



MARATHON COUNTY BOARD OF ADJUSTMENT AGENDA

Date & Time of Meeting: **Thursday, May 28, 2020 at 9:00 a.m.**

Meeting Location: **210 River Drive, Wausau 54403**

Committee Members: Richard Lawson - Chair; Karen Piel -Vice-chair; Arnold Schlei, Roger Zimmerman, Jim Servi, Carolyn Opitz (alternate).

Marathon County Mission Statement: *Marathon County Government serves people by leading, coordinating, and providing county, regional, and statewide initiatives. It directly or in cooperation with other public and private partners provides services and creates opportunities that make Marathon County and the surrounding area a preferred place to live, work, visit, and do business.*

The meeting site identified above will be open to the public. However, due to the COVID-19 pandemic and associated public health directives, Marathon County encourages Board members and the public to attend this meeting remotely. To this end, instead of attendance in person, Board members and the public may attend this meeting by telephone conference. If Board members or members of the public cannot attend remotely, Marathon County requests that appropriate safety measures, including adequate social distancing, be utilized by all in-person attendees. Persons wishing to attend the meeting by phone may call into the telephone conference beginning five (5) minutes prior to the start time indicated above using the following number:

Phone Number: 1-408-418-9388

Access Code: 295 815 007

Attendee ID / Numeric Meeting Password: 1234

When you enter the telephone conference, **PLEASE PUT YOUR PHONE ON MUTE!**

- 1. Approval of April 23, 2020 Committee minutes**
- 2. Board education and training as needed**
- 3. Announcements and Requests**
- 4. Adjourn**

All interested persons will be given the opportunity to be heard. Written testimony may be forwarded to the Board of Adjustment, c/o Conservation, Planning & Zoning Department, 210 River Drive, Wausau WI 54403-5449. Any person planning to attend this meeting who needs some type of special accommodation in order to participate should call the County Clerk's Office at 715-261-1500 or e-mail infomarathon@mail.co.marathon.wi.us at least one business day before the meeting.

FAXED TO:

News Dept. at Daily Herald (715-848-9361), City Pages (715-848-5887),
Midwest Radio Group (715-848-3158), Marshfield News (877-943-0443),
COURTHOUSE: TPP Printing (715 223-3505)

Date: May 19, 2020
Time: 9:00 a.m.
By: cek
Date/Time/By: _____

SIGNED Rebecca J. Frisch

Presiding Officer or Designee

NOTICE POSTED AT

Date: _____
Time: _____
By: County Clerk

**MINUTES
MARATHON COUNTY BOARD OF ADJUSTMENT**

.Members present remotely: Richard Lawson, Roger Zimmerman, Arnold Schlei, Karen Piel, Carolyn Opitz

Members not present: Jim Servi

Also present remotely via phone: Raymond Lloyd, Teresa Ellefsen, Jeff Krukowski, Randy Palmer, Keith Langenhahn, and Don Southworth Jr.

Also present via WEBEX: Teal Fyksen, Cindy Kraeger, Dominique Swangstu, Lane Loveland, Becky Frisch, Diane Hanson Nathan Wincentsen, Dustin Vreeland, Jessica Bahr, and Jordan Weaver

Present in person: Mark Kolbe

Called to order at 9:00 a.m., 210 River Drive, Wausau by Chair Lawson, who explained the **rules of the hearing** and the reason for the establishment of the Board of Adjustment.

1. Approve November 21, 2019 minutes – **Motion** / second by Piel / Schlei to approve November 21, 2019 minutes as distributed. Motion **carried** by voice vote, no dissent.

2. The application of Dairyland Power Cooperative for a conditional use permit per Table 3 (Uses Permitted by District), Community, Civic and Institutional Uses, Essential Services and Utilities of the General Code of Ordinances for Marathon County Chapter 17 Zoning Code for the purpose of constructing and operating an electrical distribution substation in the R-E Rural Estate district, on property owned by David Endries described as Outlot 1 on Certified Survey Map #18523 located in part of the SE ¼ SE ¼ of Section 8 and part of the SW ¼ SW ¼ of Section 9, Township 26N, Range 02 E, Town of Spencer, further described as PIN # 074.2602.084.0986 with a property address of 206771 State Highway 13, Spencer, WI 54479.

Teal Fyksen was sworn in for case and all additional cases, asked the Board to use the determination worksheets in their decisions and cited the provisions of law which apply. Exhibit 1 – Staff report: Town of Spencer has adopted county zoning. The property is not located in shoreland zoning or a mapped floodplain. There are no mapped wetlands on the property. There are no known violations on the site. Exhibit 2 – Petition for Conditional Use Permit application. Exhibit 3 – Narrative. Exhibit 4 – Certified Survey Map. Exhibit 5 – Location within township. Exhibit 6 – Future land use map. Exhibit 7 – Surrounding zoning. Exhibit 8 – Aerial Photo (wide angle). Exhibit 9 – Substation Plan Section A-A photo. Exhibit 10 – Proposed Site Layout plan. Exhibit 11 – Substation photo (example). Exhibit 12 – Yagi Antenna photo (example). Exhibit 13 – Common Shack photo (example). Exhibit 14 – Basis of Determination. Exhibit 15 - Town of Spencer resolution.

Fyksen discussed Ordinance Section 17.301.09 related to Conditional Utilities Use permitted by District, related to the construction and operation of an electrical distribution substation. Applicant will meet any other required applicable regulations.

Bahr was sworn in and discussed the need to provide a more reliable source of energy to the general public and a sawmill located on the end of the Clark Electric line that is experiencing power outages.

Chair Lawson asked for any additional testimony.

There was no additional testimony in favor, opposed, or as interest may appear. Testimony portion of the hearing closed at 9:30 a.m.

Motion / second by Piel / Zimmerman to **grant** the conditional use request, without any additional conditions.

The Board deliberated and completed the Conclusion of Law and Decision Sheet.

Motion **carried** 5 yes, 0 no, roll call vote.

3. The application of Jordan Weaver, J&E Diesel and Auto Repair, for a conditional use permit per Section 17.204.46 “Vehicle Sales, Service or Rental (New and/or Used)” of the General Code of Ordinances for Marathon County Chapter 17 Zoning Code for the purpose of operating a light duty diesel and auto repair shop located in the G-A General Agriculture district, on property described as part of Lot 1 located in the NE 1/4, SE ¼ Section 8, T28N, R2E, Town of Hull, further described as PIN# 044.2802.084.0989 with a property address of 226390 Silver Maple Lane, Colby, WI 54421.

Teal Fyksen asked the Board to use the determination worksheets in their decisions and cited the provisions of law which apply. Exhibit 1 – Staff report: Town of Hull has adopted county zoning. The property is located in shoreland zoning. The property is not located in a mapped floodplain. There are mapped wetlands located on the property. There is one known violation on this site. Exhibit 2 – Petition for Conditional Use Permit application. Exhibit 3 – Narrative. Exhibit 4 – Site Plan. Exhibit 5 – Location within township. Exhibit 6 – Future land use map. Exhibit 7 – Surrounding zoning. Exhibit 8 – Aerial Photo. Exhibit 9 – Town of Hull resolution.

MINUTES MARATHON COUNTY BOARD OF ADJUSTMENT

Fykse discussed there had been several violations on Mr. Weaver's parcel that have since been resolved and that only one violation remains. Specifically, the existence and use of the Auto Body Repair Shop. This use is only allowed within the General Agricultural zoning district by Conditional Use Permit. The final step toward compliance is obtaining a CUP for the auto repair shop. This is an "after the fact" Conditional Use Request and there is no request to further expand the shop. Weaver was sworn in and is the owner of the parcel and Auto Body Repair Shop. He had no additional details regarding the CUP request.

Lawson questioned the timeframe of operating the repair service. Weaver has been operating the repair service for two years.

Chair Lawson asked for any additional testimony.

There was no additional testimony in favor, opposed, or as interest may appear. Testimony portion of the hearing closed at 9:45 a.m.

Motion / second by Zimmerman / Piel to **grant** the conditional use request, without any additional conditions.

The Board deliberated and completed the Conclusion of Law and Decision Sheet

Motion **carried** 5 yes, 0 no, roll call vote.

4. The application of Raymond Lloyd, for a conditional use permit per section permit per 17.204.54 "Nonmetallic Mining" of the General Code of Ordinances for Marathon County Chapter 17 Zoning Code, for the purpose of operating a nonmetallic mining operation on property currently owned by Raymond Lloyd. The property is located R-E Rural Estate district, on property described as part of the SW ¼ SW ¼, Section 18, T29N, 10E, Town of Plover, further described as PIN# 062.2910.183.0996.

Teal Fykse asked the Board to use the determination worksheets in their decisions and cited the provisions of law which apply. Exhibit 1 – Staff report: Town of Plover has adopted county zoning. The property is not located in shoreland zoning. The property is not located in a mapped floodplain. There are no mapped wetlands on the property. There are no known violations on the site. Exhibit 2 – Petition for Conditional Use Permit application. Exhibit 3 – Narrative. Exhibit 4 – Basis of Determination. Exhibit 5 – Location within township. Exhibit 6 – Future land use map. Exhibit 7 – Surrounding zoning. Exhibit 8 – Aerial Photo (wide angle). Exhibit 9 – Proposed Mine Site Map. Exhibit 10 – Mining Map. Exhibit 11 – Topographic Boundary Survey. Exhibit 12 – Proposed Reclamation Site Plan. Exhibit 13 – Proposed Reclamation Site Plan Cross Section A. Exhibit 14 – Proposed Reclamation Site Plan Cross Section B. Exhibit 15 – Town of Plover resolution.

Fykse discussed Ordinance Section 17.204.54 related to the requirements of nonmetallic mining within the Code. There will be no blasting since this site will be mining for clay. The mining map shows the driveway and site layout. The proposed final land use identified in the reclamation plan will be a farm field. There are other permitted nonmetallic mining sites in the area. The CUP is to run in concurrence with the mine site reclamation permit and remain valid for the duration of the reclamation permit, to the extent, both permits are in compliance.

The Applicant will meet any other required regulations.

Schlei questioned if this mine site will adjoin with Marathon County nonmetallic mine site #R9-5015. Fykse stated it is not part of site in discussion.

Lawson questioned the setbacks and all setbacks will be met. Seasonal weight and road limits will be abided by throughout the duration of the project.

Lloyd was sworn in and is the owner of the parcel. The clay will be used at Marathon County Solid Waste Landfill. The hours of operation are 6:30 a.m. to 6:30 p.m. Monday – Friday and 6:30 a.m. to 12:00 p.m. on Saturdays.

