

NO. 2008-06

**ORDINANCE CREATING CHAPTER 64 OF THE
TOWN OF BUCHANAN MUNICIPAL CODE
REGULATION OF WIND ENERGY FACILITIES**

The Town Board of the Town of Buchanan does hereby ordain Chapter 64 of the Town of Buchanan Municipal Code to read:

**ARTICLE I
AUTHORIZATION, PURPOSE, AND DEFINITIONS**

Sec. 64-1. Statutory Authorization.

This Chapter is enacted pursuant to Sec. 66.0401, Wis. Stats.

Sec. 64-2. Purpose.

The purpose of this Chapter is to provide a regulatory scheme for the construction and operation of Wind Energy Facilities in the Town of Buchanan, whose primary purpose is to supply electricity to off-site customer(s), subject to reasonable restrictions that will preserve the public health and safety or that do not significantly increase the cost of the system or significantly decrease its efficiency, while allowing for renewable energy sources to be present within the Town of Buchanan.

Sec. 64-3. Rules of Construction and Definitions.

(a) The definitions and rules of construction of this Chapter will be set forth in Sec. 1-2 of the Town of Buchanan Municipal Code and as set forth in this Chapter unless such definitions or rules of construction are inconsistent with the manifest intent of the Town Board or as required by the statutes of the State of Wisconsin.

(b) Words used in the present tense include the future, the singular number includes the plural number, and the plural number includes the singular number; the word “building” includes the word “structure,” and any words not herein defined shall be presumed to be interpreted by their customary dictionary definitions.

Sec. 64-4. Specific Words and Phrases.

Benchmark: A point of reference for a measurement.

Town Board of Appeals: A three-member Board, appointed by the Town Chairperson with approval of the Town Board, to review the decisions of the Code Administrator and officers, departments, boards, building inspector or other administrative officer as set forth in Chapter 63, Town of Buchanan Municipal Code of Ordinances.

Code Administrator: A person appointed by the Town Board authorized by enactment of this Chapter to issue permits for Wind Energy Systems, monitor compliance, and enforce the provisions of this Chapter.

Commission: Shall mean the Town of Buchanan Planning Commission.

Decommissioning: The process of use termination and removal of all or part of a Wind Energy System by the owner or assigns of a Wind Energy Facility.

FAA: The Federal Aviation Administration.

Good Utility Practice: Good Utility Practice means any of the practices, methods and acts with respect to the safe operation of a Wind Energy Facility engaged in or approved by a significant portion of the electric utility industry and, in particular, those portions of the industry with experience in the construction, operation and maintenance of wind turbines during the relevant time period; or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.

Hub Height: When referring to a Wind Energy System, the distance measured from ground level to the center of the Tower hub.

Karst Feature: An area of surficial geologic feature subject to bedrock dissolution so that it is likely to provide a conduit to groundwater, and may include areas with soils less than sixty inches (60") thick over bedrock, caves, enlarged fractures, mine features, exposed bedrock surfaces, sinkholes, springs, seeps, swallets, and depressional areas with no surface drainage.

Landowner: The person who owns the property on which a Wind Energy System is located.

MET Tower: A meteorological tower, including the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resources at a given location.

Non-Conforming Legal Structure: A Wind Energy System that was erected prior to the enactment of this Chapter, that is not in compliance with the provisions of this Chapter, and that has not ceased the production of energy for a period of twelve (12) consecutive months or longer.

Occupied Structure: A permanent building existing prior to submittal of a Wind Energy permit application used for human or animal habitation.

Owner: The person or entity who develops, operates or owns a Wind Energy System, whether an individual, proprietorship, corporation, association, partnership, limited liability entity or any other legal entity. For purposes of this ordinance Owner also includes the applicant.

Rotor Diameter: The cross sectional dimension of the circle swept by the rotating blades.

Sewer Service Planning Area: An area identified by East Central Regional Planning Commission as having an anticipated need for wastewater treatment. A sewer service area plan identifies existing sewered areas as well as adjacent land most suitable for new development.

Shadow Flicker: The on and off flickering effect of a shadow caused when the sun passes behind the rotor of a wind turbine or the blades of a wind turbine.

Total Height: When referring to a Wind Energy System, the distance measured from ground level to the blade extended at its highest point.

Tower: The monopole, freestanding, or guyed structure that supports a wind generator.

Town: Shall mean Town of Buchanan, Outagamie County, Wisconsin.

Use Termination: The time at which a large Wind Energy Facility owner provides notice to the Town of Buchanan that the large Wind Energy Facility or individual wind turbines are no longer used to produce electricity unless due to repairs. Such notice of use termination shall occur no less than 30 days prior to actual use termination.

Wind Energy Facility: One or more Wind Energy Systems 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).

