all related Town-paid invoices to the large wind-energy facility owner for repayment to the Town.

§ 135-277 Setback requirements for wind turbines.

In addition to the siting conditions and criteria set out in Sec. 135-276B, the following setback requirements shall be conditions of the conditional use permit applicable to each wind turbine.

- A. Inhabited structures. Each wind turbine shall be setback from the nearest inhabited building a distance of ~~no less than the greater of two times its total height or 1,000 feet~~ as prescribed in TABLE 1 of Sec. PSC 128.13(1)(a), Wis. Admin Code. The Town Board may modify this requirement upon the consent of the owner of the relevant building to decrease the setback. In no instance shall the setback be decreased to less than 1.1 times the total height of the wind turbine. A consent to such modification shall be signed by the impacted property owner(s) and recorded with the property with the Brown County Register of Deeds.
- B. Property lines. Each wind turbine shall be setback from the nearest property line a distance ~~no less than 1.1 times its total height~~ as prescribed in TABLE 1 of Sec. PSC 128.13(1)(a), Wis. Admin Code. The Board may modify this provision where strict enforcement would not serve the public interest and upon consent of the neighboring property owner impacted

by the waiver. A consent to such modification shall be signed by the impacted property owner(s) and recorded with the Brown County Register of Deeds.

- C. Public roads. Each wind turbine shall be setback from the nearest public road right-of-way a distance of no less than 1.1 times ~~its total height~~ the maximum blade tip height. The Town Board may modify this provision where the public interest in erecting the wind turbine is outweighed by the public interest in strict enforcement of this setback.
- D. Communication and utility lines. The large wind-energy facility must meet all utility company setbacks and/or easements as well as the setback provisions prescribed in TABLE 1 of Sec. PSC 128.13(1)(a), Wis. Admin Code . The owner of the large wind-energy facility is responsible for contacting the appropriate utility to determine the location of all above and underground utility lines, including, but not limited to, electricity, natural gas, petroleum, propane, cable television, and fiber optic. Utility line and/or easement locations shall be provided to the Town of Ledgeview for verification
- E. Niagara escarpment ledge face. Due to the significance of the Niagara escarpment ledge face to the character of the Town, the karat features, including, but not limited to, sinkholes and fractured bedrock associated with the Niagara escarpment, the potential for groundwater contamination and impact on nearby wells from blasting, and the potential impact on endangered plants and animals, each wind turbine shall be setback a minimum of 1,500 feet from the Niagara escarpment ledge face. A map depicting this setback from the ledge face is on file with the Town of Ledgeview. This setback may be modified by the Town Board where such modification does not adversely impact the public health or safety and if such modification is necessary to avoid significant increases in the cost of the proposed system or significant decreases in system efficiency, or no alternative system of comparable cost or efficiency can be installed without modification of this setback.

§ 135-278 Noise and vibration requirements.

The following noise and vibration requirements shall be conditions of the conditional use permit.

- A. ~~Audible noise due to large wind energy facility operations shall not exceed 45 dBA for 10% of the time over a continuous twenty four hour period, when measured at any residence, school, hospital, church, or public library existing on the date of approval of a building permit for a wind turbine. If audible noise exceeds 50 dBA for 10% of the time over a continuous twenty four hour period, the offending wind turbine must be inoperable until repairs are completed, or a waiver is obtained from affected property owners in accordance with Subsection F.~~ An owner shall operate the wind energy system so that the noise attributable to the wind energy system does not exceed 50 dBA during daytime hours and 45 dBA during nighttime hours unless a waiver is obtained from the affected property owners in accordance with Subsection F hereof. If an owner uses sound level measurements to evaluate compliance with this section at a nonparticipating residence or occupied community building, those measurements shall be made as near as possible to the

outside wall nearest to the closest wind turbine, or at an alternate wall as specified by the owner of the nonparticipating residence or occupied community building. The owner may take additional measurements to evaluate compliance in addition to those specified by this section.

