

# Town of Hampden Wind Energy System Ordinance

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**ORDINANCE NO. \_\_\_\_\_**  
**TOWN OF HAMPDEN WIND ENERGY SYSTEM ORDINANCE**

The Town Board of the Town of Hampden does hereby ordain that this Town of Hampden Wind Energy System Ordinance is hereby created to provide as follows:

**ARTICLE 1. PURPOSE**

The purpose of this Ordinance is to incorporate the requirements of Section 66.0401 of the Wisconsin Statutes and Chapter PSC 128 of the Wisconsin Administrative Code as a Town ordinance and to establish Town regulations for the installation and use of large and small wind energy systems that are authorized by, compliant with, and no more restrictive than the rules promulgated by the Wisconsin Public Service Commission. This Section is also intended to preserve and protect public health and safety, to not significantly increase the cost of the system or significantly decrease wind energy system efficiency and to allow for an alternative system of comparable costs and efficiency.

**ARTICLE 2. DEFINITIONS**

Terms used here shall have meaning described in Section PSC 128.01 of the Wisconsin Administrative Code.

- A. **“Commercial communications”** includes communications used by government and military entities for emergency purposes, licensed amateur radio service, and non-emergency communications used by agricultural, business, government, and military entities including aviation radar, commercial mobile radio service, fixed wireless service, global positioning, line-of-sight, microwave, personal communications service, weather radar, and wireless internet service.
- B. **“Commission”** means the public service commission.
- C. **“Decommissioning”** means removal of all of the following:
  - i. 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.
  - ii. All below ground facilities, except the following:
    - a. Underground collector circuit facilities.
    - b. Those portions of concrete structures 4 feet or more below grade.
- D. **“DNR”** means the Wisconsin Department of Natural Resources.
- E. **“Maximum blade tip height”** means 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” means the actual hub height plus the blade length.
- F. **“Nameplate capacity”** means the nominal generating capacity of a wind energy system, as listed in the wind turbine specifications provided by the wind turbine manufacturer.
- G. **“Nonparticipating property”** means real property that is not a participating property.
- H. **“Nonparticipating residence”** means a residence located on nonparticipating property.
- I. **“Occupied community building”** means a school, church or similar place of worship, daycare facility or public library.

J. **“Owner”** means:

- i. A person with a direct ownership interest in a 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.
- ii. 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 for or by planning for the construction and operation of a wind energy system, regardless of whether the person will own or operate the wind energy system.

K. **“Participating property”** means any of the following:

- i. A turbine host property.
- ii. Real property that is the subject of an agreement that does all of the following:
  - a. Provides for the payment of monetary compensation to the landowner from an owner regardless of whether any part of a wind energy system is constructed on the property.
  - b. Specifies in writing any waiver of a requirement or right under this chapter and that the landowner’s acceptance of payment establishes the landowner’s property as a participating property.

L. **“Participating residence”** means a residence located on participating property.

M. **“Personal communications”** includes wireless telecommunications, personal communications service, radio, television, wireless internet service, and other systems used for personal use purposes.

N. **“Political subdivision”** has the meaning given in s. 66.0401 (1e) (c), Stats.

O. **“Residence”** means 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. “Residence” includes a temporarily unoccupied primary or secondary personal residence. “Residence” does not include any of the following:

- i. A recreational vehicle as defined in s. 340.01 (48r), Stats., notwithstanding the length of the vehicle.
- ii. A camping trailer as defined in s. 340.01 (6m), Stats.
- iii. A permanently abandoned personal residence.

P. **“Shadow flicker”** means 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.

Q. **“Small wind energy system”** means a wind energy system 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.

R. **“Town”** as used in this Ordinance means Town of Hampden.

S. **“Turbine host property”** means real property on which at least one wind turbine is located.

T. **“Violation”** means a violation of this Ordinance or a violation of a permit issued under this Ordinance, or a violation of a Permitting Agreement entered into under this Ordinance.

- U. **“Wind access easement”** means a written document that creates a legal interest in real property that restricts the use of the property to avoid interference with the wind resource on another property.
- V. **“Wind energy system”** means equipment and associated facilities that convert and then store or transfer energy from the wind into usable forms of energy.
- W. **“Wind energy system easement”** means a written document that creates a legal interest in real property that permits an owner to place, construct or operate a wind turbine or other wind energy system facility on the property.
- X. **“Wind energy system emergency”** means a condition or situation at a wind energy system that presents a significant threat of physical danger to human life or a significant threat to property or a natural event that causes damage to wind energy system facilities.
- Y. **“Wind energy system facility”** means any component of a wind energy system, such as a wind turbine, collector circuit, access road, electric system interconnection facility or operation and maintenance facility.
- Z. **“Wind energy system lease”** means a written agreement between a landowner and an owner that establishes the terms and conditions associated with the placement, construction or operation of a wind turbine or other wind energy system facility on a landowner’s property.

### **ARTICLE 3. STATE AND COUNTY REQUIREMENTS INCORPORATED**

The requirements set forth in section 66.0401 of the Wisconsin Statutes and Chapter PSC 128 of the Wisconsin Administrative Code are adopted and incorporated herein. The requirements set forth in Columbia County Zoning Ordinances 12.125.29 and 12.125.30 are also hereby adopted and incorporated herein.

### **ARTICLE 4. OTHER GENERAL REQUIREMENTS FOR WIND ENERGY SYSTEMS**

In addition to State and County requirements, the following requirements are herein set by the Town in this Ordinance.

#### **A. Setbacks**

As provided in PSC 128.13, the following setbacks and separation requirements shall apply to all wind turbines; provided, however, that the Town may reduce the standard setbacks and separation requirements if the intent of this Ordinance would be better served.