Loveland was sworn in and explained that through the permitting process it has been practice to allow reclamation of mine sites only over the last 3 years of the CUP. Lloyd verbally amended the application from a 10 year to a 15 year CUP.

Lawson questioned the number of trucks hauling the clay out of the mine. Lloyd anticipates ten axle trucks running 10-15 loads per hour.

Wincentsen was sworn in and had no additional details regarding the CUP request.

Ellefsen was sworn in and is a neighbor to the parcel. She is concerned about the dust control. Lloyd stated this mine site is located along two County black top roads and that haul roads within the mine's permitted boundary will be watered down to control dust.

Frisch was sworn in and stated the Zoning Code provides no jurisdiction where the materials are transported to.

Chair Lawson asked for any additional testimony.

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There was no additional testimony in favor, opposed, or as interest may appear. Testimony portion of the hearing closed at 10:25 a.m.

Zimmerman recused himself from voting due to being a member on the Solid Waste Management Board.

Motion / second by Schlei / Piel to **grant** the conditional use request for 15 years with the last 3 years for reclamation purposes only. The applicant agrees to all provisions as outlined in the applicants permit application.

The Board deliberated and completed the Conclusion of Law and Decision Sheet

Motion **carried** 4 yes, 0 no, 1 abstained, roll call vote.

5. The application of Jeffrey Krukowski for a conditional use permit per 17.204.54 “Nonmetallic Mining” of the General Code of Ordinances for Marathon County Chapter 17 Zoning Code, for the purpose of mine boundary expansion and continued operation of an existing permitted nonmetallic mining operation (Reclamation Permit #99-001) on properties currently owned by Krukowski Limited Partnership. The properties are located in the G-A General Agricultural district, on parcels described as NW ¼ NW ¼ and SW ¼ NW ¼ Section 23, T26N, 8E Town of Guenther, further described as PIN# 032.2608.232.0998, 032.2608.232.0997 and 032.2608.233.0998.

Teal Fyksen asked the Board to use the determination worksheets in their decisions and cited the provisions of law which apply. Exhibit 1 – Staff report: Town of Guenther has adopted county zoning. The property is located in shoreland zoning. The property is not located in a mapped floodplain. There are mapped wetlands on the property. There are no known violations on the site. Exhibit 2 – Petition for Conditional Use Permit application. Exhibit 3 – Narrative. Exhibit 4 – Description of work. Exhibit 5 – Location within township. Exhibit 6 – Future Land Use Map. Exhibit 7 – Surrounding zoning. Exhibit 8 – Aerial Photo (wide angle). Exhibit 9 – Aerial Photo. Exhibit 10 – Currently Permitted Mine Site (North). Exhibit 11 – Existing Contours Map (area to be permitted). Exhibit 12 – Proposed Erosion Control Plan. Exhibit 13 – Proposed Reclamation Site Plan Cross Section A. Exhibit 14 – Town of Guenther resolution.

Fyksen discussed Ordinance Section 17.204.54 related to the requirements of nonmetallic mining within the Code. The purpose of this application is to expand the existing boundary in the G-A General Agriculture district by 39 acres and to continue operation of an existing permitted nonmetallic mining. The hours of operation proposed are 7 a.m. to 7 p.m. Monday – Friday. Fyksen stated a well is located on the adjacent property, also owned by Mr. Krukowski. The well would not meet the setback to a quarry and described several options for compliance, specifically identified within NR812. Fyksen explained that a CUP is for the land use of mining, which Mr. Krukowski is securing for the future. The immediate plan is to use this location for processing.

All other applicable setbacks will be met.

Piel questioned the expiration date on the existing CUP and if an expiration date can be applied to the existing CUP. Fyksen stated there is no sunset/expiration date. The CUP is to run in concurrence with the mine site reclamation permit. Loveland discussed is it not common to have end dates on expanding mine sites because of the mining and market resources. Loveland stated that conditions could be placed on the new CUP but leave the existing permit stand.

Krukowski was sworn in, and had no additional details regarding the CUP request.

Vreeland was sworn in and part of this CUP request is to develop the site and add a trammel on approximately 2 acres in the Northwest corner of the 30 acres.

Chair Lawson asked for any additional testimony.

There was no additional testimony in favor, opposed, or as interest may appear. Testimony portion of the hearing closed at 10:52 a.m.

Motion / second by Piel / Schlei to **grant** the conditional use request for 15 years with the last 3 years for reclamation purposes only. The applicant agrees to all provisions as outlined in the applicants permit application.

The Board deliberated and completed the Conclusion of Law and Decision Sheet

Motion **carried** 5 yes, 0 no, roll call vote.

Chair Lawson called for a 10 minute recess.

Hearing resumed at 11:05 a.m.

6. The application of James Peterson Sons, Inc. for a conditional use permit per 17.204.54 “Nonmetallic Mining” of the General Code of Ordinances for Marathon County Chapter 17 Zoning Code, for the purpose of a vertical expansion (deeper depth) and continued operation of an existing permitted nonmetallic mining operation (Reclamation Permit #04-003) on properties currently owned by Andrew and Thomas Altenhofen and Joan Altenhofen. The properties are located in the F-P Farmland Preservation district, on parcels described as NE ¼ SW ¼ and SE ¼ SW ¼ Section 1, T28N, 6E Town of Marathon, further described as PIN# 054.2806.013.0998 and 054.2806.013.0993.

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Teal Fyksen stated a letter was received by the Town of Marathon Board Chairman, Keith Langenhahn, requesting that the hearing for this case be recessed to a future meeting date due to the extension of the Safer at Home Rule; which resulted in the Town Board not being able to hold their regular Town Board meeting to render a decision on the James Peterson Sons, Inc. application. This is entered into the record as Exhibit 12. Discussion occurred amongst committee members whether to allow input/testimony from anyone that is unable to attend the Board of Adjustment meeting at a later date, as described, such testimony was taken.

Motion / second by Schlei / Zimmerman to recess the James Peterson Conditional Use Permit application to a future Board of Adjustment hearing subject to taking input/testimony from anyone in attendance today that may not be available to appear at a later date.

Motion **carried** 5 yes, 0 no, roll call vote.

Mark Kolbe was sworn in and Exhibit 14 was entered into the record. He is not opposed to nonmetallic mining but opposes the pond that could impact the field. The field currently follows a Nutrient Management Plan that identifies a Surface Water Quality Management Area (SWQMA) which encompasses approximately 26 acres along the eastern side of the field. His concern is if the pond is constructed the remainder of the field would be included in the SWQMA. This would eliminate the remainder of the field from “winter” manure applications. Kolbe is opposed to added restrictions on his property due to the pond. Possible solutions to the impact of the pond would be to construct a berm or ditch along the west side of the field. One drawback to creating a berm would be the potential for ponding along the west side, impacting crop production.

Don Southworth Jr was in attendance and will speak at a later date.

Randy Palmer was in attendance and will speak at a later date.

7. Board education and trainings as needed – None.

8. Announcements and Requests

Frisch mentioned the Board of Adjustment appointments may occur at County Board tonight.

Next meeting date – May 28, 2020 at 9:00 a.m., 212 River Drive, Wausau Room 5 / remotely

9. Meeting adjourned – **Motion** / second by Piel / Opitz to adjourn at 11:40 a.m. Motion **carried** by voice vote, no dissent.

Respectfully submitted,
Arnold Schlei, Secretary
Marathon County Board of Adjustment

AS/cek

cc: Board of Adjustment (7), County Clerk, Town Clerk

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WIND ENERGY SYSTEM(WES) BOARD OF ADJUSTMENT EDUCATION:



REFERENCE STATUTES AND ADMINISTRATIVE CODE(S):

PUBLIC SERVICE COMMISSION (PSC 128); WIS. STATS. 66.0401

1. Background Information and Regulation:

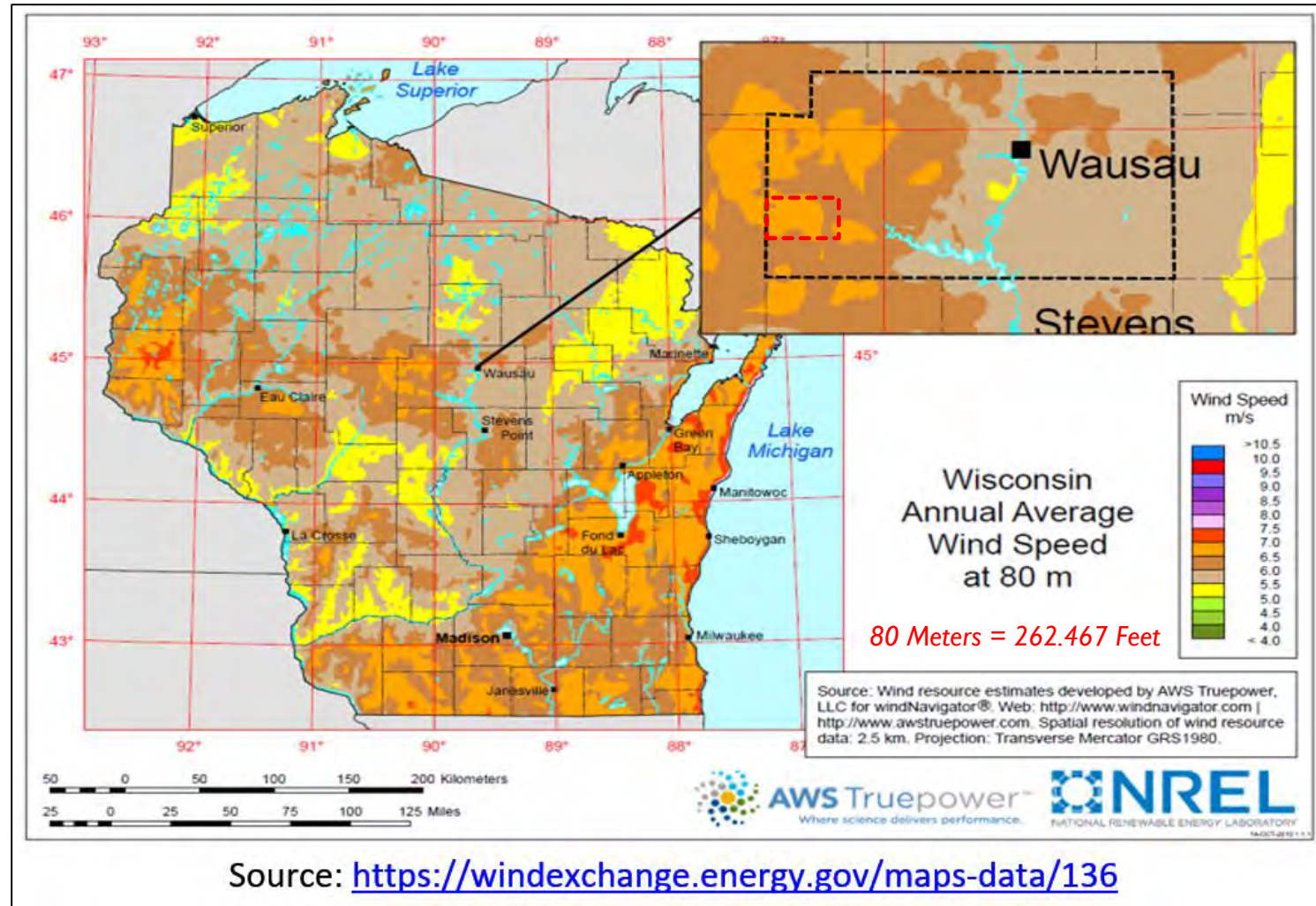
- Why Western Marathon County Wisconsin
- State and local regulations
- Ordinance structure in relation to PSC 128 and Wis. Stat., 66.041
- *Anticipated* scale and size for perspective