- B. Wind-energy facilities shall not create a steady, pure tone, such as a whine, screech, hum, or vibration audible from any residence, school, hospital, church or public library existing on the date of issuance of any building permit for a wind turbine. In the event audible noise due to wind energy system operations contains a steady pure tone, such as a whine, whistle, screech, or hum, the owner shall promptly take corrective action to permanently eliminate the noise. This provision does not apply to sound the wind energy system produces under normal operating conditions. A pure tone exists if the 1/3 octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two contiguous 1/3 octave bands by five (5) dBA for center frequencies of 500 Hz and above, by eight (8) dBA for center frequencies between 160 Hz and 400 Hz, or by fifteen (15) dBA for center frequencies less than or equal to 125 Hz.
- C. In the event the ambient noise level (exclusive of the wind-energy facility) exceeds the applicable standard given herein, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is succeeded for more than five minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches, and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind-generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed 30 mph at the ambient noise level measurement location.
- D. Any noise level measurement falling between two whole decibels shall be rounded up.
- E. Any noise monitoring or measurements deemed necessary in the reasonable discretion of the Town Board to determine compliance with the conditional use permit shall be considered a service to the property and shall be paid for by the applicant or wind turbine facility owner and if not paid within 30 days, written notice, a copy of which shall be mailed to the owner of the property if different than the applicant or wind facility owner, may be placed on the tax roll as a special charge pursuant to Wis. Stats. § 66.0627.
- F. In the event the noise levels resulting from the wind-energy facility exceed the criteria listed above, a modification to such levels may be granted by the Town Board, provided that the following has been accomplished:
- (1) Written consent waiver from the affected property owner(s) has been obtained stating that they are aware of the large wind-energy facility and noise limitations imposed by this article, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and

(2) A noise impact easement has been recorded in the Brown County Register of Deeds which describes the benefited and burdened properties and which advises all subsequent owners of the burdened property that noise levels in excess of those permitted by this article may exist on or at the burdened property.

G. Upon receipt of a complaint regarding a violation of the noise standards in this Section, an owner shall test for compliance with the noise limits in Subsection A hereof. The Town Board may require additional testing to show compliance with the noise limits in Subsection A hereof if the owner has not provided the results of an accurate test conducted within 2 years of the date of the complaint showing that the wind energy system is in compliance with the noise limits set out in Subsection A hereof at the location relating to the complaint.

H. Notification.

(1) Before entering into a waiver agreement under subparagraph F hereof, an owner of a wind energy system shall provide written notice of the requirements of this section to the owner of an affected nonparticipating residence or occupied community building.

(2) Before the initial operation of the wind energy system, an owner of a wind energy system shall provide notice of the requirements of this section to an owner of a nonparticipating residence or occupied community building within 0.5 mile of a constructed wind turbine that has not entered into a waiver agreement under subparagraph F hereof.

(3) All notices required hereunder shall comply with the provisions of Sec. PSC 128.30, Wis. Admin. Code.

§ 135-279 Signal interference.

The following signal interference requirements shall be conditions of the conditional use permit.

A. An owner shall use reasonable efforts to avoid causing interference with commercial communications and personal communications to the extent practicable. An owner may not construct wind energy system facilities within existing line-of-sight communication paths that are used by government or military entities to provide services essential to protect public safety. The Town may require an owner to provide information showing that wind turbines and other wind energy system facilities will be in compliance with this paragraph.

B. As a further condition of the conditional use permit, all interference with electromagnetic communications, such as radio, telephone, computers or television signals, including any

public agency radio systems shall be substantially mitigated. Public utilities shall comply with Wis. Adm. Code § PSC 113.0700.

C. All signal interference mitigation undertaken by an owner hereunder shall comply with the provisions of Sec. PSC 128.16, Wis. Admin. Code.

§ 135-280 Shadow flicker.

Conditions shall be imposed to minimize or mitigate shadow flicker to any occupied building on property of nonconsenting land owners. The following shadow flicker limitations and requirements shall be conditions of the conditional use permit:

A The shadow flicker requirements in this Section apply to a nonparticipating residence or occupied community building that exists when the owner gives notice under Sec. PSC 128.105 (1) Wis. Admin. Code or for which complete publicly-available plans for construction are on file with a political subdivision within 30 days of the date on which the owner gives notice under Sec. PSC 128.105 (1), Wis. Admin. Code.

B. An owner shall design the proposed wind energy system to minimize shadow flicker at a residence or occupied community building to the extent reasonably practicable. An owner shall use shadow flicker computer modeling to estimate the amount of shadow flicker anticipated to be caused by a wind energy system and shall design the wind energy system so that computer modeling indicates that no nonparticipating residence or occupied community building will experience more than 30 hours per year of shadow flicker under planned operating conditions.

C. An owner shall operate the wind energy system in a manner that does not cause more than 30 hours per year of shadow flicker at a nonparticipating residence or occupied community building. If a nonparticipating residence or occupied community building experiences more than 30 hours per year of shadow flicker under the wind energy system's normal operating conditions, the owner shall use operational curtailment to comply with this subsection.