Wind Energy Siting Permit: A construction and operating permit granted by the Code Administrator in accordance with the provisions of this Chapter and Sec. 66.0401, Wis. Stats., or any successor statutes.

Wind Energy System: A wind energy conversion system that converts the energy in the wind into electricity through the use of a wind generator, and includes the tower, blade, foundation, controller or inverter, and utility interface equipment.

Wind Energy System – Small: A wind energy system that has:

- (a) a nameplate capacity of 100 kilowatts or less; and
- (b) a total height of 170 feet or less

Wind Energy System – Large: A wind energy system that has:

- (a) a nameplate capacity over 100 kilowatts; or
- (b) a total height over 170 feet

Sec. 64-5. Non-Conforming Legal Structures.

(a) Wind Energy Systems that were erected before the enactment of this Chapter and that are in continuous use shall be considered Non-Conforming Legal Structures and need not comply with the provisions contained herein.

(b) A Wind Energy System that does not provide energy for twelve (12) consecutive months shall lose its “Non-Conforming Legal” status and must comply with the provisions of this Chapter before it recommences production of energy.

(c) No person shall alter or modify a pre-existing Non-Conforming Legal Structure without bringing the entire structure into compliance with this Chapter. This provision does not apply to routine maintenance and ordinary repairs that do not exceed fifty percent (50%) of the value of the structure at the time of the maintenance or repair.

Sec. 64-6 to 64-14. Reserved.

ARTICLE II
PROVISIONS APPLICABLE TO BOTH
SMALL AND LARGE WIND ENERGY SYSTEMS

Sec. 64-15. Application Required.

(a) Any person who wishes to erect, modify, or alter a Wind Energy Facility as set forth above must submit an application for a Wind Energy Siting Permit with the Planning Commission.

(b) If the Code Administrator determines the applicant is not meeting all of the conditions of the Wind Energy Siting Permit, this Chapter, or the approved site plan, the Code Administrator shall issue a Letter of Non-Compliance. The applicant shall have fourteen (14) days to respond to said non-compliance allegations. If non-compliance is still determined to exist after review of the response by the Code Administrator, the applicant shall have thirty (30) days to correct the violation(s). Failure to comply within the thirty (30) days may result in a revocation of the Wind Energy Siting Permit as set forth in Sec. 64-80 or a citation being issued as set forth in Chapter 1, Section 1-12.

(c) For Wind Energy Systems – Small, the Administrator shall issue a permit or deny the application within one (1) month of the date on which the application is received. The Administrator shall issue a building permit for a Wind Energy System – Small if the application materials show that the proposed Wind Energy System – Small meets the requirements of this Chapter. If the application is rejected, the Administrator will notify the applicant in writing and provide a written statement of the reason why the application was rejected. The applicant may reapply if the deficiencies specified by the Administrator are resolved.

(d) For Wind Energy Systems – Large, the applicant must comply with the requirements of Sec. 64-62 and 64-63, Neighborhood Review Process.

(e) For Wind Energy Systems – Large. Any permit issued to an Owner is not assignable (except as collateral to obtain financing) or transferable to any other person, firm or corporation, whether by operation of law or otherwise, without the express prior written consent of the Town, which consent is not to be unreasonable withheld. In addition to any other requirements imposed by the Town with regard to a proposed assignment, the assignee must submit an affidavit demonstrating its agreement to assume all of the Owner's rights, duties and obligations under the permit, including, without limitation, the financial security provisions.

(f) For Wind Energy Systems – Large. The Owner of a Large Wind Energy Facility shall defend, indemnify, and hold harmless the Town of Buchanan and their officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever including attorney fees arising out of the acts or omissions of the operator concerning the operation of the Large Wind Energy Facility without limitation, whether said liability is premised on contract or tort.

(g) All Wind Energy Facilities authorized by this Chapter shall be erected and completed according to the approved application and site plan within thirty-six (36) months of permit issuance. If the Wind Energy Facility is to be erected in phases exceeding the allowable thirty-six (36) months, the timeline must be stated in the application and approved by the Code Administrator. The Code Administrator shall then specify a deadline for completion of the permit.

Sec. 64-16. Information Required on/with Application.

(a) All permit applications shall be made on forms provided by the Plan Commission and be accompanied by the fee set forth by the Town Board.