- i. Occupied Community Buildings: Each wind turbine shall be set back from the nearest occupied community building, the lesser of 1,250 feet, or 3.1 times the maximum blade tip height.
- ii. Participating Residences: Each wind turbine shall be set back at least 1.1 times the maximum blade tip height.
- iii. Non-Participating Residences: Each wind turbine shall be set back the lesser of 1,250 feet or 3.1 times the maximum blade tip height.
- iv. Participating Property Lines: No setback distance for a wind turbine is set under this Ordinance.

- v. Non-Participating Property Lines: Each wind turbine shall be set back at least 1.1 times the maximum blade tip height.
- vi. Public Right of Way: Each wind turbine shall be set back at least 1.1 times the maximum blade tip height.
- vii. Overhead Communication and Electric Transmission and Electric Distribution Lines: Each wind turbine shall be set back at least 1.1 times the blade tip height.
- viii. Overhead Utility Lines to Individual Houses and Outbuildings: No setback distance for a wind turbine is set under this Ordinance.
- ix. Measuring Setback Distances: An owner shall measure wind turbine setback distances as a straight line from the vertical centerline at the base 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.
- x. Minimizing Individual Hardships: An owner shall work with a town and owners of participating and nonparticipating properties to site wind turbines to minimize individual hardships.
- xi. Pre-Existing Medical Condition: Any nonparticipant living within 1 mile of a proposed turbine site who has a medical condition pre-existing to building at said site and has documentation from a physician that notes that turbine noise at the State's limit of 50 dBA during the day or 45 dBA at night, or the presence of low frequency sound and/or shadow flicker would cause deterioration of the documented medical condition or cause bodily harm will be able to petition the permit applicant to choose an alternate site or cease operation.

## **B. Sound Levels and Measurements**

The following requirements shall apply to all wind energy systems:

- i. Planning:
  - a. The noise limits in this section apply at the outside wall property line of a nonparticipating residence or occupied community building that exists when the owner gives notice under s. PSC 128.105 (1) or for which complete publicly-available plans for construction are on file with the Town within 30 days of the date on which the owner gives notice under s. PSC 128.105 (1).
  - b. An owner shall design the proposed wind energy system to minimize noise at a residence or occupied community building to the extent reasonably practicable.
  - c. An owner shall design a wind energy system to comply with the noise standards in this section under planned operating conditions.
- ii. Noise Limits:
  - a. Except as otherwise provided in this Ordinance, 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. In this section, nighttime hours are the hours beginning at 10:00 p.m. and ending at 6:00 a.m. daily and daytime hours are the hours beginning at 6:00 a.m. and ending at 10:00 p.m. daily.
  - b. 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

paragraph does not apply to sound the wind energy system produces under normal operating conditions.

iii. Compliance:

- a. 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. Upon receipt of a complaint regarding a violation of the noise standards in this Ordinance, an owner shall test for compliance with the noise limits in this Ordinance. The Town or monitoring committee established under PSC 128.41 may not require additional testing to show compliance with the standards in this Ordinance if the owner has 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 standards in this Ordinance at the location relating to the complaint.
- c. Methods available for the owner to comply with the standards in this Ordinance shall include operational curtailment of one or more wind turbines. Upon receipt of a complaint about a noise under this Ordinance, the owner shall use operational curtailment to eliminate the noise until the owner permanently corrects the problem.
- d. An owner shall evaluate compliance with the standards in this Ordinance as part of pre- and post-construction noise studies. An owner shall conduct pre- and post-construction noise studies under the most current version of the noise measurement protocol as described in s. PSC 128.50 (2).

iv. Waiver: Upon request by an owner of a wind energy system, an owner of an affected nonparticipating residence or occupied community building may relieve the owner of the wind energy system of the requirement to meet any of the noise limits in this section at the affected residence or occupied community building by written contract with the wind energy system owner. 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 is an encumbrance on the real property, runs with the land until the wind energy system is decommissioned, and shall be recorded under ch. 706, Stats.

v. Notification:

- a. Before entering into a contract under this section, 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.
- b. 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 contract under sub. (iv).

### **C. Signal Interference**

The following requirements shall apply to all wind energy systems:

- i. Planning:
  - a. Except as may otherwise be provided in this Ordinance, the signal interference requirements in this section apply to commercial communications and personal communications in use when the wind energy system begins operation.
  - b. An owner shall use reasonable efforts to avoid causing interference with commercial communications and personal communications to the extent practicable.
  - c. 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.
- ii. Commercial Communication Interference Mitigation: An owner shall use reasonable and commercially available technology to mitigate interference caused by a wind energy system with commercial communications in use when a wind energy system begins operation. Before implementing mitigation measures, the owner shall consult with affected parties regarding the preferred mitigation solution for commercial communications interference problems. Except as may be provided elsewhere in this Ordinance, an owner shall mitigate commercial communications interference caused by the wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the wind energy system is decommissioned or the communication is no longer in use, whichever is earlier.
- iii. Personal Communications Interference Mitigation:
  - a. An owner shall use reasonable and commercially available technology to mitigate interference, with personal communications in use when a wind energy system begins operation, caused by a wind energy system. The Town may require an owner to use reasonable and commercially available technology to mitigate interference with personal communications that were not in use when the wind energy system began commercial operation, if a wind energy system is causing the interference and the interference occurs at a location at least 0.5 mile from a wind turbine.
  - b. Before implementing mitigation measures, the owner shall consult with affected parties regarding the preferred mitigation solution for personal communications interference problems. Except as provided in sub. (iv), an owner shall mitigate personal communications interference caused by the wind energy system by making the affected party's preferred reasonable mitigation solution effective until either the wind energy system is decommissioned or the communication is no longer in use, whichever is earlier.



- iv. Mitigation Protocol: The Town may, under a protocol established under s. PSC 128.50 (2), require an owner to implement a new mitigation solution that becomes commercially available before the wind energy system is decommissioned to address interference for which mitigation is required under this Ordinance and for which the original mitigation solution implemented is only partially effective.