D. An owner of a wind energy system shall:

(1) Work with an owner of a nonparticipating residence or occupied community building to mitigate the effects of shadow flicker to the extent reasonably practicable. An owner shall provide reasonable shadow flicker mitigation at the owner's expense for a nonparticipating residence or occupied community building experiencing 20 hours or more per year of shadow flicker.

(2) Shall model shadow flicker and a nonparticipating residence or occupied community building is eligible for mitigation if computer modeling shows that shadow flicker at the nonparticipating residence or occupied community building will be 20 hours or more per year. An owner of a nonparticipating residence or

occupied community building is not required to document the actual hours per year of shadow flicker if modeling indicates the nonparticipating residence or occupied community building is eligible for mitigation. A nonparticipating residence or occupied community building that experiences 20 hours or more per year of shadow flicker based on records kept by the resident of a nonparticipating residence or the occupant of an occupied community building shall also be eligible for mitigation.

E. An owner may provide shadow flicker mitigation for any residence or occupied community building in addition to the mitigation required hereunder and under the provisions of Sec. PSC 128.15, Wis. Admin. Code. The requirement to mitigate shadow flicker applies when the owner receives a complaint or request for mitigation regarding shadow flicker for an eligible nonparticipating residence or occupied community building. If shadow flicker mitigation is required, the owner of the wind energy system shall allow the owner of the nonparticipating residence or occupied community building to choose a preferred reasonable mitigation technique, including installation of blinds or plantings at the wind energy system owner's expense.

F. An owner of a wind energy system and an owner of an affected nonparticipating residence or occupied community building may enter into an agreement relieving the wind energy system owner of a shadow flicker requirements hereunder at the affected nonparticipating residence or occupied community building. Unless otherwise provided in a contract signed by an owner of an affected nonparticipating residence or occupied community building, a waiver by an owner of an affected nonparticipating residence or occupied community building shall be an encumbrance on the real property and runs with the land until the wind energy system is decommissioned, and shall be recorded under Chapter 706, Wis. Stats., as provided under Sec. PSC 128.15(4), Wis. Admin. Code.

G. Notification.

(1) Before entering into a waiver agreement under subparagraph F hereof, a wind energy system owner shall provide notice of the requirements of this section to individual owners of an affected nonparticipating residence or occupied community building.

(2) Before the initial operation of the wind energy system, a wind energy system owner shall provide notice of the requirements of this section to an owner of a nonparticipating residence or occupied community building within 0.5 mile of a constructed wind turbine that has not entered into a waiver agreement under subparagraph F hereof.

(3) All notices required hereunder shall comply with the provisions of Sec. PSC 128.30, Wis. Admin. Code.

§ 135.281 Construction and operation requirements and conditions.

A. Physical characteristics.

- (1) No advertising material or signage other than warnings, equipment information, or indicia of ownership on a wind turbine may be displayed on any wind turbine. No flag, decorative sign, streamers, pennants, ribbons, spinners, fluttering, or revolving devices to a wind turbine may be attached to any wind turbine. A safety feature or wind monitoring device to a wind turbine.
- (2) The owner shall ensure that each wind turbine has a conventional or unobtrusive finish.
- (3) The owner shall install lighting at a wind energy system that complies with standards established by the federal aviation administration. The Town may require use of shielding or control systems approved by the federal aviation administration to reduce visibility of lighting to individuals on the ground.
- (4) The owner shall take appropriate measures to ensure that a wind turbine is not readily climbable except by authorized personnel.
- (5) The owner shall ensure that all wind turbine access doors and electrical equipment are locked when authorized personnel are not present.
- (6) The owner shall place appropriate warning signage on or at the base of each wind turbine.
- (7) The owner shall post and maintain up-to-date signs containing a 24-hour emergency contact telephone number, information identifying the owner, and sufficient information to identify the location of the sign within the wind energy system. The owner shall post and maintain these signs at every intersection of a wind energy system access road with a public road and at each wind turbine location.
- (8) The owner shall clearly mark guy wires and supports for a wind energy system, meteorological tower or other device for measuring wind speeds so that the wires and supports are visible to low flying aircraft under fair weather conditions.