2. Review, Processing, and Applicable Conditions:

3. Miscellaneous Requirements: (Post Construction/ Approvals):

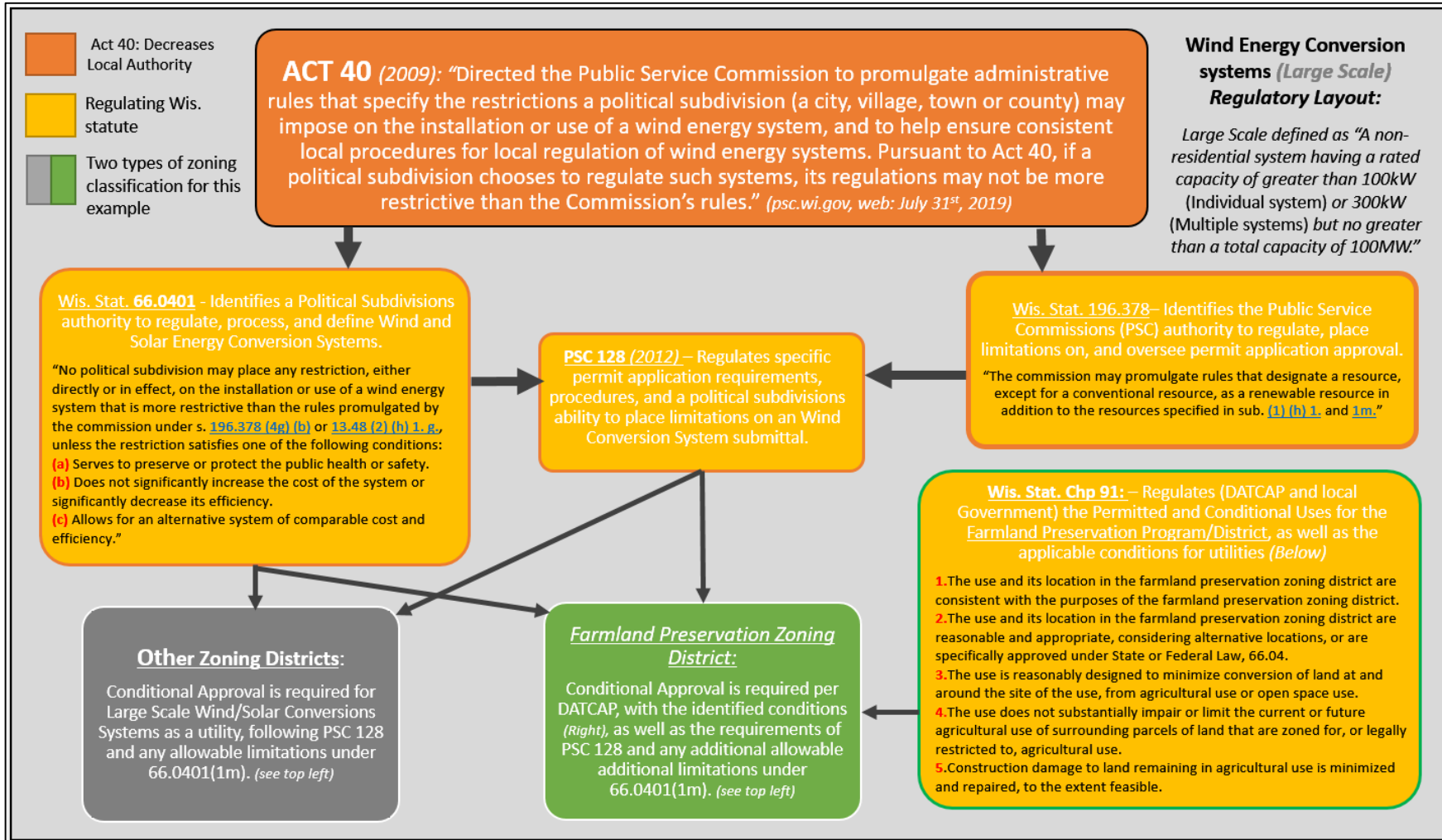
*By: Dominique Swangstu
Marathon County Zoning Administrator
May 28th, 2020*

WHY WESTERN MARATHON COUNTY?



Source: <https://windexchange.energy.gov/maps-data/136>

STATE REGULATIONS:



PUBLIC SERVICE COMMISSION (PSC) 128:
 WISCONSIN STATUTES 66.0401:
 COUNTY ZONING ORDINANCE, CHAPTER 17.405:



PSC 128.01	Definitions.
PSC 128.02	Applicability.
PSC 128.03	Political subdivision authority.
PSC 128.04	Enforcement.
PSC 128.10	Incorporating owner requirements into local ordinances.
PSC 128.105	Development of a wind energy system; notice requirements.
PSC 128.11	Real property provisions.
PSC 128.12	Existing property uses.
PSC 128.13	Siting criteria.
PSC 128.14	Noise criteria.
PSC 128.15	Shadow flicker.
PSC 128.16	Signal interference.
PSC 128.17	Stray voltage.
PSC 128.18	Construction and operation.
PSC 128.19	Decommissioning.
PSC 128.30	Application and notice requirements.
PSC 128.31	Application completeness.
PSC 128.32	Political subdivision review of a wind energy system.
PSC 128.33	Political subdivision permitted provisions.
PSC 128.34	Record of decision.
PSC 128.35	Modifications to an approved wind energy system.
PSC 128.36	Monitoring compliance.
PSC 128.40	Complaint process.
PSC 128.41	Monitoring committee.
PSC 128.42	Notice to property owners and residents.
PSC 128.50	Standards established by the commission.
PSC 128.51	Commission review.
PSC 128.60	Exemptions from this chapter.
PSC 128.61	Modifications to this chapter.

Wis. Stat., 66.0401

(1e) DEFINITIONS. In this section
 (1m) AUTHORITY TO RESTRICT SYSTEMS LIMITED.
 (2) AUTHORITY TO REQUIRE TRIMMING OF BLOCKING VEGETATION.
 (3) TESTING ACTIVITIES
 (4) LOCAL PROCEDURE
 (5) PUBLIC SERVICE COMMISSION REVIEW.
 (6) APPLICABILITY OF A POLITICAL SUBDIVISION OR COUNTY ORDINANCE.



Chapter 17.405	Wind Energy Systems (WES)	103
Section 17.405.01	<i>Purpose</i>	103
Section 17.405.02	<i>Permit, Application, and Filing Requirements</i>	103
Section 17.405.03	<i>Local Regulations</i>	105
Section 17.405.04	<i>Local Procedure</i>	108
Section 17.405.05	<i>Modifications to an approved system</i>	110
Section 17.405.06	<i>Post Construction Filing Requirement</i>	110
Section 17.405.07	<i>Compliance Monitoring</i>	110
Section 17.405.08	<i>Decommissioning Review</i>	110
Section 17.405.09	<i>Appeals</i>	111
Section 17.405.10	<i>Complaints</i>	111



PURPOSE AND KEY DEFINITIONS OF CHAPTER 17.405

“The purpose of this Chapter is to adopt and incorporate the requirements of Wis. Stats., 66.0401 and Wis. Admin. Code PSC 128 as a local ordinance and to establish local regulations on the installation, siting, use, and decommissioning of wind energy systems that are authorized by, compliant with, and are no more restrictive than the rules promulgated by the Wisconsin Public Service Commission and that serve to preserve and protect the public health, safety, and welfare. For the purposes of the this chapter...

Large Wind Energy Systems are systems that have a total installed nameplate capacity of 300 kilowatts or greater and consists of individual wind turbines that have an installed nameplate capacity of more than 100 kilowatts. Systems with a *total installed nameplate capacity of greater than 100 Megawatts may not be regulated by this ordinance....*

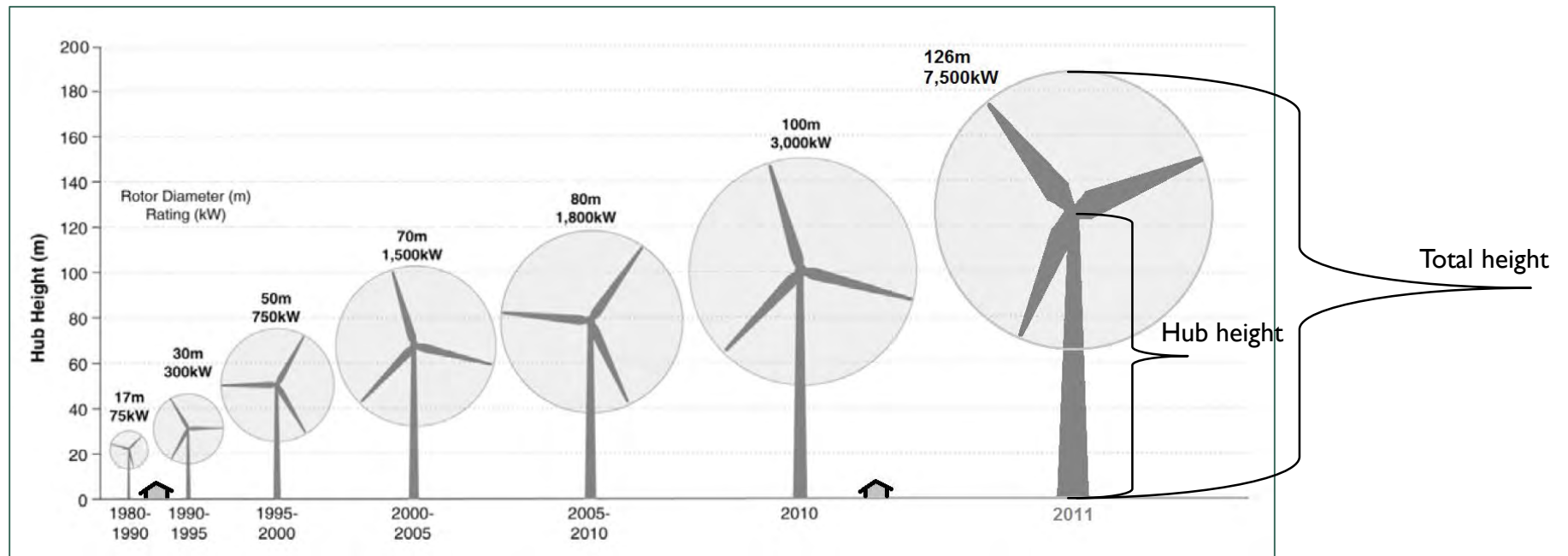
Small Wind Energy Systems are systems that have a total installed nameplate capacity of 300 kilowatts or less and that consists of individual wind turbines that have an installed nameplate capacity of not more than 100 kilowatts.”