#### **D. Shadow Flicker**

The following requirements shall apply to all wind energy systems:

- i. Planning:
  - 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 s. PSC 128.105 (1) or for which complete publicly-available plans for construction are on file with a Town within 30 days of the date on which the owner gives notice under s. PSC 128.105 (1).
  - 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
  - c. 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.
- ii. Shadow Flicker Limits: 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.
- iii. Shadow Flicker Mitigation:
  - a. An owner of a wind energy system shall work with an owner of a nonparticipating residence or occupied community building to mitigate the effects of shadow flicker to the extent reasonably practicable.
  - b. 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.
  - c. An owner 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.
- d. An owner may provide shadow flicker mitigation for any residence or occupied community building in addition to the mitigation required under par. (b).
  - e. The requirement under par. (b) 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.
- iv. Waiver: Upon request by an owner of a wind energy system, an owner of an affected nonparticipating residence or occupied community building may relieve the wind energy system owner of a requirement under sub. (ii) or (iii) (b) at the affected nonparticipating residence or occupied community building by written contract with the wind energy system owner. 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 is an encumbrance on the real property and runs with the land until the wind energy system is decommissioned, and shall be recorded under ch. 706, Stats.
- v. Notification:
- a. Before entering into a contract under sub. (iv), 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.
  - b. 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 contract under sub. (iv).

## **E. Groundwater Protection**

The Permit Holder shall operate the wind energy system so as not to cause groundwater contamination in violation of applicable law. Nothing contained in the permit is intended to authorize any degradation of the quantity or quality of the groundwater in connection with the system. Further, no wells may be drilled within 1.1 times the height of the wind energy system tower or the safe clearance, whichever is greater. In addition, the Applicant shall complete a plan for managing surface water runoff to prevent pollution of groundwater through sinkholes and infiltration through the soil and underlying bedrock in the vicinity of each wind turbine site.

## **F. Hazardous Waste**

As part of the construction or operation of the wind energy system, upon request, the Permit Holder shall provide the Town with a report covering hazardous waste that will be present on the properties that are part of the wind energy system. The Permit Holder shall be responsible

for compliance with all laws applicable to the generation, storage, clean up, transportation and disposal of hazardous wastes generated during any phase of the wind energy project.

### **G. Road Impact Requirements**

The Applicant shall meet the following requirements relating to public roads:

- i. Applicant's Plan:
  - a. A description and map of all public roads in the Town to be used in connection with the construction of the wind energy system, including a description of how such roads will be used in connection with the construction of the system. Also, a description of the type and length of vehicles and type, weight and length of loads to be conveyed on all public roads in the Town.
  - b. An assessment of the proposed use of roads in the Town in connection with the construction of wind energy system, including the adequacy of turning radii; the ability of the roads to sustain loads without damage; the need to remove (permanently or temporarily) signs, trees, utilities or anything else; any reasonably foreseeable costs the Town may incur in connection with the Permit Holder's use of roads in the Town, relating to the wind energy system, including, but not limited to, costs relating to traffic control, public safety or damage to roads or property.
  - c. A traffic control and safety plan relating to the use of roads in the Town in connection with the wind energy system.
  - d. Any additional information the Town may request relating to the use of roads in the Town in connection with the wind energy system.
- ii. Town Review: The Town shall evaluate and require changes to the plan it deems appropriate to protect public safety, to protect Town roads, and to address anticipated costs to the Town associated with Permit Holder's use of roads in the Town.
- iii. Agreement and Security: The Town may require the Permit Holder to enter into an agreement relating to the use of roads in the Town. The Town may require the Permit Holder to provide a deposit or letter of credit in an amount the Town determines appropriate to secure any obligations under that agreement, including, but not limited to, any obligation relating to alterations or improvements to roads needed in connection with Permit Holder's use of roads in the Town, and the reimbursement to the Town for any costs the road use assessment indicates the Town may incur in connection with the Permit Holder's use of the roads in the Town relating to the wind energy system.

### **H. Stray Voltage**

The following requirements shall apply to all wind energy systems:

- i. Testing Required:
  - a. An 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 Commission 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 Commission staff under par. (b).

- b. Before any testing under par. (a) begins, an owner shall work with Commission staff 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 under par. (a) shall conduct or arrange to conduct all required testing at the expense of the owner.
- c. An owner shall provide to the Town the results of all stray voltage testing in writing.
- ii. Requirement to Rectify: An owner shall 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.

## **I. Accommodating Existing Land Uses**

The wind energy system shall be designed to reasonably minimize the conversion of land from existing agricultural use. Also an owner shall make reasonable efforts to ascertain and accommodate any land use or commercial enterprise located on a nonparticipating property within 0.5 mile of a proposed wind turbine site if the land use or commercial enterprise exists when the owner gives notice under s. PSC 128.105 (1), or if complete publicly-available plans for construction are on file with the Town within 30 days of the date the owner gives notice under s. PSC 128.105 (1).

## **J. Small Energy Systems**

The following exemptions to, and modifications of, wind energy system requirements provided for in this Ordinance, shall apply to Small Wind Energy Systems:

- i. Exemptions: All of the provisions in this chapter apply to a small wind energy system except ss. PSC 128.14 (4) (d), 128.15 (1) (c), (3) (b) to (e), and (5), 128.16 (2) to (4), 128.18 (1) (g), (2) (b) and (c), (3) (am), (b) and (c), and (4) (b) to (f), 128.19 (1) (c) to (e), (3), and (4), 128.30 (2) (L) and (m), 128.33 (1) to (3m) and (5), 128.34 (3), 128.36, 128.40 (2) (b) to (e), 128.41, and 128.42.
- ii. Modification: The following provisions in this chapter are modified to apply to a small wind energy system as follows:
  - a. Notice. Under PSC 128.105 (1), the notice shall be filed at least 60 days before an owner files an application to construct a small wind energy system and the notice shall be provided only to adjacent landowners and the political subdivisions with jurisdiction over the small wind energy system.
  - b. Land use. Section PSC 128.12 (1) applies only to existing land uses and enterprises that are located on adjacent nonparticipating properties.
  - c. Setback distances. In PSC 128.13 (1):
    - 1. Table 1 is replaced with Table 2.
    - 2. The owner of an adjacent nonparticipating residence or adjacent occupied community building may waive the applicable turbine setback distances in Table 2.