B. Electrical standards.

- (1) The owner shall construct, maintain, and operate collector circuit facilities in a manner that complies with the national electrical safety code and Chapter. PSC 114, Wis. Admin. Code and shall construct, maintain, and operate all wind energy system facilities in a manner that complies with the national electrical code.
- (2) The owner shall construct collector circuit facilities for a wind energy system underground to the extent practicable.
- (3) The owner shall establish an inspection schedule for all overhead collector circuits to ensure that third-party facilities, including cable television and telecommunications cables, are not attached or bonded to overhead collector circuit grounding. If third-party facilities are found attached to the overhead collector

facilities, the owner shall ensure that the third-party facilities are promptly removed.

- (4) The owner shall work with the local electric distribution company to test for stray voltage at all dairy and confined animal operations within 0.5 mile of a wind energy system facility pursuant to the stray voltage protocol established by the PSC before any wind energy system construction activity that may interfere with testing commences and again after construction of the wind energy system is completed, except as otherwise specified by the PSC. In compliance herewith the owner shall:
 - (a) Before any testing hereunder work with the PSC and the Town to determine the manner in which stray voltage testing will be conducted and on which properties. The electric distribution company serving a dairy or confined animal operation where testing is required shall conduct or arrange to conduct all required testing at the expense of the owner.
 - (b) Provide the PSC and the Town, in writing, with the results of all stray voltage testing.
 - (c) Work with the electric distribution company and farm owner to rectify any stray voltage problems attributable to the construction and operation of the wind energy system, in compliance with the commission's stray voltage protocol.

C. Construction, operation, and maintenance standards.

- (1) An owner shall construct, operate, repair, maintain and replace wind energy system facilities as needed to keep the wind energy system in good repair and operating condition and in a manner that protects individuals from injury.
- (2) An owner shall minimize soil compaction, topsoil mixing and damage to drainage systems on agricultural land during the construction or decommissioning of the wind energy system. A political subdivision may establish reasonable requirements designed to minimize soil compaction, topsoil mixing and damage to drainage systems on agricultural land.
- (3) Except for the area physically occupied by the wind energy system facilities, an owner shall restore the topography, soils and vegetation of the project area to original condition after construction is complete, unless otherwise provided in a contract signed by an affected landowner, considering any modifications needed to comply with DNR requirements.
- (4) An owner shall carry and maintain in place general liability insurance relating to claims for property damage or bodily injury arising from the construction, operation or decommissioning of the wind energy system and shall include turbine host property owners as additional insured persons on the policy.

D. Emergency procedures.

- (1) An owner shall notify the Town of the occurrence and nature of a wind energy system emergency within 24 hours of the wind energy system emergency.
- (2) An owner shall work with the Town and with local fire, police, and other appropriate first responders serving the wind energy system to create effective emergency plans that include all of the following:
 - (a) A list of the types of wind energy system emergencies that require notification under Subsection D(1) above.
 - (b) Current emergency contact information for first responders and for the wind energy system owner, including names and phone numbers.
 - (c) Procedures for handling different types of wind energy system emergencies, including written procedures that provide for shutting down the wind energy system or a portion of the system as appropriate.
 - (d) Duties and responsibilities of the owner and of first responders in the event of a wind energy system emergency.
 - (e) An emergency evacuation plan for the area within 0.5 mile of any wind energy system facility, including the location of alternate landing zones for emergency services aircraft.
- (3) The owner 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.
- (4) The owner shall provide current copies of the emergency plan to the Town and local fire, police and other appropriate first responders as identified by the political subdivision.

E The Town may require the owner to provide annual training for fire, police and other appropriate first responders regarding responding to a wind energy system emergency until the wind energy system has been decommissioned.

F. An owner of a wind energy system 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 a wind energy system emergency, review employee activities to determine whether the procedures were effectively followed.

§ 135.282 Additional safety conditions.

- A. All wiring between wind turbines and the large wind-energy facility substation shall be underground.
- B. Wind turbine towers shall not be climbable up to 15 feet above ground level and must be located inside of the tower.
- C. All access doors to wind turbine towers and electrical equipment shall be locked at all times when not being serviced or attended to by authorized personnel.
- D. Appropriate warning signage shall be placed on wind turbine towers, electrical equipment, and large wind-energy facility entrances.
- E. The large wind-energy facility site and all structures shall provide an annual inspection of structural stability, paid by the large wind-energy facility owner, with a report filed with the Town Clerk.
- F. The owner/operator of the large wind-energy facility shall coordinate with the Wisconsin Public Service Commission (PSC) to test for stray voltage before, during, and after construction upon request by the Ledgeview Zoning Administrator.
- G. All substations shall be fenced to prevent public access. Chain link fencing shall include vinyl or aluminum slats or other landscaping to create an opaque visual barrier of at least 75%.
- H. The owner/operator of the large wind-energy facility shall clearly post and maintain at each facility a twenty-four-hour per day manned telephone number in case of an emergency.
- I. The owner or operator of the large wind-energy facility shall provide qualified personnel to conduct training sessions to emergency responders whenever requested.
- J. The owner/operator of the large wind-energy facility shall provide a company representative to accompany the local Fire Department Fire Inspector during site visits. The owner/operator of the large wind-energy facility shall comply with all applicable laws regarding those inspections.
- K. All reasonable precautions shall be taken to prevent health and safety risks due to ice shedding.