(b) The application shall include:

- (1) The name, address, legal corporate status, and telephone number of the applicant responsible for the accuracy of the application and site plan.
- (2) The name, address, legal corporate status, and telephone number of the owner of the Wind Energy Facility.
- (3) A signed statement indicating that the applicant has legal authority to construct, operate, and develop the Wind Energy System(s) under state, federal, and local laws and regulations, including Federal Aviation Administration (FAA), state, and local building codes.
- (4) The applicant shall also provide copies of the Proof of a Certificate of Authority from the Public Service Commission of Wisconsin and the Public Service Commission of Wisconsin Environmental Assessment, if applicable.
- (5) A description of the number and kind of Wind Energy System(s) to be installed.
- (6) A description of the Wind Energy System(s) height and design, including a cross section, elevation, and diagram of how the Wind Energy System(s) will be anchored to the ground.
- (7) A diagram, drawn to scale, showing the parcel boundaries and a legal description, support facilities, access, proposed landscaping, and fencing.
- (8) A statement from the applicant that all Wind Energy System(s) will be installed in compliance with manufacturer's specifications, and a copy of those manufacturer's specifications.
- (9) A copy of the lease with the landowner if the applicant does not own the land for the proposed Wind Energy Facility(ies). A statement from the landowner of the leased site that he/she will abide by all applicable terms and conditions of the Wind Energy Siting Permit.
- (10) A statement indicating what hazardous materials will be used and stored on the site, and how those materials will be stored.
- (11) A statement indicating how the Wind Energy Facility will be lit, if applicable.
- (12) Except as provided in paragraph (13) below, the landowner where a Wind Energy System will be located shall provide a performance bond, completion bond, or other financial assurance that guarantees the performance of the

removal of the Wind Energy System and site restoration in accordance with Section 64-85. Said bond shall be provided at the rate equivalent to one (1) tower per year.

- (13) For each Wind Energy System – Large, the applicant shall submit a decommissioning plan which shall describe how the site shall be restored when the facility is no longer in operation in accordance with Section 64-85. The plan shall be updated and resubmitted every ten (10) years and shall include:
 - a) The anticipated life of the Wind Energy System.
 - b) The estimated decommissioning costs in current dollars.
 - c) How said estimate was determined.
 - d) The method of ensuring that the funds will be available for decommissioning and restoration.
 - e) The manner in which the Wind Energy System will be decommissioned and the site restored, in accordance with Section 64-85.
- (14) A shadow flicker model for any proposed Wind Energy System – Large. To include a description of the zones where shadow flicker will likely be present within the project boundary and a one half (1/2) mile radius beyond the project boundary, the expected durations of the flicker at these locations and the calculation of the total number of hours per year of flicker at all locations.
- (15) Photo exhibits visualizing the proposed wind energy system.
- (16) For Wind Energy Systems – Large, a site grading, erosion control and stormwater drainage plan will be submitted. At the Town’s discretion these plans may be reviewed by a Town selected engineering firm. The cost of this review will be the responsibility of the Owner of the Wind Energy Facility.
- (17) A certificate of insurance with a minimum of \$2,000,000 liability coverage per incidence, per occurrence shall be required. Each renewal period will require a copy of certificate of insurance be provided to the Town of Buchanan. An expired insurance certificate or an unacceptable liability coverage amount is grounds for revocation of the permit. The insurance afforded to the Town as an additional insured shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by the Town.
- (18) The Town of Buchanan shall require an irrevocable letter of credit, bond, cash escrow, and/or personal guarantee, held in trust in favor of the Town of Buchanan to recover the costs associated with removal of a terminated Wind Energy Facility and appurtenant facilities. The amount shall be negotiated by the Town of Buchanan prior to permit approval and shall remain in effect until released by the Town. The Buchanan Town Board will determine which method will be allowed.

- (19) The Town may require additional conditions and information to ensure safety and proper land use fit to the surrounding area.
- (c) No action will be taken on an application until the completed application and all supporting documentation is received by the Planning Commission.

Sec. 64-17. Site Plan.

- (a) All applicants shall also submit a Site Plan containing the following:
 - (1) A map, drawn to scale, with said scale no smaller than one inch (1”) equaling one hundred feet (100’), identifying the proposed site.
 - (2) The scale and a north arrow on the map.
 - (3) Said map should include the location of:
 - a) All public roads.
 - b) Existing buildings and structures within a one half (1/2) mile radius, including residences, schools, hospitals, churches, businesses and public libraries.
 - c) All sewer service planning areas and incorporated municipal boundaries within a one half (1/2) mile radius.
 - d) Karst features, including sink holes and visible cracks, in the ground or rock surface on the proposed site. (Said Karst information must be provided by a professional geologist, licensed professional engineer, or the Plan Commission’s designee.)
 - e) All property lines.
 - f) All communication and electrical lines.
 - g) Location of microwave signal paths within a one half (1/2) mile radius (see Sec. 64-20).
 - h) All proposed Wind Energy Facilities.
 - (4) Descriptions of a benchmark on the proposed site, including elevations expressed in feet and tenths of feet.
 - (5) Ground contour (two-foot (2’) maximum intervals) on the proposed site with spot elevations, including land slope around the proposed site for a minimum of one hundred feet (100’).
 - (6) Location of existing and proposed electrical overhead and underground electrical lines.
 - (7) Wind Energy Systems may not include offices, vehicle storage, or other outdoor storage. One accessory building may be permitted per wind turbine at Town Board discretion. The size and location of any proposed accessory building shall be shown on the site plan. No other structure or building is permitted unless used for the express purpose of the generation of electricity.
 - (8) Any recorded access easement across private lands to a Wind Energy Facility shall in addition to naming the Owner as having access to the easement shall

also name the Town of Buchanan as having access to the easement for purpose of inspection or decommission with 24 hour advance notice to the property owners and Wind Energy Facility owner.