<b>Table 2</b>	
<b>Setback Description</b>	<b>Setback Distance</b>
Occupied Community Buildings	1.0 times the maximum blade tip height
Participating Residences	None
Nonparticipating Residences	1.0 times the maximum blade tip height
Participating Property Lines	None
Nonparticipating Property Lines	1.0 times the maximum blade tip height
Public Road Right-of-Way	None
Overhead Communication and Electric Transmission or Distribution Lines — Not including utility service lines to individual houses or outbuildings	1.0 times the maximum blade tip height
Overhead Utility Service Lines — Lines to individual houses or outbuildings	None

- d. Noise. Under PSC 128.14 (6) (b), an owner shall provide notice of the requirements of PSC 128.14 only to each adjacent nonparticipating residence or occupied community building before the initial operation of the small wind energy system.
- e. Useful life. Under PSC 128.19 (1), a small wind energy system is presumed to be at the end of its useful life if it generates no electricity for a continuous 540-day period.
- f. Effects on land uses. Under PSC 128.30 (2) (g), the information regarding the anticipated effects of the small wind energy system on existing land uses shall only be for parcels adjacent to the wind energy system.
- g. Application notice. Under PSC 128.30 (5) (a), written notice of the filing of the application shall be provided only to property owners and residents located adjacent to the small wind energy system.
- h. Meetings. As provide under PSC 128.30 (6) (c), the Town may hold at least one public meeting to obtain comments on and to inform the public about a proposed small wind energy system.

## **ARTICLE 5. PERMIT REQUIRED – APPLICATION AND PROCESS**

No wind energy system may be installed, constructed or expanded in the Town without a wind energy system permit granted by the Town pursuant to this Ordinance.

### **A. Filing Application**

The Applicant must apply for and receive a permit from the Town before installing, constructing or expanding any wind energy system in the Town. The application must contain information as provided in PSC 128.30 except as amended by 128.61 (6) and the information required under Columbia County ordinances 12.125.29 and 12.125.30, as well as the information to be submitted under the plans and reports required under this Ordinance. It shall also contain information about whether an owner has consulted with and received any non-binding recommendations for constructing, operating or decommissioning the wind energy system from a state or federal agency, and whether the owner has incorporated such

non-binding recommendations into the design of the wind energy system. The Town may also require that additional information be presented for its evaluation of the application. Eight copies of the initial application shall be filed with the Town Clerk along with a digital copy. If the wind energy system is proposed to be located in more than one town, the Town may, upon its own motion or upon request, may conduct a joint application review process in accordance with the joint review process provided in PSC 128.30.

#### **B. Permit Fee**

The Applicant must pay the application fee at the time the application is filed with the Town. That application fee shall be set forth on the Town's fee schedule. The provisions of PSC 128.32(5) shall apply to that fee.

#### **C. Reimbursable Services Agreement**

The Applicant must execute a Reimbursable Services Agreement to cover engineering, consulting and legal fees and any other expenses incurred by the Town relating to the Town's consideration of the application, which expenses are to be the Applicant's responsibility in addition to the permit fee. That sum, to be deposited with the Town, in escrow, shall be determined by the Town based upon projected costs within 10 days after the initial application submittal and shall be used to reimburse the Town for those expenses relating to its consideration of the application. Initially, it shall be for no less than \$2,000.00 per wind turbine. In the event the amount deposited falls below 25% of the initial deposit, the Town may require the Applicant to replenish that escrow account.

#### **D. Project Application Notice**

- i. On the same day that the application is filed with the Town, the applicant, as required by statute and PSC 128.30, shall provide written notice of the filing of the application to all property owners and residents located within one mile of the proposed location of the wind energy facility.
- ii. After the Town receives an application for a wind energy system, the notice required to be published under 66.0401 (4) (a) 1., Stats., shall include a detailed description of the proposed wind energy system and its proposed location, the locations where the application is available for public review, the method and time period for the submission of public comments to the Town, the approximate schedule for review of the application by the Town, and the owners contact information.

#### **E. Public Participation**

- i. The Town shall make an application for a wind energy system available for public review at the town hall or some other publicly-accessible location. The Town may also provide public access to the application electronically.
- ii. The Town shall establish a process for accepting and considering written public comments on an application for a wind energy system.
- iii. The Town shall hold at least one public meeting to obtain comments on and to inform the public about a proposed wind energy system.

## **F. Submittal to Staff**

The initial application received shall be promptly forwarded to the Town Engineer, Town Attorney and any consultants retained by the Town for their review and advice in determining whether the application is complete.

## **G. Determination Whether Application is Complete**

- i. Process for Determining if Application is Complete. The Town Board shall, with assistance from its staff and consultants, determine whether the application is complete and contains all of the materials, plans, reports, information, agreements, deposits and payments required to be submitted with an application. If an application is not complete, the Applicant shall be so advised within 45 days after the application is filed, as provided in PSC 128.31(1) and no further action shall be taken by the Town until a complete application is received. The applicant may supplement an application determined as being incomplete as provided in PSC 128.31. The Town Board, in its discretion, may choose to accept an application that is otherwise incomplete if the omitted items, appear at that point, to be unnecessary for its initial review.
- ii. Additional Information Requests. The town may request additional information necessary to understand the wind energy system after determining that an application is complete. An owner shall provide additional information in response to all reasonable requests. An owner shall respond to all inquiries made subsequent to a determination of completeness in a timely, complete, and accurate manner.