Different definitions for Wind and Solar Energy Systems

Private Use WES or SES. Means the primary purpose of the WES and/or SES is to convert wind and/or solar energy into electricity which is to be used and/or stored onsite. These WES and SES must be accessory to an existing residential, commercial, industrial, or agricultural use and are subject to all the standards, requirements, and processes set forth in this ordinance.

Commercial Use WES or SES. Means the use/purpose of the WES and/or SES is to convert wind and/or solar energy into electricity which is to be used, distributed, or sold offsite. These uses may be deemed to be accessory to an existing residential, commercial, or agricultural use but are subject to all the standards, requirements, and conditional use processes set forth in this ordinance.

PROJECT SCALE AND TURBINE SIZE - PERSPECTIVE



Anticipated Hub Height – 330 feet

Anticipated Total Height (including blades) – 600 feet

Approx. Heights based on previous EDP-R presentations and information.

PERMITTED USES: SECTION 17.203.05 (TABLE 3)

Chapter 17 Solar Energy System Classifications (P or C) are based on the proposed use of the system.

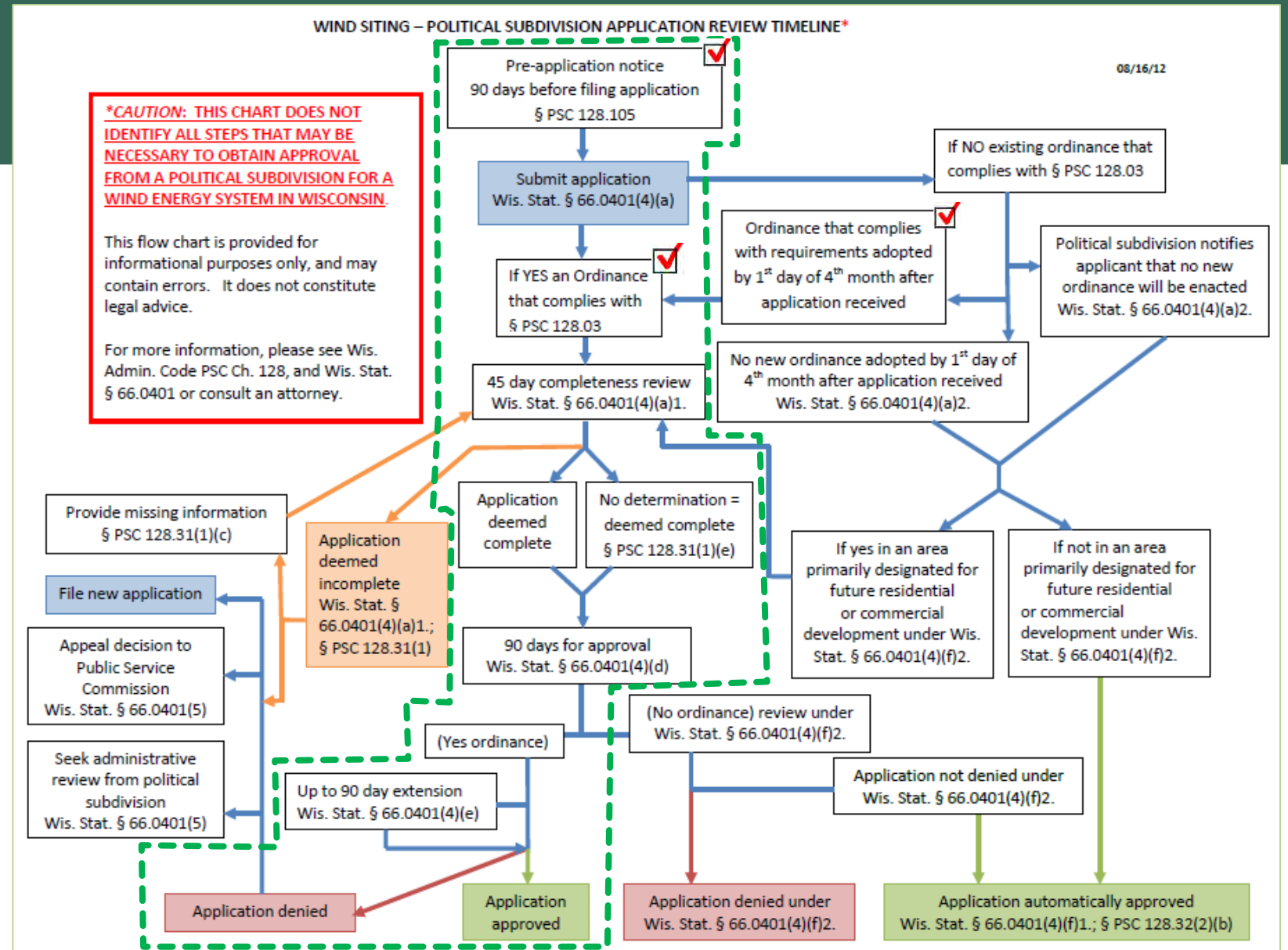
Whereas, Chapter 17 Wind Energy System Classifications (P or C) are based on the use and size of proposed the system.

USE	Key: P Permitted Use C Conditional Use (Blank) Use Not Permitted													Development Standards
	Residential Districts				Agricultural Districts			Nonresidential Districts						
	U-R	L-D-R	R-R	R-E	F-P	G-A	C-V/R-C	N-C	C	B-R	L-I	H-I		
ACCESSORY, TEMPORARY, and OTHER USES														
Solar Energy Systems – Private Use	P	P	P	P	P	P	P	P	P	P	P		P	Chapter 17.408
Solar Energy Systems – Commercial Use					C	C	C				C		C	Chapter 17.408
Small Wind Energy Systems	P	P	P	P	P	P	P	P	P	P	P		P	Chapter 17.405 <i>Note: See Title 3 for specific Farmland Preservation Regulations</i>
Large Wind Energy Systems					C	C	C				C		C	Chapter 17.405 <i>Note: See Title 3 for specific Farmland Preservation Regulations</i>

REGULATION TIMELINE/PROCESS:

Marathon County Town/County Engagement:

- Infrastructure Committee 06/06/2019, 07/11/2019, 08/01/2019
 - EDP Renewables submitted a complete Pre-Application notice to CPZ 10/28/2019
 - Town of Brighton (*Joint meeting with the Town of Eau Pleine*) 10/29/2019
 - Town of Eau Pleine (*Joint meeting with Brighton*) 11/14/2019
 - Environmental Resources Committee 11/07/2019, 12/05/2019, 01/02/2020, 02/05/2020,
 - Open house (Conservation, Planning, and Zoning Department) 01/16/2020
 - Town Memos 11/06/2019, 12/18/2019, 01/10/2020
 - Eastern and Western Towns Association meetings 2020
 - Marathon County Board of Supervisors 02/25/2020
- New Wind Energy System (WES) regulations adopted by County Board 02/25/2020



WIND ENERGY SYSTEM (WES)

CPZ REVIEW, PROCESSING, BOA REVIEW AND AUTHORITY, AND POST CONSTRUCTION/MISC. REQUIREMENTS:

Overview:



1. Start – Pre application
2. Application submission and completeness review
3. **Completing material requests for a complete application submission**
4. Notify owner of the completed application

5. Notice of complete application and Class I notice
6. Approval period (CUP or Permitted)
6. **Additional time to review/approve/deny**
7. Approval Standards
8. Possible Conditions

10. Fee Reimbursement – After review and approval
11. Construction and Operation plan establishment
11. Construction
12. Third party Inspections
13. Post construction filing requirements
14. Compliance monitoring
15. Decommissioning review

APPLICATION REQUIREMENTS

17.405.02(B)(1)–(2)

1. For Small Wind Energy Systems - An owner shall file an application with the department that, at a minimum, includes the following information:
 - a. Wind Energy System description and maps showing the locations of all proposed wind energy facilities. (This may include the description and maps for alternative wind energy facility locations.)
 - b. Technical description of wind turbines and wind turbine sites.
 - c. Timeline and process for constructing the Wind Energy System.
 - d. *Information regarding anticipated impact of the Wind Energy Systems on local infrastructure.*
 - e. *Information regarding noise anticipated* to be attributable to the Wind Energy System.
 - f. *Information regarding shadow flicker anticipated* to be attributable to the Wind Energy System, consistent with PSC 128.15, with the exception of PSC 128.15(1)(c), 3(b)-(e), and (5) which do not apply to Small Wind Energy Systems.
 - g. *Information regarding the anticipated effects* of the Wind Energy System on existing land uses within 0.5 miles of adjacent to the Wind Energy System.
 - h. *Information regarding the anticipated effects* of the Wind Energy System on airports and airspace
 - i. *Information regarding the anticipated effects* of the Wind Energy System on line-of-sight communications, consistent with PSC 128.16, with the exception of PSC 128.16(2)-(4) which do not apply to Small Wind Energy Systems.
 - j. A list of all state and federal permits required to construct and operate the Wind Energy System
 - k. *Information regarding the planned use* and modification of roads during the construction, operation, and decommissioning of the Wind Energy System, including a process for assessing road damage caused by Wind Energy System activities and for conducting road repairs at the owner's expense.
 - l. A representative copy of all notices issued consistent with PSC 128.105(1) and 128.30(5), except as provided by PSC 128.61.
2. For Large Wind Energy Systems - An owner shall file an application with the department that, at a minimum, includes the following information:
 - a. All information required under Section 17.405.02(B)(1) (a-f) and (h-L) of this chapter
 - b. *Information regarding the anticipated effects of the Wind Energy System* on existing land uses within 0.5 mile of the Wind Energy System. (For example, information may include the anticipated effects to applicable environmental conditions and/or development limitations within 0.5 miles).
 - c. A representative copy of all notices issued under sub. PSC 128.105(1), 128.30(5), and 128.42(1), which are:

PRE-APPLICATION (AND NOTICE REQUIREMENTS):

- 1) **Pre-application notice** – At least 90 days before an owner files an application to construct a Wind Energy System, an owner shall use commercially reasonable methods to provide written notice of the planned wind energy system to all of the following:
 - a) Land owners within one mile of the planned wind turbine host properties
 - b) Political subdivisions within which the Wind Energy System may be located
 - c) Emergency first responders and air ambulance service providers serving the political subdivisions within which the Wind Energy System may be located
 - d) The Wisconsin department of transportation
 - e) The Wisconsin public service commission
 - f) The Wisconsin department of natural resources
 - g) The Wisconsin department of agriculture, trade and consumer protection
 - h) The office of the deputy undersecretary of the U.S. department of defense

Required prior to the start of construction

- 2) **Notice of process for making complaints** – Before construction of a Wind Energy System begins, an 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. An 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 political subdivision, 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.
- 3) **A copy of all emergency plans** developed in collaboration with appropriate first responders under s. PSC 128.18(4)(b). An owner may file plans using confidential filing procedures as necessary.
- 4) **A decommissioning and site restoration plan** providing reasonable financial assurance that the owner will be able to comply with s. PSC 128.19.