(b) Prior to beginning construction, all applicants shall file with the Plan Commission a final site plan, which shall also be provided in digital form such as a portable document format (PDF), microstation (DGN format), autocad (DWG format), or GIS format. The applicant shall also submit a copy of all “as built plans” including structural engineering and electrical plans for all towers following construction to the Town to use for removal of a Large Wind Energy Facility should Owner or its assigns fail to meet the requirements of this ordinance.

Sec. 64-18. Visual Appearance.

(a) Wind Energy Facility shall be a non-reflective, non-obtrusive color, such as grey, white, or off-white.

(b) At Wind Energy Facility site, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening, and landscaping that will blend the Wind Energy System(s) to the natural setting and the existing environment.

(c) Wind Energy Facility shall not be artificially lighted, except to the extent required by the FAA or other applicable authority.

(d) Wind Energy Facility shall not be used for displaying any advertising except for reasonable identification and the manufacturer or operator of the Wind Energy System(s) and appropriate warning signs.

(e) Electrical controls and control wiring and power-lines shall be wireless or not above ground except where Wind Energy Facility collector wiring is brought together for connection to the transmission or distribution network, adjacent to that network.

(f) Owner is responsible for properly maintaining all landscaping, including grass cutting.

Sec. 64-19. Noise.

(a) The noise generated by the operation of a Wind Energy System may not exceed the ambient noise level by more than fifty (50) dB(A) as measured at any point on property adjacent to the parcel on which the Wind Energy Facility is located. The noise level generated by the operation of a Wind Energy Facility will be determined during the investigation of a noise complaint by comparing the sound level measured when the wind generator blades are rotating to the sound level measured when the wind generator blades are stopped.

(b) In the event audible noise to Wind Energy Facility operations contains a steady, pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph (a) of this subsection shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one-third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred twenty-five (125) Hz.

(c) In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of highest whole number sound pressure level in dBA, which is succeeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches, and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind-generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow Wind Energy Facility operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

(d) Any noise level falling between two (2) whole decibels shall be the lower of the two.

(e) In the event the noise levels resulting from the Wind Energy Facility exceed the criteria listed above, a waiver to said levels may be granted by the Code Administrator provided that the following has been accomplished:

- (1) Written consent from the affected property owners has been obtained stating that they are aware of the Wind Energy Facility and the noise limitations imposed by this Chapter, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and
- (2) If the applicant wishes the waiver to apply to succeeding owners of the property, a permanent noise impact easement has been recorded in the Office of the Outagamie County Register of Deeds which describes the benefited and burdened properties and which advises all subsequent owners of the burdened property that noise levels in excess of those permitted by this Chapter may exist on or at the burdened property.

(f) The burden of proof that a Wind Energy Facility is exceeding the allowed decibel levels shall be the responsibility of the party making such allegations.

(g) It is understood Wind Energy Systems – Small occasionally exceed these limits during power outages. The above regulations shall not apply to Wind Energy Systems – Small during power outages or storm occurrences.

(h) Wind Energy Systems shall have a posting directly on the system or in close proximity stating the owner of the system and contact information including name and a phone number. This shall be provided to allow individuals to report noise or other complaints directly to the owner of the system.

Sec. 64-20. Signal Interference.

The applicant shall minimize or mitigate any interference with communications such as electromagnetic and microwave, and including radio, telephone, or television signals caused by any Wind Energy System. If the applicant is a public utility, s. PSC 113.0707 also applies.

Sec. 64-21. Safety.

(a) All wiring between Wind Energy System(s) and the Wind Energy System substation shall be underground.

(b) All Wind Energy System(s) shall be reasonably protected from unauthorized access up to fifteen feet (15') above ground level and must be located inside the tower.

(c) All access to doors to Wind Energy System(s) and electrical equipment shall be secured to prevent unauthorized access. All substations shall be fenced to prevent public access.

(d) Appropriate warning signage shall be placed on Wind Energy System(s), electrical equipment, and Wind Energy System entrances.

(e) No blasting shall occur in connection with the construction of the facility unless the Owner has provided prior notification to the property owner, any abutting property owners, property owners within 1,500 feet of the blasting site, and the Town Board. All blasting shall be done in accordance with all applicable laws and regulations.

(f) The Large Wind Energy Facility owner/operator shall ensure that ice from the wind turbine blades does not impact any non-participating landowner's property.