## **H. Referral to Plan Commission**

After the Town Board determines that an application is complete, it shall be referred to the Town Plan Commission for its review and to hold a public hearing and to make a recommendation to the Town Board whether the application meets all requirements of this Ordinance. In determining whether the application meets the requirements of this Ordinance, the Plan Commission shall obtain assistance from staff and consultants, as it deems appropriate. The Plan Commission shall review the application as soon as reasonable and feasible, given the complexity of the application, questions that arise during the review process, and other matters affecting the time needed to complete the review process and, following its review and the hearing, recommend approval of the application, denial of the application, or approval subject to conditions.

## **I. Town Board Review**

Upon receiving the recommendation of the Plan Commission, the Town Board shall review the application and the information obtained and the recommendation of the Plan Commission. In its discretion, it may hold a further hearing on the application. If the wind energy system is proposed to be located in more than one political subdivision with jurisdiction over the wind energy system, the town involved may conduct a joint application review process on their own motion.

## **J. Final Action by Board**

If an application is complete and meets all requirements of this Ordinance and meets all of the requirements under applicable state statutes, rules and regulations and meets all requirements under Columbia County's Ordinances, the Town Board may, in a written decision, approve a permit for the wind energy system, subject to condition that are to apply and the execution of a Permitting Agreement pursuant to this Ordinance. If an application does not meet all requirements of this Ordinance or the Applicant has not paid all fees and costs required under this Ordinance, then the Town Board may deny the application or approve the application with conditions that will assure compliance with this Ordinance. An application may be approved effective upon the satisfaction of certain conditions, in which case the permit shall be issued when all such conditions have been satisfied. If the application is denied or approved with a delayed effective date, the Town shall notify the Applicant in writing, within ten (10) business days of the reasons for denial or for imposing the conditions that must be met to render the approval effective.

## **K. Appeal of Decision**

Any Applicant or other person aggrieved by the decision of the Town Board, including any resident or owner of property in the Town, shall be entitled to appeal the Board's decision in circuit court. Such an appeal must be made within thirty (30) days of the date of written decision by the Board or, if the permit is approved, then the date of issuance of the permit. The Town explicitly elects not to be governed by Wis. Stats. Chapter 68 and instead elects to provide the review procedures described in this Section.

## **L. Permitting Agreement**

If the permit is approved, the Town Board shall require the Applicant to enter into a written agreement. The agreement shall include all provisions, within the Town's authority and deemed appropriate by the Town, to assure that the wind energy system is constructed, operated and maintained in compliance with this Ordinance and the terms set forth in the permit, and that all fees, costs and sureties are paid and provided, as required by the Town Board and by this Ordinance. Among other things, the Agreement shall also require the following provisions:

- i. Information: Require information about whether an owner has consulted with and received any non-binding recommendations for constructing, operating or decommissioning the wind energy system from a state or federal agency, and whether the owner has incorporated such non-binding recommendations into the design of the wind energy system.
- ii. Cooperate with Studies: Require an owner to cooperate with any study of the effects of wind energy systems coordinated by a state agency.
- iii. Monetary Compensation: Require an owner of a wind energy system to offer an agreement that includes annual monetary compensation to the owner of a nonparticipating residence, if the residence is located within 0.5 mile of a constructed wind turbine. For one turbine located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed \$600. For two turbines located within 0.5 mile of a nonparticipating



residence, the initial annual monetary compensation may not exceed \$800. For three or more turbines located within 0.5 mile of a nonparticipating residence, the initial annual monetary compensation may not exceed \$1,000. The initial annual amounts shall increase each year by the greater of two percent or the increase in the Consumer Price Index, as described in s. 196.374 (5) (bm) 2. b., Stats., from the previous year. An agreement shall be made in writing and acceptance of payment will not change nonparticipating property to participating and shall remain in effect even if owner changes.

- iv. Aerial Spraying: Require an owner of a wind energy system to offer an agreement that includes monetary compensation to a farm operator farming on a nonparticipating property located within 0.5 mile of a constructed wind turbine if the farm operator demonstrates all of the following:
  - a. Evidence of a history, before the wind energy system owner gives notice under PSC 128.105 (1), of using aerial spraying for pest control or disease prevention for growing potatoes, peas, snap beans or sweet corn on all or part of a farm field located within 0.5 mile of a constructed wind turbine.
  - b. A material reduction in potato, pea, snap bean or sweet corn production or a material increase in application costs on all or part of a farm field located within 0.5 mile of a constructed wind turbine as a result of the wind energy system's effect on aerial spraying practices.
- v. Other Government Permits: Require the owner to submit to the Town copies of all necessary state and federal permits and approvals.
- vi. Ownership Change: Require that the owner provide the Town with timely notice of any change in the ownership of the wind energy system.
- vii. Decommissioning and Land Restoration Plan: Require a decommissioning, site restoration plan and financial assurances that meet the requirements set forth in Article 10 of this Ordinance.
- viii. Annual Reports: Require the owner to file an annual report with the Town documenting the operation and maintenance of the wind energy system during the previous calendar year.
- ix. Permit Expiration: Provide that, unless the Town Board approves a different term based on an analysis of the anticipated useful life of the wind energy system or other pertinent factors, the permit issued under this Ordinance shall expire thirty years after the date it is issued.
- x. Amendments and Changes: The Permit Holder may apply to the Town Board for changes to a permit. The application shall describe the requested change or changes. The Town Board shall review the application and determine the provisions of this Ordinance that shall apply to that application. The application shall then be processed in accordance with those provisions. The provisions relating to the reimbursement of fees and costs shall also apply to any application for an amendment/change.

