

## **ORDINANCE NO. 3-1-2010-B**

### **An Ordinance To Impose a Temporary Stay On Construction Of Large Wind Energy Systems In The Town Of Holland.**

#### **Recitals:**

1. A “wind energy system” is an electricity generating facility consisting of one or more wind turbines under common ownership or operating control, and includes substations, MET Towers, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity to off-site customer(s). A “wind turbine” is a wind energy conversion system which converts wind energy into electricity through the use of a wind turbine generator. A “large wind energy system” is a wind energy system with turbines exceeding 170 feet in height and 100 kilowatts in nameplate capacity.
2. There is an interest in establishing wind energy systems in the Town of Holland.
3. There exist potential health and safety issues related to the construction of large wind energy systems including, but not limited to, electrical connections, electric and magnetic fields, tower failure (falling turbines), tower climbing, falling ice, blade thrower, flicker or shadow flicker, and noise.
4. The Town currently has an Ordinance regarding wind energy systems but Town residents have informed the Town Board at a public hearing that the current ordinance is inadequate to protect the public health and safety of the Town residents and that particularly the present setback requirements are insufficient to provide reasonable protection from health effects including health effects from noise and shadow flicker associated with wind energy systems.
5. The Town Board has been authorized under Wis. Stat. 60.10(2) ( c ) to exercise powers conferred on Village Boards, and also has the authority to adopt zoning regulations under Wis. Stat. 60.61 and 60.62 and 61.35.
6. The Town is beginning the process of reviewing its present ordinance and adopting an ordinance that will provide a review and permitting process and ensure the health and safety standards for large wind energy systems, and to adopt an ordinance that complies with Wis. Stat. 66.040( m ) ( a ) to ( c ) and which complies with Wis. Stat. 196.378( 4g ).
7. On February 1, 2010, the Town Plan Commission conducted a public hearing preceded by publication of a notice, regarding what process the Town should use to study and develop a large wind energy system ordinance, and whether the Town should impose a temporary stay on the construction of large wind energy systems while the Town is considering amendment and changes to its present ordinance. The Town Plan Commission did recommend passing an amendment to its ordinance by creating a setback of 2,640 feet from inhabited structures for wind energy turbines and a moratorium on the construction of said facilities be placed for one year so that the Town can study the health and safety issues associated with wind energy systems.
8. That the Town Board on February 1, 2010 Board Meeting discussed the recommendations of the Town Plan Commission. The Town Board proceeded to direct the attorney for the Town to draft an amendment to the present ordinance regarding the setback from inhabited structures for wind energy turbines to be 2,640 feet from an inhabited structure and draft a moratorium for one year on the construction of said wind energy systems, and to appoint a committee to study the wind energy ordinance and to make suggested recommendations with regard to appropriate amendments. The Town Board has appointed a committee to advice with regard to changes in its present ordinance regarding large wind energy facilities to protect the health and safety of the residences of the Town and to gather information and

documentation with regard to the operation of the facilities.

9. That the State of Wisconsin has enacted 2009 Wisconsin Act 40 amending Wis. Stat. 66.0401(1m) and other statutes regarding regulation of wind energy systems and granting rule making authority to the Public Service Commission with advice of the wind siting council to promulgate rules that specify the restrictions a political subdivision may impose on the installation or use of wind energy systems consistent with the conditions specified in 66.0401(1m) (a) to ©. The subject matter of the rule shall include setback requirements that provide reasonable protection from any health effects from noise and shadow flicker, associated with energy systems. Such rules should also include decommissioning which may include visual appearance, lighting, electrical connections to power grid, setback distance, maximum audio sound levels, shadow flicker, proper means of measuring noise, interference with radio, telephone, television signals, or other matters. A political subdivision may not place restrictions on installation or use of wind energy systems that is more restrictive than these rules. To date, no such rules have been promulgated by the commission therefore a stay or moratorium would protect the health and safety of the residents of the Town until Town has amended its ordinance to adequately protect the health and safety of the Town residents.

10. As the Public Service Commission has not yet promulgated rules that specify the restrictions that the Town may impose on the installation or use of a wind energy system pursuant to S.S. 196.379( 4g ) of the Wisconsin Statutes, created by Act 40, and as it is uncertain when the rules specifying such restrictions will be promulgated by the Public Service Commission, a moratorium is necessary for the protection of the health and safety of the residents of the Town until such rules are promulgated or until the Town has amended its present ordinance in a manner sufficient to protect the health and safety of the public.

11. The Town Board agreed with the Town Plan Commission's recommendation regarding the process that should be followed to amend the present ordinance and determined that the adoption of a temporary stay or moratorium will promote public health and safety of the people in the Town.

NOW THEREFORE, based on the above recitals and pursuant to Article XI, Section 1 of the Wisconsin Constitution, Sections 60.22( 3 ), 61.34, 60.61 and 60.62 of the Wisconsin Statutes, and any and all other sources of authority that authorize the adoption of this ordinance, the Town Board of Holland, Brown County, Wisconsin, do hereby ordain as follows:

### **Section 1. Temporary Wind Energy System Stay (Moratorium)**

There is hereby established a temporary stay (moratorium) on the construction of large wind energy systems in the Town. During the temporary stay provided by this ordinance it shall be unlawful to install or construct any large wind energy system or part thereof, and the Town shall not accept or process any applications relating to the proposed construction of any large wind energy system.

### **Section 2. Duration**

One year from the date hereof.

### **Section 3. Inconsistent Ordinance Voided**

All ordinances or provisions of ordinances inconsistent with or contravening the provisions of this Ordinance are hereby temporarily voided and shall have no legal force or effect during the period that this Ordinance is in effect.

### **Section 4. Scope**

The temporary stay provided by this Ordinance shall apply throughout the Town.

**Section 5. Severability**

If any section or part of this Ordinance is adjudged to be unconstitutional, unlawful, or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

**Section 6 Effective Date**

This Ordinance shall become effective upon adoption and publication or posting, as provided by law.

The above and foregoing Ordinance was duly adopted by the Town Board of the Town of Holland at a meeting held on March 1, 2010 by a vote of 3 in favor, 0 opposed and 0 not voting.