(g) The owner/operator of a Large Wind Energy Facility shall provide qualified personnel to conduct training sessions to emergency responders when requested by the Town Board.

(h) The owner/operator of a Large Wind Energy Facility shall provide a company representative to accompany the local Fire Department Inspector during site visits. The owner/operator of the facility shall comply with all applicable laws regarding those inspections.

Sec. 64-22. Flicker or Shadow Flicker.

The owner of a Wind Energy System – Large must take reasonable steps as are necessary to prevent, mitigate, or eliminate shadow flicker on any residence located within one half (1/2) mile.

Sec. 64-23. Zoning and Building Permits.

Wind Energy Facilities - Large may only be constructed in areas zoned agriculture with an approved permit and building permit from the Town of Buchanan.

Wind Energy Facilities - Small may be constructed in all zoning areas except commercial with an approved permit and building permit from the Town of Buchanan.

No grading, filling, or construction may begin until the Code Administrator issues a building permit. A separate building permit is required for each wind turbine to be constructed.

Sec. 64-24. Fees.

Owner shall reimburse the Town's actual reasonable fees and costs incurred in the preparation, negotiation, administration and enforcement of the permit, including, without limitation, the Town's attorneys' fees, engineering consultant fees, meeting/hearing fees and the costs of public notices. Fees are payable within 30 days of invoice. Unpaid invoices shall bear interest at the rate of 1% per month until paid. The Town may recover all reasonable cost of collection, including attorney's fees.

Sec. 64-25. Defense of Land Use Decision.

In addition to indemnification described within this Chapter, the Owner shall reimburse the Town its reasonable attorney's fees incurred in defending any legal actions brought by third parties challenging the legality or enforceability of a permit. If the Town seeks reimbursement, it shall notify the Owner in writing promptly upon discovering any claim entitling it to a land use defense reimbursement, but in no event later than 60 days after receiving written notice of any action, lawsuit, proceeding investigation or other claim against it which may give rise for a land use defense reimbursement.

Sec. 64-26 to 64-39. Reserved.

ARTICLE III
WIND ENERGY SYSTEMS - SMALL

Sec. 64-40. Setbacks.

(a) The following setbacks and separation requirements shall apply to all Wind Energy Systems – Small.

- (1) Each Wind Energy System shall be set back from the nearest occupied structure, a distance of no less than 1.1 times its Total Height.
- (2) Municipal Boundaries: Each Wind Energy System shall be sited at least 1.1 times its Total Height from the nearest boundary of all sewer service planning areas or sewer service boundary, or 1.1 times its total Total Height from an incorporated municipal boundary, whichever is greater. The setback shall be determined by utilizing the area or boundary existing at the time of the permit application.
- (3) Property Lines: Each Wind Energy System shall be set back from the nearest property line a distance of no less than 1.1 times its Total Height, unless appropriate easements are secured from adjacent property owners for a lesser setback. The easement must be recorded with the Register of Deeds.
- (4) Public Roads: Each Wind Energy System shall be set back from the nearest public road a distance of no less than 1.1 times its Total Height, determined as the nearest boundary of the underlying right-of-way for such public road.
- (5) Park and Wildlife Area: Each Wind Energy System shall be set back a distance of no less than 1.1 times its Total Height from a "Park and Wildlife Area," as designated in the Outagamie County Outdoor Recreation Plan as adopted at the time of the permit application.

Sec. 64-41. Minimum Ground Clearance.

The blade tip on any Wind Energy System – Small shall, at its lowest point, have a ground clearance of no less than thirty feet (30').

Sec. 64-42 to 64-59. Reserved.

ARTICLE IV
WIND ENERGY SYSTEMS - LARGE

Sec. 64-60. Setbacks.

(a) The following setbacks and separation requirements shall apply to all Wind Energy Systems – Large.

- (1) Each Wind Energy System shall be set back from the nearest occupied structure, a distance of no less than one thousand feet (1,000’).
- (2) Municipal Boundaries: Each Wind Energy System shall be sited at least one thousand feet (1,000’) from the nearest boundary of all sewer service planning areas or sewer service boundary, or one thousand feet (1,000’) from an incorporated municipal boundary, whichever is greater. The setback shall be determined by utilizing the area or boundary existing at the time of the permit application.
- (3) Property Lines: Each Wind Energy System shall be set back from the nearest property line a distance of no less than 1.1 times its Total Height, unless appropriate easements are secured from adjacent property owners for a lesser setback. The easement must be recorded with the Register of Deeds.
- (4) Public Roads: Each Wind Energy System shall be set back from the nearest public road a distance of no less than 1.1 times its Total Height, determined as the nearest boundary of the underlying right-of-way for such public road. The Buchanan Town Board may grant a waiver to this provision which strict enforcement would not serve the public interest.

Sec. 64-61. Minimum Ground Clearance.