## **ARTICLE 6. POST-CONSTRUCTION FILING REQUIREMENT**

Within 90 days of the date a wind energy system commences operation, the owner shall file with the Town and the 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 system facilities, geographic information system information showing the location of all wind energy system facilities and current information identifying the owner of the wind energy system. An owner shall in the filings under this subsection label each wind turbine location with a unique identifier consistent with the information posted at the wind turbine location under PSC 128.18 (1) (g).

## **ARTICLE 7. MODIFICATIONS TO THE APPROVED WIND ENERGY SYSTEM**

### **A. Application Required**

An owner shall submit an application to the Town for any material change to an approved wind energy system. An application for a material change shall contain information necessary to understand the material change. The application for a material change is subject to PSC 128.30 (1), (3) to (5), (6) (a) and (b), and (7) and 128.31 to 128.34.

### **B. Hearing**

The Town may hold at least one public meeting to obtain comments on and to inform the public about a proposed material change to an approved wind energy system.

### **C. Review Limitation**

The Town, in considering the application for a material change to the wind energy system, may not reopen the merits of the earlier approval but shall consider only those issues relevant to the proposed change.

### **D. Town Approval Required**

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 unless the Town automatically approves the material change by taking either of the steps specified in PSC 128.32 (2) (b) 1. or 2.

## **ARTICLE 8. CONSTRUCTION, OPERATION AND MAINTENANCE**

The wind energy system shall be constructed, operated, and maintained in accordance with this Ordinance, the permit, the Permitting Agreement and the plans approved by the Town. Where a standard or requirement is not otherwise provided, the Permit Holder shall comply with accepted industry standards. Among other requirements set forth in this Ordinance, the following provisions shall apply to the construction, operation and maintenance of the wind energy system and its facilities that are approved by the Town.

### **A. Physical Characteristics**

- i. No Advertisements: An owner may not display advertising material or signage other than warnings, equipment information, or indicia of ownership on a wind turbine.

An owner may not attach any flag, decorative sign, streamers, pennants, ribbons, spinners, fluttering, or revolving devices to a wind turbine. An owner may attach a safety feature or wind monitoring device to a wind turbine.

- ii. Conventional Finish: Owner shall ensure that a wind turbine has a conventional or unobtrusive finish.
- iii. Lighting: Owner shall install lighting at a wind energy system that complies with standards established by the Federal Aviation Administration. Town may not establish lighting requirements for a wind energy system that conflict with standards established by the Federal Aviation Administration. Town requires use of shielding or control systems approved by the Federal Aviation Administration to reduce visibility of lighting to individuals on the ground.
- iv. Not Climbable: Owner shall take appropriate measures to ensure that a wind turbine is not readily climbable except by authorized personnel.
- v. Locked Facilities: Owner shall ensure that all wind turbine access doors and electrical equipment are locked when authorized personnel are not present.
- vi. Warning: Owner shall place appropriate warning signage on or at the base of each wind turbine.
- vii. Emergency Contacts: 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. An owner shall post these signs at every intersection of a wind energy system access road with a public road and at each wind turbine location.
- viii. Marking Guy Wires and Supports: 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**

- i. Code Compliance: Owner shall construct, maintain, and operate collector circuit facilities in a manner that complies with the national electrical safety code and PSC 114 and shall construct, maintain, and operate all wind energy system facilities in a manner that complies with the national electrical code.
- ii. Underground Facilities: Owner shall construct collector circuit facilities for its wind energy system underground to the extent practicable.
- iii. Inspection Schedule: 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 those third-party facilities are promptly removed.

## **C. Construction, Operation, and Maintenance Standards**

- i. Repair and Maintenance: 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.
- ii. Minimize Soil and Drainage Damage: 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. The Town may establish reasonable requirements designed to minimize soil compaction, topsoil mixing and damage to drainage systems on agricultural land.
  - iii. Site Restoration: 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.
  - iv. Insurance Required: Owner shall carry 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**

- i. Notice of Emergency: 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. As soon as possible after the end of a wind energy system emergency, review employee activities to determine whether the procedures were effectively followed.
- ii. Coordination with First Responders: Owner shall establish and maintain liaison with the Town and with fire, police, and other appropriate first responders that would serve the wind energy system and in cooperation with them 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 par. D. (i) 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.
  - f. The owner shall distribute current copies of the emergency plan to the Town, fire, police and other first responders and 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. In addition, the owner shall offer annual training to fire, police and other appropriate first

responders covering responses to a wind energy system emergency, until the wind energy system has been decommissioned.

- iii. **Training Operating Personnel:** The owner shall 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 and shall train the appropriate operating personnel to ensure they have knowledge of the emergency procedures and verify that the training is effective. Further, as soon as possible after the end of a wind energy system emergency, the owner shall conduct a review of employee activities to determine whether the procedures were effectively followed.

## **ARTICLE 9. MONITORING COMPLIANCE**

### **A. Third-Party Inspection During Construction**

The Town may require an owner to pay a reasonable fee for a third-party inspector to monitor and report to the Town regarding the owner's compliance with permit requirements during construction. An inspector monitoring compliance under this subsection shall also report to a state permitting authority upon the state permitting authority's request.

### **B. Town Monitoring Procedure**

The Town may establish a procedure to monitor compliance by the owner with any condition applicable to an approved wind energy system or to assess if any wind energy system facilities are not maintained in good repair and operating condition. The procedure may include among other things, timelines, compliance of shadow flicker and noise monitoring, provide for payment of any fees for conducting an assessment, monitoring equipment, and provide for notification to the public.

### **C. Monitoring Committee**

The Town shall also establish a monitoring committee to oversee the resolution of complaints as provided in Article 12 of this Ordinance.