3. **For All Applications.** Evidence shall be included for all applications to show that, on the same day an owner filed an application under this ordinance, the owner used commercially reasonable methods to provide written notice of the filing of the application to property owners and residents located within one mile of the proposed location of any Wind Energy System facility. The notice shall include all of the following:

- a. A complete description of the Wind Energy System, including the number and size of the wind turbines.
- b. A map showing the location of all proposed Wind Energy System facilities.
- c. The proposed timeline for construction and operation of the Wind Energy System.
- d. Locations where the application is available for public review.
- e. Owner contact information (including the contact person(s), primary phone number, and email)

Possible Conditions

BREAKDOWN - APPLICATION STANDARDS 17.405.02(B)(1)(a-e)

- a. Wind Energy System description and maps showing the locations of all proposed wind energy facilities. (This may include the description and maps for alternative wind energy facility locations.)
- b. Technical description of wind turbines and wind turbine sites.
- c. Timeline and process for constructing the Wind Energy System.
- d. *Information* regarding anticipated impact of the Wind Energy Systems on local infrastructure.
- e. Information regarding noise anticipated to be attributable to the Wind Energy System.



Noise Criteria. 17.405.03(E)

1. For both Large and Small Wind Energy Systems:

- a. The noise generated by the operation of a wind energy system may not exceed 50 dB(A) during the daytime hours and 45 dB(A) during the nighttime hours as measured at the outside wall of a nonparticipating residence or occupied community building that existed when the owner gave notice pursuant to PSC 128.105(1) or for which complete publicly available plans for construction were on file with a political subdivision within 30 days of the date when the owner gave notice pursuant to PSC 128.105(1). 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. The owner of an adjacent nonparticipating residence or adjacent 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 by written contract as provided in PSC 128.14(5) and (6).
- c. The owner shall provide the notice as prescribed by PSC 128.61(4).
- d. If an owner receives a complaint of a violation of the noise standards contained in PSC 128.14 and the owner has not provided the department with 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 standard at the location relating to the complaint, the owner shall promptly conduct a noise study to evaluate compliance with the noise standards at that location using the most current version of the noise measurement protocol as described in PSC 128.50(2).

Possible Condition

BREAKDOWN - APPLICATION STANDARDS 17.405.02(B)(1)(f)

Information regarding shadow flicker anticipated to be attributable to the Wind Energy System, consistent with PSC 128.15, with the exception of PSC 128.15(1)(c), 3(b)-(e), and (5) which do not apply to Small Wind Energy Systems.

PSC 128.15(1)-(5)

(1) PLANNING.

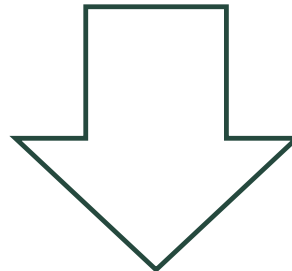
(a) The shadow flicker requirements in this section apply to a nonparticipating residence or occupied community building that exists when the owner gives notice under s. [PSC 128.105 \(1\)](#) or for which complete publicly-available plans for construction are on file with a political subdivision within 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.

(2) 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.*



Possible Condition

BOA may request information regarding b and c.

SHADOW FLICKER CONTINUED: PSC 128.15(3)-(5)

(3) 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.

(4) 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. (2) or (3) (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.

(5) NOTIFICATION.

(a) Before entering into a contract under sub. (4), 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. (4).

AIRPORTS AND AIRSPACE 17.405.02(B)(1)(h)

Information regarding the anticipated effects of the Wind Energy System on airports and airspace

Statute References and standards:

PSC 128.13(2)(b)

A political subdivision may not set height or setback distance limitations for a wind turbine near a public use airport or heliport that are more restrictive than existing airport and airport approach protection provisions under ss. [114.135](#) and [114.136](#), Stats. If no provisions have been established for public use airports or heliports under s. [114.135](#) or [114.136](#), Stats., the political subdivision may adopt wind turbine height or setback distance provisions that are based on, but not more restrictive than, the federal aviation administration obstruction standards in [14 CFR Part 77](#).

PSC 128.18(1)(c)

An owner shall install lighting at a wind energy system that complies with standards established by the federal aviation administration. A political subdivision may not establish lighting requirements for a wind energy system that conflict with standards established by the federal aviation administration. A political subdivision may require use of shielding or control systems approved by the federal aviation administration to reduce visibility of lighting to individuals on the ground.

Possible Condition

Chapter 17.305 Airport Approach Protection Overlay District (already established)

Chapter 17.405.03(A)

Airport Approach Protection Overlay District. An owner may not construct any wind energy system that does not comply with the Marathon County Airport Zoning Ordinance which, in part, controls the height of structures within the Airport Approach Protection Overlay District ([Chapter 17.305](#)), which shall be no more restrictive than limitations referenced in PSC 128.13(2)(b).

Chapter 17.405.03 (D)

Lighting Criteria. A wind energy wind system may be artificially lighted only if lighting is required by the Federal Aviation Administration. An owner shall use shielding or control systems approved by the Federal Aviation System to reduce visibility of light when viewed from the ground.

LINE-OF-SIGHT COMMUNICATIONS: 17.405.02(B)(1)(i)

Information regarding the anticipated effects of the Wind Energy System on line-of-sight communications, consistent with PSC 128.16, with the exception of PSC 128.16(2)-(4) which do not apply to Small Wind Energy Systems.

PSC 128.16 - Signal Interference

(1) PLANNING.

(a) Except as provided in sub. (4), the signal interference requirements in this section apply to commercial communications and personal communications in use when the wind energy system begins operation.

(b) A 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. A political subdivision may require an owner to provide information showing that wind turbines and other wind energy system facilities will be in compliance with this paragraph.

(3) 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. A political subdivision 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. (4), 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.

(2) COMMERCIAL COMMUNICATIONS 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 provided in sub. (4), 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.

(4) MITIGATION PROTOCOL.

A political subdivision 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 sub. (2) or (3) and for which the original mitigation solution implemented is only partially effective.

Additional Information Request possible

BREAKDOWN CONTINUED 17.405.02(B)(1)(j – l)

- j. A list of all state and federal permits required to construct and operate the Wind Energy System
- k. *Information* regarding the planned use and modification of roads during the construction, operation, and decommissioning of the Wind Energy System, including a process for assessing road damage caused by Wind Energy System activities and for conducting road repairs at the owner's expense.
- l. A representative copy of all notices issued consistent with PSC 128.105(1) and 128.30(5), except as provided by PSC 128.61.

Pre-Application notice requirements

Application notice requirements:
specifically referencing Notice to
Property Owners and Residents

List of exemptions regarding
notice requirements for Small
Wind Energy Systems

17.405.02(B)(2)

- 2. **For Large Wind Energy Systems** - An owner shall file an application with the department that, at a minimum, includes the following information:
 - a. All information required under Section 17.405.02(B)(1) (a-f) and (h-L) of this chapter
 - b. Information regarding the anticipated effects of the Wind Energy System on existing land uses within 0.5 mile of the Wind Energy System. (For example, information may include the anticipated effects to applicable environmental conditions and/or development limitations within 0.5 miles).
 - c. A representative copy of all notices issued under sub. PSC 128.105(1), 128.30(5), and 128.42(1), which are:

Additional Information requests possible

Pre-Application and Application notice
requirements

ADDITIONAL APPLICATION CONSIDERATIONS:

17.405.03(G)(1): Setbacks and Siting Criteria. An owner shall work with a political subdivision and owners of participating and nonparticipating properties to site wind turbines to minimize individual hardships. Source: PSC 128.13(1)(c)

Small Wind Energy Systems: Shall comply with the minimum setback distances shown in Table 2 to PSC 128.13 included in PSC 128.61, which are:

Description	Setback Distance*
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

* Wind turbine setback distances shall be determined 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. The owner of an adjacent nonparticipating residence or adjacent occupied community building may waive the applicable turbine setback distances as described in PSC 128.61(3)(b), setbacks also listed in Section 17.405.03(G)(1).

ADDITIONAL APPLICATION CONSIDERATIONS:

17.405.03(G)(2): Large Wind Energy Systems: Shall comply with the minimum setback distances shown in Table 1 in PSC 128.13, which are:

Description	Setback Distance*
Occupied Community Buildings	The lesser of 1,250 feet or 3.1 times the maximum blade tip height
Participating Residences	1.1 times the maximum blade tip height
Nonparticipating Residences	The lesser of 1,250 feet or 3.1 times the maximum blade tip height
Participating Property Lines	None
Nonparticipating Property Lines	1.1 times the maximum blade tip height
Public Road Right-of-Way	1.1 times the maximum blade tip height
Overhead Communication and Electric Transmission or Distribution Lines – not including utility service lines to individual houses or outbuildings	1.1 times the maximum blade tip height
Overhead Utility Service Lines – Lines to individual houses or outbuildings	None

* Wind turbine setback distances shall be determined 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.

a. The owner of a nonparticipating residence or occupied community building may waive the applicable wind turbine setback distances of this chapter for those structures to a minimum setback distance of 1.1 times the maximum blade tip height. The owner of a nonparticipating property may waive the applicable wind turbine setback distance in this chapter from a nonparticipating property line.

END OF APPLICATION REQUIREMENTS: QUESTIONS

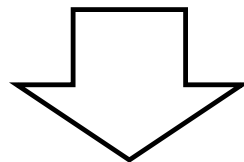


APPLICATION PROCESSING, REVIEW, APPROVAL: DEADLINES

Local Procedure - 17.405.04(D)(1)-(2)

(D) Application Processing.