The blade tip on any Wind Energy System – Large shall, at its lowest point, have a ground clearance of no less than seventy-five feet (75’).

Sec. 64-62. Road Repair.

(a) Road Analysis: The permit applicant shall reimburse the County or Town for any and all repairs and reconstruction to County or Town roads resulting directly from the construction of the Wind Energy Facility. A qualified independent third party or other qualified person, agreed to by the County or Town and permit applicant, and paid for by the permit applicant, shall be hired to pre-inspect the roadways to be used during construction of the Wind Energy Facility, and against thirty (30) days after the Wind Energy Facility is completed. Any road damage done by the permit applicant or one or more of its contractors or subcontractors shall be repaired or reconstructed at the permit applicant’s expense.

(b) Construction Completion Notification: The permit applicant shall provide the County or Town with written notice of completion of construction within thirty (30) days after the Wind Energy Facility construction is complete. Determination as to how the roads should be repaired or reconstructed, within Wisconsin Department of Transportation standards for counties and townships,

or Town standards if they exist, must be completed before the Wind Energy Facility is commissioned.

(c) Payment for Damages: At the end of the Wind Energy Facility construction, the County or Town Board of Supervisors will negotiate the percentage of road repair or reconstruction costs that will be paid by the permit applicant based on the independent third party's evaluations. The repair or reconstruction costs will be based on the cost of the repair at the time the work is actually done. Actual work on the road repair or reconstruction will occur at the earliest possible time.

(d) Road Damage: Any road damage caused by the permit holder or their agents during the repair, replacement, or decommissioning of any Wind Energy System(s) during the life of the project shall be paid by the permit holder per the above language.

Sec. 64-63. Neighborhood Review.

(a) Pre-Application Public Meeting: An applicant for a Large Wind Energy Facility may request, at applicant's expense, a pre-application meeting with the Town Board and/or Planning Commission, at which no official town action shall be taken. In no instance shall this meeting take the place of a formal public hearing or a Neighborhood Review Meeting.

(b) Notice Provisions: The Code Administrator shall notify, by mail, all of the following individuals that an application has been submitted. The notice shall be mailed within ten (10) days of receiving a completed application and site plan.

- (1) Plan Commission.
- (2) All property owners who reside within one half (1/2) mile of the exterior property lines at the site of the proposed Wind Energy Facility.

(c) Identification of the property owners to receive a notice shall be based upon parcels and property owners recorded in the Outagamie County Real Property Lister Office. The failure of such notice to reach any of the property owners identified shall not invalidate any site plan review meeting.

(d) The notice shall include the following information:

- (1) Name of the applicant, property owner, and corporation (if applicable).
- (2) Location of the subject property.
- (3) General description of the operation.
- (4) Information apprising the notice recipients of the date, time, and place of the neighborhood review meeting.
- (5) A statement noting that written correspondence shall be accepted by the Plan Commission until 4:00 p.m. of the day prior to the meeting. The notice shall state that the concerns expressed in such correspondence will be summarized at the meeting by the Code Administrator, but that the applicant will not be required to address said concerns unless similar concerns are expressed by persons in attendance at the meeting.

Sec. 64-64. Neighborhood Review Meeting.

(a) Purpose: The purpose of the meeting is to try to negate any potential conflicts between the applicant and surrounding property owners by providing an opportunity for the neighboring property owners and the applicant to reach an understanding on the planned use of a site. Wind Energy Facilities are permitted in the Town of Buchanan provided the operation is in compliance with this Article. The ability of the applicant to create, enlarge, or modify a Wind Energy Facility is not debatable at this meeting. Section 66.0401, Wis. Stats., makes it clear that the Town is limited in what conditions they may impose upon an applicant for Wind Energy Facilities. The Neighborhood Review Meeting is designed to give information to the surrounding property owners of the proposed operational plan and to allow them an opportunity to make suggestions so that conflicts can be minimized. It is expected that the parties will attempt to find solutions so that new or expanded Wind Energy Facilities are compatible with the existing neighborhood properties.

(b) Neighborhood Review Meeting: The Code Administrator shall schedule a meeting within fifteen (15) days of notifying individuals a completed application has been submitted to the Plan Commission. The Code Administrator shall preside over the meeting. The meeting is to be conducted in an atmosphere of informality. Direct dialogue between the parties shall be allowed, provided fairness to all parties and orderliness do not suffer. The Code Administrator shall:

- (1) Ensure that all parties have adequate opportunity to participate in the proceedings.
- (2) Summarize any written correspondence.
- (3) Facilitate orderly conduct to ensure fulfillment of the purpose of the meeting.
- (4) Raise concerns held by the Plan Commission that are not otherwise addressed at the meeting.
- (5) Assist the parties in arriving at a consensus on the proposed site plan by offering solution suggestions.

