ORDINANCE AMENDMENT 107.2 ADOPTING

WISCONSIN PSC WIND TURBINE SITING RULES

WHEREAS, the Wisconsin Legislature has pre-empted most local regulation of wind turbines by enacting provisions in 2011 Act 40 which directed the Wisconsin Public Service Commission to adopt uniform wind turbine siting standards;

WHEREAS, the adopted rules, PSC 128, allow local governments to adopt the State rules in order to provide for local notice and review of proposed wind turbines, although the rules forbid local units of government from adopting ordinances that are more restrictive than the rule;

WHEREAS, the Town of Cross Plains believes it is in the public interest to adopt the state rules in order to afford the residents of the Town the opportunity to be informed of proposed wind turbine projects;

Now, therefore, the Town Board of Supervisors of the Town of Cross Plains does hereby Ordain as follows:

ARTICLE ONE. Pursuant to sec. PSC 128.10, of the Wisconsin Administrative Code, Chapter PSC 128 is hereby incorporated by reference, together with any amendments to that Rule. As incorporated, chapter 128 is adopted as an ordinance of the Town.

ARTICLE TWO. Pursuant to sec. PSC 128.32 (1), the Town requires the owner of a proposed wind energy system to obtain approval of the Town before constructing either a wind energy system or an expansion of a wind energy system.

ARTICLE THREE. The Town adopts the following requirements of all owners of a proposed wind energy system:

1. Pursuant to sec. PSC 128.16 (3), the Town requires all wind energy system owners to use reasonable and commercially available technology to mitigate interference with personal communications that were not in use when the wind energy system began operations, if the wind energy system is causing interference at a location at least .5 miles from a wind turbine.
2. Pursuant to sec. PSC 128.18 (1)(c), the Town requires that all wind turbine lighting be shielded or shaded to minimize visibility of lighting to individuals on the ground, to the extent possible consistent with standards of the federal aviation administration.
3. Pursuant to sec. PSC 128.18 (3)(am), the Town requires owners to comply with applicable Dane County erosion control ordinances, and use best construction practices to minimize soil compaction, topsoil mixing or damage to drainage control systems.
4. Pursuant to sec. PSC 128.18 (4)(e), the owner shall provide the Town’s Public Works employee with training every year on response to an emergency involving the wind energy system.
5. Pursuant to sec. PSC 128.19(3)(b), the Town requires the owner to provide financial assurance of the owner’s ability to pay for the actual and necessary cost to decommission the wind energy system. The amount and type of such financial security shall be determined by the Town and owner as part of the review process, but shall comply with PSC 128.19 (3)(b) and (c). The Town may review the sufficiency of the financial security not more than once every five years.
6. Pursuant to sec. PSC 128.32 (4), the Town requires the owner of a wind energy system to provide the Town with written notice of the change of owner of the wind energy system within 30 days of the transfer of ownership. The notice shall include the name, address and phone number of both the person with managerial authority over the wind energy system and the person who has immediate responsibility for responding to emergencies or maintenance issues concerning the wind energy system located in the Town.
7. Pursuant to sec. PSC 128.33, the Town requires any person proposing to construct a wind energy system in the town to provide the Town with 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.
8. Pursuant to sec. PSC 128.33, the Town requires the owner of any wind energy system to cooperate with any study of the effects of wind energy systems coordinated by a state agency.
9. Pursuant to sec. PSC 128.33, the Town requires the 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 monetary compensation under this subsection shall apply to agreements entered into in 2011. For agreements entered into in 2012 and thereafter, 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 offered under this subsection shall specify in writing any waiver of a requirement or right under this chapter and whether the landowner's acceptance of payment establishes the landowner's property as a participating property under this chapter.
10. Pursuant to sec. PSC 128.33, the Town requires the 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) Substantial evidence of a history, before the wind energy system owner gives notice under s. 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.

(11) Pursuant to sec. PSC 128.33, the Town requires the owner to submit to the political subdivision copies of all necessary state and federal permits and approvals.

(12) Pursuant to sec. PSC 128.33, the Town requires the owner to file an annual report with the political subdivision documenting the operation and maintenance of the wind energy system during the previous calendar year.

ARTICLE FOUR. (1) Pursuant to sec. PSC 128.36, the Town requires that any wind turbine shall be inspected during its construction to assure compliance with the approved plans of construction.

(2) After completion of the wind energy system, the Town may direct that the system be inspected at reasonable intervals to monitor compliance with the conditions of approval of the system. The Town shall charge a reasonable fee to compensate it for the cost of the inspection.

ARTICLE FIVE. (1) Pursuant to sec. PSC 128.30, the Town establishes the following application process for a wind energy system.

1. The process shall follow the requirements of sec. PSC 128.33 – 128.34.
2. The Town requires applicants to submit at least 20 copies of the application materials for review by interested citizens. At least 10 copies shall be paper copies; as many as 10 copies may be submitted in PDF format on a CD-ROM.
3. The Town elects to make the record of any Town meetings on an application for a wind energy system using a digital electronic recording.
4. The applicant shall pay an application fee which is equal to the Town’s actual costs in reviewing the wind energy system, including attorney’s and engineers’ fees.
5. The Town shall assist the applicant in assuring that all affected parties have notice of the application by providing the applicant with address and contact information which are public information. The same information shall be provided to any other interested party.

ARTICLE SIX. This amendment to Town of Cross Plains Ordinance **107 Wind Power Structure Ordinance,** hereby repeals section **107.09 Moratorium (Stay) on New Wind Power Structures**, and supersedes **Ordinance 107** with respect to wind turbines falling under **PSC 128.** All other provisions of **Ordinance 107** shall remain in force.

Dated this \_13\_\_\_ day of \_\_January\_\_\_\_\_\_\_\_\_\_, 2014.

TOWN BOARD, TOWN OF CROSS PLAINS

/s/ Greg Hyer, Town Chairman

/s/ Vera Riley, Supervisor 1

/s/ Jeff Baylis, Supervisor 2

/s/ Greg Haack, Supervisor 3

ATTEST:

/s/ Nancy Meinholz, Town Clerk

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