1. Within **45 days** of receiving the application, the department shall notify the applicant whether the application is complete and, if it is not, what the applicant must do in order to make it complete.
 - a. The applicant shall provide the additional information specified in the notice to the department **within 60 days** of the date of the notice.
 - b. The owner may file a new application at a later date; there is no limit to the number of times that an owner may file an application.
 - c. An application shall be deemed complete if it complies with the filing requirements of Section 17.405.02 of this ordinance and of PSC 128.30(2) and 128.50(1).
2. As soon as reasonably possible after receiving a complete application, the department **shall publish a class 1 notice**, under Ch.985 Stats., stating that an application for approval has been filed with the county.
 - a. For Small Wind Energy Systems . The department shall make the application available for public review consistent with PSC 128.30(6)(a) and shall accept written comments on the application for a minimum period of 10 days following the date of the published notice. The county shall hold at least one public meeting to obtain comments on and to inform the public about the proposed wind energy system consistent with PSC 128.30(6).
 - 1) This section does not apply to Small Wind Energy Systems subject to the conditional use permit standards and conditions within the farmland preservation zoning districts. See 17.405.03(B).
 - b. For Large Wind Energy Systems. The application will be **forwarded to the Board of Adjustment** for issuance of a conditional use permit under Chapter 17.803 of this ordinance, and reviewed under the criteria of this Section 17.405. Notwithstanding the provisions of Chapter 17.803, the application shall be determined to be complete if it meets the requirements under PSC 128.30 (2) and 128.50 (1).



CPZ AND BOARD OF ADJUSTMENT REVIEW: DECISIONS

Section 17.405.04(D)(3)-(7)

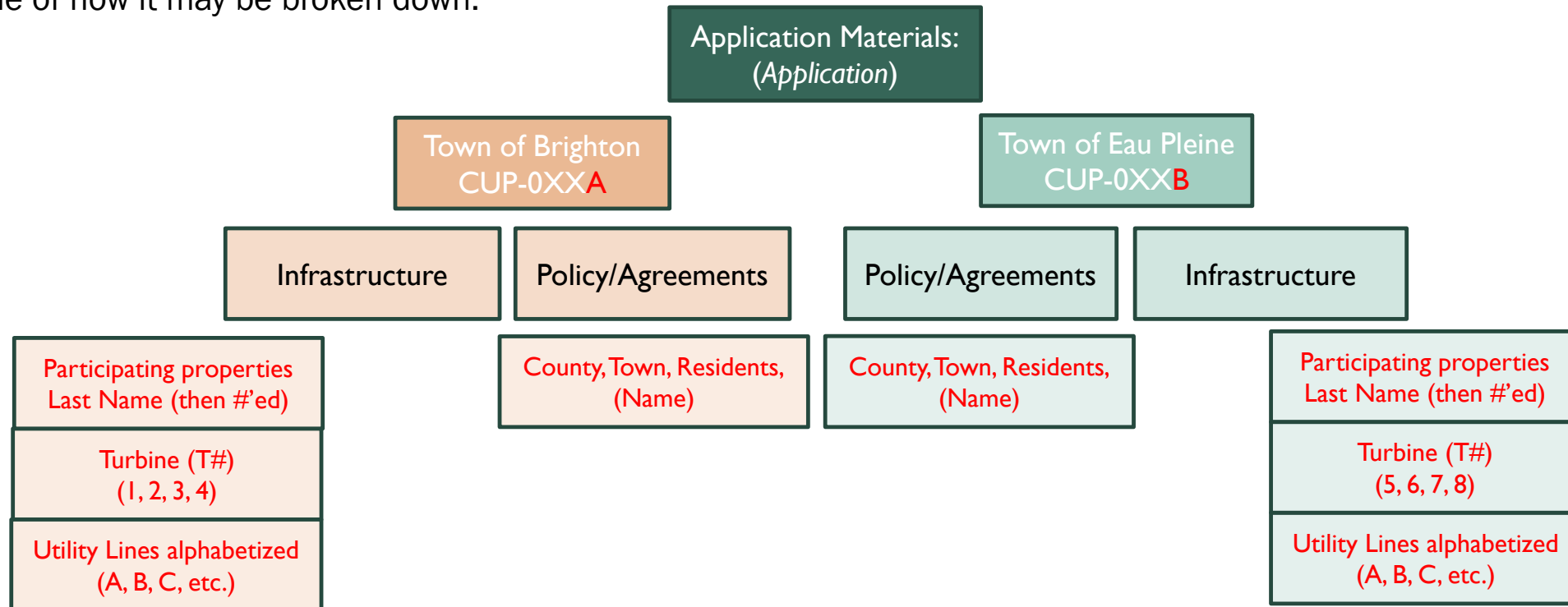
3. The county shall make a record of its decision making on an application, including a recording of any public hearing, copies of documents submitted at any public hearing, and copies of any other documents provided to the county in connection with the application for approval.
4. The county shall base its decision on an application on written findings of fact that are supported by the evidence in the record.
 - a. For Large Wind Energy Systems. For Wind Energy Systems with a nominal capacity of at least one megawatt, the county may **deny** an application for approval if the proposed site of the wind energy system is in an area primarily designated for future residential or commercial development, as shown in a map that is adopted, as part of a comprehensive plan, under s. 66.1001 (2) (b) and (f), before June 2, 2009, or as shown in such maps after December 31, 2015, as part of a comprehensive plan that is updated as required under s. 66.1001 (2) (i). This provision applies to Wind Energy Systems that have a nominal capacity of at least one megawatt. 66.0401(4)(f)(2).
5. The county shall approve or disapprove an application for approval no later than 90 days after the day on which it notifies the applicant that the application for approval is complete. The county may extend this time period in writing provided the extension is done during the initial 90-day period, except the total amount of time for all extensions granted may not exceed 90 days. Any combination of the following extensions may be granted:
 - a. An extension of up to 45 days if the county needs additional information to determine whether to approve or deny the application.
 - b. An extension of up to 90 days if the applicant makes a material modification to the application.
 - c. An extension of up to 90 days for other good cause specified in writing by the county.

Deadlines/Timelines

If the county fails to act within the initial 90 days, or within any extended time period, the application is considered approved
6. The decision made by the county to deny an application shall be made in writing to the applicant and must include the reasons for denial.
7. The county shall provide a written decision to the applicant and the public service commission. Said decision shall contain findings of fact supported by evidence in the record.

APPLICATION/MATERIAL ORGANIZATION: TENTATIVE

To make this large project more manageable it will be broken down into different sections, numbers/letters, and exhibits. Below is an example of how it may be broken down.



Recommendations to make the application more manageable is appreciated

BOARD OF ADJUSTMENT REVIEW:

Section 17.803.01(B)

Authority. Wind Energy Systems forwarded to the Board of Adjustment under Section 17.405.04(D)(2) shall be reviewed and either approved or denied in accordance with the criteria enumerated in PSC 128, Wis. and Sections 17.405.01 - 17.405.10.

Local Procedure: Section 17.405.04(A)-(C)

- A. All applications regulated by this chapter may be subject to additional conditions and restrictions consistent with but no more restrictive than those in Wis. Stats., 66.0401(1M) and authorized by, and consistent with, PSC 128, Wis. Admin. Code. Where such conditions are considered and applied on a case-by-case basis; as well as satisfy one of the following:
1. Serves to preserve or protect the public health or safety.
 2. Does not significantly increase the cost of the system or significantly decrease its efficiency.
 3. Allows for an alternative system of comparable cost and efficiency.
- B. **Small Wind Energy Systems** shall be processed as a permitted use.
1. This section does not apply to Small Wind Energy Systems subject to the conditional use permit standards and conditions within the farmland preservation zoning districts. See 17.405.03(B).
- C. **Large Wind Energy Systems** shall be processed as a conditional use.
1. In addition to conditions established pursuant to 17.405.04(A) the Zoning Administrator or Board of Adjustment may require the owner of a Wind Energy Systems to offer monetary compensation to the owner of a non-participating residence consistent with PSC 128.33(3) and also may be subject to the monetary compensation requirements of PSC 128.33(3m).

Any additional conditions that are established for a application shall meet one of the criteria in (A)

Possible condition

BOARD OF ADJUSTMENT: REVIEW AUTHORITY AND CONDITIONS

The BOA Should Not:

- Make a determination on the completeness of the WES application submitted.
 - The determination of completeness is done prior to being placed on the BOA agenda.
 - The BOA members may ask questions of the staff, applicant, or pertinent public hearing attendees regarding the application completeness and/or standards..
 - The BOA may request additional information
- Place conditions on an application that does NOT satisfy one of the following, or has been specifically permitted by Wis. Stat., 66.0401 or PSC 128 .
 - Serves to preserve or protect the public health or safety.
 - Does not significantly increase the cost of the system or significantly decrease its efficiency.
 - Allows for an alternative system of comparable cost and efficiency

The BOA Can:

- Make a determination on if the application/use meets the requirements of the DATACP approved Farmland Preservation Zoning District.
 - *FP Requirements are shown in future slides*
- Apply additional conditions or requirements consistent with but no more restrictive than those in Wis. Stats., 66.0401(1M) and authorized by, and consistent with, PSC 128, Wis. Admin. Code. Where such conditions are considered and applied on a case-by-case basis; as well as satisfy one of the following:
 - Serves to preserve or protect the public health or safety.
 - Does not significantly increase the cost of the system or significantly decrease its efficiency.
 - Allows for an alternative system of comparable cost and efficiency.

BOARD OF ADJUSTMENT: CONDITIONS CONTINUED (ADMIN CODE)

PSC 128.33(1)-(5)

PERMITTED PROVISIONS: “A POLITICAL SUBDIVISION MAY DO ANY OF THE FOLLOWING IN AN ORDINANCE OR ESTABLISH ANY OF THE FOLLOWING AS A CONDITION FOR APPROVAL OF AN APPLICATION TO CONSTRUCT A WIND ENERGY SYSTEM”:

- (1) 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.
- (2) STUDIES.** Require an owner to cooperate with any study of the effects of wind energy systems coordinated by a state agency.
- (3) 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 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.
- (3m) 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)** 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.
- (4) PERMITS.** Require the owner to submit to the political subdivision copies of all necessary state and federal permits and approvals.
- (5) ANNUAL REPORTS.** Require 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.