(c) Procedure:

- (1) The applicant shall first present to the assemblage details of the proposed project.
- (2) Following the presentation, the neighborhood property owners and their agents, and residents who live within the one half (1/2) mile area may question the applicant about details that remain unclear.
- (3) After the questioning period, the presider will summarize any written correspondence, and the neighborhood property owners, and their agents, may suggest changes to the proposed site plan.
- (4) Only neighborhood property owners, or their agents, within the notification distance specified in Sec. 64-63 shall be eligible to suggest a site plan changes and be party to any subsequent dialogue with the applicant regarding those suggested changes.
- (5) The surrounding neighbors may suggest changes to the site plan in the following areas only:
 - (a) Methods to be implemented to minimize potential negative impacts on water quality.
 - (b) Traffic areas and road maintenance.
 - (c) Lighting.
 - (d) Vegetative screening.

- (e) Fencing.
- (f) Electromagnetic Communications.
- (g) Noise.

(d) If the neighborhood property owners present no suggestions, the applicant shall assume there are no objections to the site plan, and the Code Administrator, upon finding compliance with this Chapter, shall issue a Wind Energy Siting Permit within thirty (30) days.

(e) If suggestions are offered, the applicant may agree to amend the site plan to reflect those suggestions and submit the site plan to the Plan Commission.

(f) If the application and site plan are in compliance with the provisions of this Chapter, the Code Administrator shall issue a permit within thirty (30) days.

Sec. 64-65. Environmental Assessment

(a) Applicant shall complete an environmental assessment of the project consistent with requirements from the U.S. Department of Housing and Urban Development (HUD) CDBG Small Cities Program.

(b) Consistent with HUD requirements, after completing the environmental assessment the applicant shall make a determination classifying the project as having no significant impact or having a significant impact. An Environmental Impact Statement (EIS) shall be required for any projects determined to have a significant impact.

(c) The environmental assessment shall be available for review at the neighborhood review meeting as identified in Sec. 64-64.

Sec. 64-66 to 64-79. Reserved.

**ARTICLE V
REVOCATION, APPEAL, NOTICE OF CONSTRUCTION, MODIFICATION,
FEES, AND ABANDONMENT**

Sec. 64-80. Revocation or Suspension of Permit.

(a) A Wind Energy Siting Permit may be revoked if, after the notice and correction provisions of Sec. 64-15 have been met:

- (1) The applicant fails to comply with conditions of the Wind Energy Siting Permit, this Chapter, and Approved Site Plan; or
- (2) The Code Administrator deems the Wind Energy Facility has not been properly maintained and poses a threat to health or safety; or
- (3) If substantial progress has not been made towards the completion of a Wind Energy Facility within twenty-four (24) months after issuance of the permit, or in accordance with the timeline approved by the Code Administrator. Upon request of an applicant, for good cause, the Code Administrator may grant an extension of time; or
- (4) If the Wind Energy Facility authorized by permit is not completed within thirty-six (36) months of permit issuance, or in accordance with the timeline

by the Code Administrator. Upon request of an applicant, for good cause, the Code Administrator may grant an extension of time; or

- (5) The Wind Energy Site has been abandoned. Any wind energy turbine or facility that does not produce energy for a continuous period of twelve (12) months, excluding time spent on repairs or improvements, shall be considered abandoned and shall be removed in accord with the provisions of this Chapter.

(b) Revocation Process:

- (1) The Plan Commission shall hold a hearing to determine whether the permit should be revoked. The applicant shall be given notice of the time and date of the hearing. The Plan Commission shall receive testimony; the applicant will be permitted to provide evidence as well. The Plan Commission shall issue a written decision based on substantial evidence.
- (2) Any person aggrieved by this determination may seek a review of the determination by the Board of Appeals as set forth in Sec. 64-81.

(c) Notwithstanding any other provision, the Code Administrator may immediately suspend a Wind Energy Siting Permit in case of an imminent substantial health or safety issue only for the length of time necessary to remedy the substantial health or safety issue. The applicant shall have the right to request a review hearing within forty-eight (48) hours of the Code Administrator's decision to immediately suspend a Wind Energy Siting Permit with the Plan Commission.

(d) To the extent applicable, the Large Wind Energy Facility shall comply with all applicable building codes and standards. To ensure the integrity of the wind turbines, the owner shall maintain the wind turbines in compliance with Good Utility Practice for wind turbines. If, upon inspection by and advice to such effect from a qualified expert in Good Utility Practice, the Town reasonably concludes that any of the wind turbines fail to comply with Good Utility Practice or constitute a danger to persons or property, then upon notice being provided to the owner, the owner shall have 90 days to bring the non-compliant wind turbines into compliance with such standards, or if the 90 days is insufficient time to cure the non-compliance, the owner will present a plan to the Town describing the reason for the delay and the timeframe for the cure to be put in place.