## **ARTICLE 10. DECOMMISSIONING AND SITE RESTORATION REQUIREMENTS**

The following requirements shall apply to the decommissioning of any wind energy system receiving a permit to operate in the Town.

### **A. Requirement to Decommission and Restore Site**

An owner of a wind energy system shall decommission and remove the wind energy system when the system is at the end of its useful life. Except as may be otherwise provided in this Ordinance, if a wind energy system was constructed on land owned by a person other than the owner of the wind energy system, the owner of the wind energy system shall also ensure that the property is restored to preconstruction condition, unless otherwise provided in a contract signed by an affected landowner, considering any modifications needed to comply with DNR requirements. Further, if a wind energy system was constructed on a brownfield, as defined in s. 238.13 (1) (a), Stats., the owner shall restore the property to eliminate effects

caused by the wind energy system, except for the effects of environmental remediation activities, as defined in s. 238.13 (1) (d), Stats.

- i. Determine End of Useful Life: The Town may establish a decommissioning review process to determine when a wind energy system has reached the end of its useful life. A wind energy system is presumed to be at the end of its useful life if the wind energy system generates no electricity for a continuous 360-day period. This presumption may be rebutted under par. ii. below.
- ii. Extension: Upon application by the owner, and except as provided in par. (d), the Town shall grant an extension of the time period for returning the wind energy system to service by one or more additional 180-day periods if the owner demonstrates it is likely the wind energy system will operate again in the future and any of the following occur:
  - a. The owner submits a plan to the Town that demonstrates an ongoing good faith effort to return the wind energy system to service and outlines the steps and schedule for returning the wind energy system to service in a reasonable period of time, including by repairing, replacing or repowering the wind energy system facilities as necessary to generate electricity.
  - b. The owner demonstrates that the wind energy system is part of a prototype or other demonstration project being used for ongoing research or development purposes.
  - c. The owner demonstrates that the wind energy system is being used for educational purposes.
  - d. However, the Town may deny a request for an extension if the wind energy system has not generated any electricity for a continuous period of 540 days or more and the Town finds that the owner is not capable of returning the wind energy system to service within a reasonable period of time. Further, a wind energy system is irrebuttably presumed to be at the end of its useful life if the wind energy system generates no electricity for a period of 540 days and any of the following occur:
    1. The owner does not request an extension of the time period for returning the wind energy system to service under par. (ii) above.
    2. The Town denies a request for an extension under par. (d) and any appeal rights have expired.
- iii. Timetable for Decommission: When decommissioning is required, the owner shall begin decommissioning within 360 days after the wind energy system has reached the end of its useful life. The owner shall complete decommissioning and removal of the wind energy system within 540 days after the wind energy system has reached the end of its useful life. An owner shall file a notice of decommissioning completion with the Town and the Commission when a wind energy system approved by the Town has been decommissioned and removed. Within 360 days of receiving a notice of decommissioning, the Town shall determine whether the owner has satisfied the requirements of this Ordinance.
- iv. Financial Responsibility:
  - a. The owner of a wind energy system with a nameplate capacity of one megawatt or larger shall maintain proof of the owner's ability to fund the actual and necessary cost to decommission the wind energy system and shall ensure the

availability of funds necessary for decommissioning throughout the expected life of the wind energy system and through to completion of the decommissioning activities.

- b. An owner of a wind energy system with a nameplate capacity of one megawatt or larger shall provide financial assurance of the owner's ability to pay for the actual and necessary cost to decommission the wind energy system before commencing major civil construction activities such as blasting or foundation construction at the wind energy system site. An owner may comply with this paragraph by choosing to provide a bond, deposit, escrow account, irrevocable letter of credit, or some combination of these financial assurances, that will ensure the availability of funds necessary for decommissioning throughout the expected life of the wind energy system and through to completion of the decommissioning activities.
- c. The Town may require an owner to provide the financial assurance under this Article in an amount up to the estimated actual and necessary cost to decommission the wind energy system. If the Town requires an owner to provide financial assurance under this Article, then the Town may do any of the following:
  - 1. Require the owner to provide the Town with up to 3 cost estimates of the actual and necessary cost to decommission the wind energy system that are prepared by third parties agreeable to the owner and the Town. However, if the Town requires an owner to provide cost estimates under this section, the Town may not require the amount of the financial assurance to exceed the average of the cost estimates provided.
  - 2. Require an owner to establish financial assurance that places the Town in a secured position, and that any secured funds may only be used for decommissioning the wind energy system until either the Town determines that the wind energy system has been decommissioned in compliance with the terms provided in this Ordinance, or until the Town has otherwise approved the release of the secured funds, whichever is earlier.
  - 3. Require an owner to establish financial assurance that allows the Town to access funds for the purpose of decommissioning the wind energy system if the owner does not decommission the wind energy system when decommissioning is required.
- d. The Town may condition its approval of a wind energy system on the owner's compliance with the decommissioning requirements provided under this Ordinance.
- e. During the useful life of a wind energy system, the Town may periodically request information from the owner regarding the industry costs for decommissioning the wind energy system. If a Town finds that the future anticipated cost to decommission the wind energy system is at least 10 percent more or less than the amount of financial assurance previously provided under the provisions of this Article, then the Town may correspondingly increase or decrease the amount of financial assurance required for the wind energy system. The Town may not adjust the financial assurance under this paragraph more often than once in a 5-year period.

- f. The Town may require an owner to submit to the Town a substitute financial assurance of the owner's choosing under this Article if an event occurs that raises material concerns regarding the viability of the existing financial assurance.