Addressed Above:

Possible Conditions

THE FARMLAND PRESERVATION ZONING DISTRICT:

The purpose of the FP Farmland Preservation Zoning District: Section - 17.301.01

The intent of this district is to maintain highly productive agricultural lands in food and fiber production, preserve productive farms by effectively limiting encroachment of non-agricultural development and minimizing land use conflicts among incompatible uses, control public service costs, and maintain a viable agricultural base to support agricultural processing and service industries. The Farmland Preservation zoning district is an area planned primarily for agricultural use, agricultural-related use, or both, and that is identified as an agricultural preservation area or in a farmland preservation plan described in 91.12(1) Wis. Stats., or identified under 91.10(1)(d) in a farmland preservation plan described in the 91.12(2) Wis. Stats., This district is not intended to accommodate or facilitate nonagricultural growth.

Wis. Stat. Ch. 91

WES 100MW+

Farmland Preservation – Permitted Uses - Ch. 91.44(1)(a)-(c)-(f)

- (b) Accessory uses.
- (c) Agriculture-related uses.
- (f) Transportation, **utility**, communication, or other use that is required under state or federal law to be located in a specific place or that is authorized to be located in a specific place under a state or federal law that preempts the requirement of a conditional use permit for that use.

WES 0+KW – 99MW

Farmland Preservation – Conditional Uses – Ch. 91.46(1)(f)

- (f) Transportation, communications, pipeline, electric transmission, **utility**, or drainage uses that qualify under sub. (4).
 - (a) The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
 - (b) The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under state or federal law.
 - (c) The use is reasonably designed to minimize conversion of land, at and around the site of the use, from agricultural use or open space use.
 - (d) The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for or legally restricted to agricultural use.
 - (e) Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.

BOARD OF ADJUSTMENT REVIEW (FARMLAND PRESERVATION): PT-I

Section 17.301.02 (Table 4)

USE	Key:			Development Standards
	P Permitted Use	C Conditional Use	(Blank) Use Not Permitted	
Farmland Preservation District				
	Permitted Uses	Conditional Uses		
UTILITIES AND GOVERNMENTAL, INSTITUTIONAL, RELIGIOUS, OR NONPROFIT COMMUNITY USES				
Solar Energy Systems - Commercial Use		C		Chapter 17.408
Wind Energy Systems - Commercial Use		C		Chapter 17.405
ACCESSORY USES				
Solar Energy Systems - Private Use	P			Chapter 17.408
Wind Energy Systems - Private Use	P			Chapter 17.405

Private Use WES or SES. Means the primary purpose of the WES and/or SES is to convert wind and/or solar energy into electricity which is to be used and/or stored onsite. These WES and SES must be accessory to an existing residential, commercial, industrial, or agricultural use and are subject to all the standards, requirements, and processes set forth in this ordinance.

Commercial Use WES or SES. Means the use/purpose of the WES and/or SES is to convert wind and/or solar energy into electricity which is to be used, distributed, or sold offsite. These uses may be deemed to be accessory to an existing residential, commercial, or agricultural use but are subject to all the standards, requirements, and conditional use processes set forth in this ordinance.

BOARD OF ADJUSTMENT REVIEW (FARMLAND PRESERVATION): PT-2

Chapter 17.405.03(B)

- A. **Farmland Preservation Zoning District.** No conditional use permit or zoning permit application for a wind energy system shall be approved by the Marathon County Board of Adjustment or Zoning Administrator within the Farmland Preservation Zoning District, unless such application meets the applicable standards and conditions identified in Wis. Stats., 91.46(4)(a-e) also listed in Section 17.301.09 of this ordinance.
1. The use and its location in the farmland preservation zoning district are consistent with the purposes of the farmland preservation zoning district.
 2. The use and its location in the farmland preservation zoning district are reasonable and appropriate, considering alternative locations, or are specifically approved under State or Federal Law, 66.04.
 3. The use is reasonably designed to minimize conversion of land at and around the site of the use, from agricultural use or open space use.
 4. The use does not substantially impair or limit the current or future agricultural use of surrounding parcels of land that are zoned for, or legally restricted to, agricultural use.
 5. Construction damage to land remaining in agricultural use is minimized and repaired, to the extent feasible.

These Farmland Preservation standards/requirements should be addressed in the application when submitted. The determination on if the information provided in the application and/or during the public hearing satisfies the requirements above is made by the Board of Adjustment.

BOARD OF ADJUSTMENT REVIEW: MOTION AND CONDITIONS

- A motion to approve or deny an application or a portion/aspect of an application shall contain findings of fact supported by evidence in the record. Any additional conditions the Board chooses to place on the application needs to meet the requirements and standards of *PSC 128 and Wis. Stats., 66.0401* (See previous slides)
 - Evidence or items in the record should be supported by findings of fact based on:
 - Application materials
 - Applicable Studies or Analysis
 - Public testimony – Keeping in mind the standards and applying the ordinance and conditions objectively
 - Supporting documents
 - Additional Conditions to address concerns/missing information – Consistent with Chapter 17.405 (PSC 128 and Wis. Stats., 66.0401)

*There is **NO** requirement outside of the timelines (set by the state) that state the determination of approval or denial shall be done with only one public hearing. Ideally there will be at least two BOA public hearings after the application is deemed complete to ensure there is adequate time to review the application materials and to obtain public input.*

POST PERMIT ISSUANCE: FEES

Permit Requirements and Fee(s).

1. For Small Wind Energy Systems:

- a. The exemptions listed under PSC 128.60 and modifications under PSC 128.61 shall apply to an application that is submitted for a small Wind Energy System.

2. For all Wind Energy Systems:

- a. **Costs of review and processing:** For all Wind Energy Systems the owner shall reimburse the department for the reasonable costs associated with permit review and processing, subject to the reimbursement requirements of PSC128.32(5). In the event the county establishes a fee consistent with Wis. Stats., 59.69 and PSC 128.32(5), said fee will be charged in lieu of reimbursement.
- b. **The established fee or reimbursement requirements consistent with PSC 128.32(5)** shall include the requirement that the applicant shall pay all reasonable costs incurred by the county in connection with the review and processing of the application, including the cost for services provided by outside attorneys, engineers, environmental specialists, planners, and other consultants and experts that are actual and necessary costs of review. Source: PSC 128.32(5).
 - 1) The department is authorized to contract with one or more engineers, environmental specialists, planners, and other consultants and experts to perform necessary services in connection with this ordinance.
 - 2) The corporation counsel is authorized to contract with outside legal counsel to perform services in connection with this ordinance.
- c. **The county shall make the applicant aware** of any such reasonable and necessary costs prior to incurring such costs and, if the applicant decides not to pay the reasonable and necessary costs, the application shall be denied.
- d. **The county may require the owner of a Wind Energy System to submit up to 50 percent of the total estimated amount** of the fee or reimbursement for the wind energy system application under PSC 128.32(5)(a) before issuing a written decision consistent with PSC 128.32(3), if the county gives written notice to the owner of its intent to do so within 10 days of the date the application is deemed complete and the notice contains an estimate of the amount of the fee and the relevant reimbursement requirements.
- e. **The county shall invoice the applicant for the reasonable costs** incurred pursuant to this chapter. The applicant will be provided 30 days from the date of the invoice to reimburse the county.

POST PERMIT ISSUANCE ABANDONMENT & DECOMMISSIONING PT-2

17.405.03(C): Abandonment and Decommissioning. Section 17.405.03(C)(1-3) below apply to both Large and Small Wind Energy Systems, whereas 17.405.03(C)(4) applied solely to large Wind Energy Systems.

1. A wind energy system that that is at the end of its useful life and/or does not generate electricity for a continuous period of 360 days will be deemed abandoned and the department may send a Notice of Abandonment to the owner. Exemptions under PSC 128.60 and modifications under PSC 128.61 apply to all Small Wind Energy Systems.
2. If, within 30 days of receipt of a Notice of Abandonment, the owner provides the department with information showing to the department's satisfaction that the wind energy system has not been abandoned, the department will withdraw the Notice.
3. Unless the department withdraws the Notice of Abandonment, a wind energy system tower must be decommissioned as prescribed by PSC 128.19. If the owner fails to remove a wind energy system and reclaim the site, the county may remove or cause the removal of the wind energy system and arrange for the reclamation of the site.
4. **For Large Wind Energy Systems.**
 - a. An owner with a nameplate capacity of one megawatt or larger shall provide the county with and maintain proof of financial assurance of the owner's ability to pay 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, consistent with PSC 128.19(3).
 - 1) An owner shall provide the county with 3 estimates of the actual and necessary cost to decommission the wind energy system. The cost estimates shall be prepared by third parties agreeable to the owner and the county. The amount of financial assurance required by the county shall not exceed the average of the 3 estimates.
 - 2) An owner shall establish financial assurance that is acceptable to the county and that places the county in a secured position, subject to 17.405.03(C)(4)(a)(1). The financial assurance must provide that the secured funds may only be used for decommissioning the wind energy system until such time as the county determines that the wind energy system has been decommissioned, as provided for in PSC 128.30(5)(b), or the county otherwise approves the release of the funds, whichever occurs first.
 - 3) An owner shall establish financial assurance that allows the county 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. *Source: PSC 128.19(3)(c)(4)*

POST PERMIT ISSUANCE: ABANDONMENT & DECOMMISSIONING CONTINUED

PT-2

- b. The county may periodically request information from the owner regarding industry costs for decommissioning the wind energy system. If the county 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 provided under this section, the county may correspondingly increase or decrease the amount of financial assurance required, but shall not adjust the financial assurance required under this paragraph more often than once in a five-year period.
 - c. The county may require an owner to submit a substitute financial assurance of the owner's choosing if an event occurs that raises material concern regarding the viability of the existing financial assurance.
 - d. Except as provided below in Section [17.405.03\(C\)\(4\)\(e\)](#), if a wind energy system was constructed on land owned by a person or persons other than the owner of the wind energy system, the owner of the wind energy system shall 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.
 - e. If a wind energy system was constructed on a brownfield, as defined in Wis. Stats., 238.13 (1)(a), 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 Wis. Stats., 238.13(1)(d).
1. All abandonment and decommissioning is subject to review as provided in Section [17.405.08](#).

Section 17.405.08 - DECOMMISSIONING REVIEW ←

- A. An owner shall file a notice of decommissioning completion with the county and any political subdivision within which its wind energy system facilities are located when a wind energy system approved by the county has been decommissioned and removed.
- B. The department shall conduct a decommissioning review to determine whether the owner has decommissioned and removed the wind energy system as required by PSC 128.19(1)(a) and, for Large Wind Energy Systems, whether the owner has complied with its site restoration obligations under PSC 128.19(4) when applicable.

The owner shall cooperate with the county by participating in the decommissioning review process and, for Large Wind Energy Systems, ensure the obligations under PSC 128.19(3) are met.