Sec. 64-81. Appeal of the Determinations of the Code Administrator or Plan Commission.

(a) Any person aggrieved by the decision of the Code Administrator or Plan Commission may appeal the decision to the Town of Buchanan Board of Appeals.

(b) "Any person aggrieved" shall include the applicant, developer, or any person who resides or owns land within one half (1/2) mile of the proposed Wind Energy Facility.

(c) All appeals must be filed within thirty (30) days of issuance, denial, or revocation of the Wind Energy Siting Permit. The Code Administrator shall file a certified copy of the record with the Board of Appeals within thirty (30) days of the receipt of the Notice of Appeal. The record shall include all documents and information relied upon by the Code Administrator or Plan Commission in making the decision to grant, deny, or revoke the Wind Energy Siting Permit.

(d) The review by the Board of Appeals shall be limited to a review of the record of the Code Administrator/Plan Commission. The basis of the appeal shall be limited to whether the Code Administrator/Plan Commission correctly applied Sec. 66.0401, Wis. Stats., and the provisions of this Chapter.

(e) The Board of Appeals may affirm, reverse, or remand back to the Code Administrator/Plan Commission.

(f) Nothing in this section shall be construed as limiting an aggrieved person's right to a Certiorari Review in Circuit Court as permitted by Wisconsin law.

Sec. 64-82. Notice of Construction.

(a) The applicant shall notify the Plan Commission at least five (5) working days before construction begins.

(b) The applicant shall be responsible to provide, during construction, a licensed electrical engineer who shall make periodic inspections as necessary in order to determine that construction is completed in accordance with the National Electrical Safety Code and all applicable federal and state electrical requirements, and who shall, within five (5) working days of completion of the Wind Energy Facility, complete and file with the Plan Commission a Certificate of Compliance, stating that the Wind Energy Facility meets all federal and state electrical requirements.

(c) Within five (5) working days of completion of the Wind Energy Facility, the applicant shall certify in writing that the Facility was built and installed according to the approved application and final site plan.

Sec. 64-83. Modification of Approved Site Plan.

The applicant shall not modify the approved application final site plan without written permission from the Code Administrator.

Sec. 64-84. Fees.

The applicant fee shall be determined by the Town Board. Said fees shall be nonrefundable.

Sec. 64-85. Abandonment.

(a) The landowner of the Wind Energy Facility, under this chapter, shall notify the Town of Buchanan Plan Commission when the facility is no longer in operation. Within twelve (12) months of cessation of operations, unless the Code Administrator approves a time extension if the owner provides good cause, the following shall occur:

- (i) All obsolete, damaged, unused, or abandoned Wind Energy Systems and accessory facilities shall be removed; and
- (ii) All foundation, pads, and underground electrical wires shall be removed to a depth of four feet (4') below the surface of the ground; and
- (iii) All hazardous materials shall be removed from the property and disposed of in accordance with federal and state laws. Said removal

shall be the responsibility of the landowner where the Wind Energy Facility is located.

- (iv) Any access roads shall be removed, cleared, and graded by the owner, unless the property owner wants to keep the access road. The Town of Buchanan will not be assumed to take ownership of any access road unless through official action of the Town Board.

(b) If removal and/or restoration are not completed, the Code Administrator may order removal utilizing the performance bond required under Sec. 64-16.

Sec. 64-86. Severability.

The sections, paragraphs, sentences, clauses, Articles, and phrases of this Chapter are severable; if any provision is found to be unconstitutional, invalid, or unenforceable, such finding shall not affect the remaining portions of this Chapter.

Sec. 64-87. Forfeiture.

- (a) Any wind generation facility, turbine or appurtenant facility hereinafter significantly erected, moved or structurally altered in violation of the provisions of this Chapter by any person, firm, association, corporation (including building contractors) or his or their agent shall be deemed an unlawful structure.
- (b) Any wind generation facility that does not meet the requirements of this Chapter, including, but not limited to those dealing with noise or visual appearance, or does not meet the conditions attached to an approved permit shall provide grounds for revocation of the permit, thereby deeming the facility an unlawful structure.
- (c) The Code Administrator shall report all such violations to the Town Board who may then refer the matter to the town attorney to bring action to enjoin the erection, moving or structural alteration of such facility or to cause such facility to be vacated or removed.
- (d) Any person, firm, corporation, agent, employee, or contractor of such, who violates, destroys, omits, neglects, or refuses to comply with, or who resists enforcement of any provision of this Chapter; shall upon conviction thereof forfeit no less than \$1,000 and not more than \$10,000 per offense together with the costs of prosecution. Each violation and each day of violation shall constitute a separate offense.

Adopted this 27th day of February, 2008.

TOWN OF BUCHANAN:

Mark McAndrews, Town Chairman

ATTEST:

Angela Gorall, Town Administrator/Clerk