## **ARTICLE 11. VIOLATIONS – FORFEITURE PROVISION & INJUNCTIVE RELIEF**

It shall be unlawful to construct or operate within the Town any wind energy system, or part thereof, in violation of any provision of this Ordinance, the permit or the Permitting Agreement. In addition to other remedies provided in Article 12 below, any person or entity that violates or fails to comply with any provision of this Ordinance, the permit issued under this Ordinance or the Permitting Agreement, shall, upon conviction thereof, be subject to forfeiture of not less than \$500 per violation nor more than \$5,000 per violation. Each day a violation exists is a separate violation. In addition, any person or entity that violates or fails to comply with provisions in this Ordinance shall be subject to an action to enjoin such violation/breach and/or for other relief to enforce the terms of this Ordinance. The remedies provided herein are in addition to other remedies provided for in Article 12 of this Ordinance.

## **ARTICLE 12. COMPLAINT PROCEDURE AND OTHER REMEDIES FOR VIOLATIONS**

The Town Board shall retain continuing jurisdiction to modify, suspend or revoke any permits in accordance with this Ordinance. Such authority shall be in addition to the Town's authority to prosecute violations and take other enforcement action.

### **A. Complaint Process**

- i. Complaint Process: Owner shall develop and implement a process for receiving, handling and resolving complaints, consistent with PSC 128.40.
- ii. Notice of Process for Making Complaints: As provided in PSC 128.42, before construction of a wind energy system begins, the owner shall provide written notice of the process for making complaints and obtaining mitigation measures to all residents and landowners within 0.5 mile of any wind energy system facility. The owner shall include in the notice the requirements under PSC 128.40 (1) for submitting a complaint to the owner, a petition for review to the Town, and an appeal to the Commission, and shall include a contact person and telephone number for the owner for receipt of complaints or concerns during construction, operation, maintenance and decommissioning. The owner shall provide a copy of the notice to the Town and the owner shall keep the contact person and telephone number current and on file with the Town.
- iii. Monitoring Committee: Except as provided in this Article, the Town is to establish a monitoring committee to oversee resolution of complaints regarding a wind energy system. That monitoring committee shall consist of at least three members and include on the committee, a member who is a local employee of an owner of a wind energy system and at least one nonparticipating landowner residing in the Town within 0.5 mile of a wind turbine that is located in the Town. Members shall be



selected by the Town Chair, subject to approval of the Town Board, for a term of 3 years. Initially their terms shall be staggered.

- a. Duties – A monitoring committee established under this Article may do any of the following:
  1. Maintain a record of all complaints brought to it.
  2. Gather information relevant to a complaint submitted to it and obtain from the owner its response to the complaint and the information submitted by the owner relating to its response.
  3. Make a report and recommendation to the Town Board of a reasonable resolution to the complaint, based upon the information that was gathered by the committee.
- b. Multiple jurisdictions – if a wind energy system is located in more than one political subdivision with jurisdiction over the wind energy system and multiple political subdivisions decide to establish a monitoring committee, the town shall jointly establish a single monitoring committee to oversee resolution of complaints regarding the wind energy system.
- iv. Plan Commission Preliminary Review: If a complaint is filed alleging a violation, the Town Plan Commission shall preliminarily review the complaint. In connection with its review, the Town Plan Commission may require the Town building inspector, engineer, attorney or other person or persons to conduct such investigations and make such reports as the Town Plan Commission may direct. The Town Plan Commission may request information from the holder of a permit, the complainant, and/or other persons or entities.
- v. Town Board Review and Action: Following its preliminary review, the Town Plan Commission shall submit its report and recommendations to the Town Board. The Town Board may then:
  - a. Take no action if it concludes there is insignificant basis to take further action on the complaint.
  - b. Refer the complaint to the Town attorney for prosecution; or
  - c. Conduct a hearing to determine whether the alleged violation(s) have occurred, and what remedial action should be taken. Prior to such hearing, notice of the hearing shall be given to the Permit Holder and in accordance with the Open Meeting Law. The Permit Holder and the complainant, and any other person, may appear at the hearing and may offer testimony and other relevant evidence, and may be represented by any attorney. If the Town Board concludes that violations have occurred, the Town Board may:
    1. Impose conditions on the Permit Holder to the extent reasonably necessary to discontinue the violation(s) or avoid any recurrence thereof; or
    2. Suspend the permit until such time as the Permit Holder presents a plan, satisfactory to the Town Board, that will remedy the violation(s), and prevent any recurrence thereof; or
    3. Modify the permit to the extent that the Town Board reasonably concludes that action is necessary to address the violation(s) and/or prevent recurrent violations; or

4. Revoke the permit if there have been recurring violations and no other remedy previously imposed has successfully prevented continuing violations; or
  5. Refer the matter to the Town attorney for prosecution; or
  6. Take no action, if the Town Board concludes that no further action is needed to remedy the violation or prevent recurrence of the violation, and that prosecution is unwarranted.
- d. Following any such hearing, the Town Board's written decision shall be furnished to the Permit Holder and to the complainant.
- iv. Appeal: An appeal from a decision of the Town Board shall be by certiorari review, which shall be commenced within 30 days after the written decision of the Town Board is issued.

### ARTICLE 13. SEVERABILITY

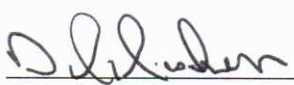
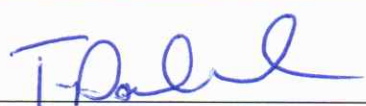

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or part thereof. The Town Board hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, phrase or part thereof even if any one or more sections, subsections, sentences, clauses, phrases or parts thereof may be declared invalid or unconstitutional.

### ARTICLE 14. EFFECTIVE DATE

This Ordinance shall be effective upon passage, posting and publication, as provided by law.

Dated 12/16/25

By: Town of Hampden Town Board

 David Tuschen, Town Chair	 Taylor Dahl, Town Supervisor
<u>abstained</u> William Hoffman, Town Supervisor	 Nanette Hensen, Town Clerk