MISC. STANDARDS AND REQUIREMENTS: PT-I

Section 17.405.06 - POST CONSTRUCTION FILING REQUIREMENTS

- A. The following post construction filing requirements apply only to Large Wind Energy Systems.
1. Within 90 days of the date a wind energy system commences operation, the owner shall file with the department and the Wisconsin Public Service Commission an as-built description of the wind energy system, an accurate map of the wind energy system showing the location of all wind energy 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.
 2. An owner shall label each wind turbine location described in its filing and shown on the map of the wind energy system with a unique identifier consistent with the information posted at the wind turbine location under PSC 128.18(1).

Section 17.405.03(F) - Ownership Changes.

1. For Small Wind Energy Systems. The owner shall provide the county with notice of any change in ownership of the wind energy system on or within 30 days of the effective date of the change.
2. For Large Wind Energy Systems. The owner shall provide the county with notice of any change in ownership of the wind energy system on or within 30 days of the effective date of the change. Notwithstanding the timing of notice of change in ownership of the wind energy system set forth above, the notice shall include information showing that the financial responsibility specified under Section 17.405.03(C) of this Chapter was assumed by the new owner, upon the effective date of the change.

MISC. STANDARDS AND REQUIREMENTS: PT-2

Section 17.405.05 - MODIFICATION TO AN APPROVED SYSTEM

A. Material Change.

1. 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 administrator and/or Board of Adjustment. An owner shall submit an application for a material change for an approved wind energy system to the county. The county may not reopen the merits of the earlier approval, but shall consider only those issues relevant to the proposed change.
2. An application for material change is subject to PSC 128.35.
3. At its discretion, the county 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.

Possible condition

Section 17.405.07 - COMPLIANCE MONITORING

The following compliance monitoring standards apply only to Large Wind Energy Systems, where all such systems are also subject to PSC 128.36.

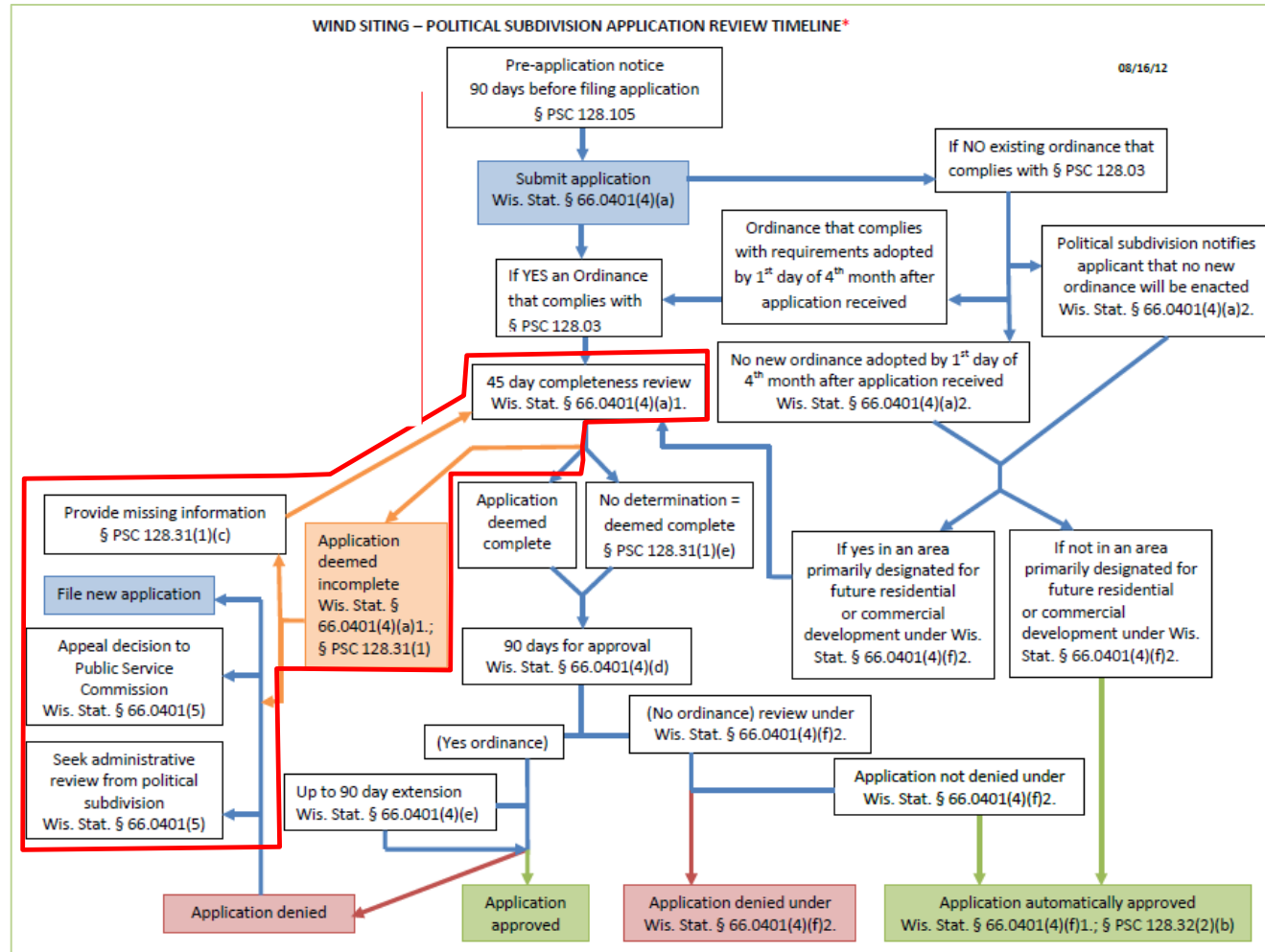
- A. The department may contract with a third party inspector to monitor and report to the department regarding the owner's compliance with permit requirements during construction. The inspector monitoring compliance under this section shall also report to a state permitting authority upon the state permitting authority's request. The inspector shall make monthly written reports to the department. The owner shall reimburse the county for the reasonable cost of the inspector.
- B. At any time following completion of construction, the department may contract with consultants or experts it deems necessary to monitor compliance by the owner with conditions of the permit and to assess when wind energy system facilities are not maintained in good repair and operation.
 1. At a minimum, the owner shall provide the department an annual report regarding maintenance checks and any maintenance performed on each turbine within the approved wind energy system.
 2. The public shall have access to any reports or assessments produced pursuant to this section.
 3. The owner of the wind energy system shall reimburse the county for reasonable costs associated with monitoring and/or assessment.

MISC. STANDARDS AND REQUIREMENTS: PT-3 (COMPLIANCE MONITORING)

Section 17.405.10 - COMPLAINTS

- A. Complaint Process for Wind Energy Systems.** The owner of a Small Wind Energy System is exempt from the provisions of Section 17.405.10(A)(4), (5), (6), and (8)
1. An aggrieved person who has made a complaint to an owner in accordance with PSC 128.40 may petition the county for review of the complaint if it has not been resolved within 45 days of the day the owner received the original complaint.
 2. The petition for review must be filed with the department within 90 days of the date of the original complaint and shall contain the following:
 - a. Name, address, and telephone number of the person filing the petition.
 - b. Copy of the original complaint to the owner.
 - c. Copy of the owner's original response.
 - d. Statement describing the unresolved complaint.
 - e. Statement describing the desired remedy.
 - f. Any other information the complainant deems relevant to the complaint.
 - g. Notarized signature of the person filing the petition.
 3. The department shall forward a copy of the petition to the owner by certified mail within 10 days of the department receiving the petition.
 4. The owner shall file a written answer to the petition with the department and provide a copy of its answer to the complainant within 30 days of its receipt of the petition. The answer must include the following:
 - a. Name, address, and telephone number of the person filing the answer.
 - b. Statement describing the actions taken by the owner in response to the complaint.
 - c. Statement of the reasons why the owner believes that the complaint has been resolved or why the complaint remains unresolved.
 - d. Statement describing any additional action the owner plans or is willing to take to resolve the complaint.
 - e. Any other information the owner deems relevant to the complaint.
 - f. Notarized signature of the person filing the answer.
 5. The complainant and the owner may, within 30 days following the owner's filing of its answer, file such additional information with the department as each deems appropriate.
 6. The department may request such additional information from the complainant and the owner as it deems necessary to complete its review.
 7. The department may retain such consultants or experts as it deems necessary to complete its review.
 8. The department shall issue a written decision and may take such enforcement action as it deems appropriate with respect to the complaint.
 9. The decision of the department and enforcement action is subject to review under Wis. Stats., 66.0401(5).

APPEALS AND RECONSIDERATIONS PT-I:



APPEALS AND RECONSIDERATIONS PT-2:

Possible appeal(s) to consider: Including process and requirements

Section 17.405.09 - APPEALS

- A. A decision of the department to determine that an application is incomplete under Section [17.405.04](#), or to approve, disapprove a wind energy system under Section 17.405.02 or impose a restriction upon a wind energy system, or an action of a county to enforce a restriction on a wind energy system, may be appealed only as provided in this section.
- B. Any aggrieved person seeking to appeal a decision or enforcement action specified under Section [17.405.04](#) may begin the administrative appeal process as set forth in Chapter [17.804](#).
 1. If the person is still aggrieved after the administrative review is completed, the person may file an appeal with the Wisconsin Public Service Commission (WPSC). No appeal to the WPSC under this section may be filed later than 30 days after the county has completed its administrative review process. For purposes of this section, if the county fails to complete its administrative review process within 90 days after an aggrieved person begins the review process, the county is considered to have completed the process on the 90th day after the person began the process.
 2. Rather than beginning an administrative review under Section [17.405.09](#), an aggrieved person seeking to appeal a decision or enforcement action of the county specified in Section [17.405.04](#) may file an appeal directly with the WPSC. No appeal to the WPSC under this section may be filed later than 30 days after the decision or initiation of the enforcement action.
 3. An applicant whose application for approval is denied under Section [17.405.09](#) may appeal the denial to the WPSC. The WPSC may grant the appeal notwithstanding the inconsistency of the application for approval with the political subdivision's planned residential or commercial development if the WPSC determines that granting the appeal is consistent with the public interest.

ADDITIONAL REQUIREMENTS: *(NOT INCLUSIVE)*

- Shoreland Zoning and/or Alteration permit(s) (where applicable)
- Floodplain standards (where applicable)
- DNR permitting (where applicable)
- State, County, Town road use/repair agreement(s)/approvals
- Etc..

QUESTIONS:

Dominique Swangstu
Marathon County Zoning Administrator

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Office Address: 210 River Drive, Wausau WI
Office Phone: 715-261-6002
Work Cell: 715-573-8348

THANK YOU!