§ 135-283 ~~Removal~~ Decommissioning.

- A. The owner of any wind-energy facility shall immediately notify the Town when the facility is to discontinue operation. Decommissioning and removal of the wind-energy facility shall occur pursuant to and in compliance with the provisions of Sec. PSC 128.19, Wis. Admin. Code and subject to the time limits made and provided therein.

- B. Within 210 days of notice of discontinuation, all wind-energy facilities shall be removed from the site and all easements appurtenant to such facilities shall be released at the expense of the owner of the wind-energy facility. The Town Board may grant reasonable extensions of time for good cause upon request.
- C. The site shall be stabilized, graded, and cleared of any debris by the owner of the facility or its assigns. Unless the site is to be used for agricultural purposes, the site shall be seeded to prevent soil erosion.
- D. Any foundation shall be removed to a minimum depth of 10 feet below grade, or to the level of the bedrock if less than 10 feet below grade, by the owner of the facility or its assigns. Following removal, the location of any remaining wind turbine foundation shall be identified on a map as such and recorded with the deed to the property with the Brown County Register of Deeds.
- E. Any wind turbine or energy facility that does not produce energy for a continuous period of 12 months, excluding time spent on repairs or improvements, shall be considered abandoned and shall be removed consistent with this section. Abandonment of any wind-energy facility shall result in revocation of the conditional use permit and render such facilities as unlawful structures.
- F. Notification:
 - (1) An owner shall file a notice of decommissioning completion with the political subdivision and the commission when a wind energy system approved by the Town has been decommissioned and removed.
 - (2) Within 360 days of receiving a notice of decommissioning, the Town shall determine whether the owner has satisfied the requirements of Sec. PSC 128.19, Wis. Admin. Code.

§ 135-284 Fees.

The application fee for a conditional use permit under this article shall be as established in § 1-19 of the Code of the Town of Ledgeview plus the actual cost of all required legal notices and fees for required Town consultants, including, but not limited to, legal and engineering review.

§ 135-285 Enforcement; violations and penalties.

No person shall erect, move or structurally alter wind-energy facility or component thereof in violation of the provisions of this article.

- A. Any wind-energy facility that does not meet the requirements of this article, including, but not limited to those dealing with noise or visual appearance, or does not meet the conditions

attached to an approved conditional use permit shall provide grounds for revocation of the conditional use permit, thereby deeming the facility an unlawful structure.

- B. The Zoning Administrator shall report all such violations to the Town Board who may then refer the matter to the Town Attorney to bring action to enjoin the erection, moving or structural alteration of such facility or to cause such facility to be vacated or removed.
- C. Any person, firm or corporation, or agent, employee, or contractor of such, who violates, destroys, omits, neglects, or refuses to comply with, or who resists enforcement of any provision of this article; shall upon conviction thereof forfeit no less than \$1,000 nor more than \$10,000 per offense together with the costs of prosecution. Each violation and each day of violation shall constitute a separate offense.
- D. This section shall not preclude the Town of Ledgeview from maintaining any appropriate action to prevent or remove a violation of this article.

§ 135-286 Severability.

Any provision of this article shall be considered severable from any other portion or any other language in this Code of Ordinances. If any provision is found to be unconstitutional, invalid or unenforceable, such finding shall not affect the remaining provisions of this article.

Section 2: Repeal of inconsistent ordinances. All existing town ordinances, parts of ordinances, and amendments thereto in conflict with any of the provisions of this ordinance are hereby repealed.

Section 3: Effective date. This ordinance shall take effect upon passage and posting.

Approved: _____, 2016.

Philip J. Danen, Town Chairman

ATTEST:

I, Sarah K. Burdette, Clerk/Administrator of the Town of Ledgeview, Brown County, hereby certifies that the above is a true copy of an Ordinance adopted by the Town Board of the Town of Ledgeview on _____, 2016.

Sarah K. Burdette
Town Clerk/Administrator

Posted: _____

Published: _____