

Pair of towns facing legal battle over wind ordinances

By Kevin O'Brien

Two Marathon County townships are facing legal threats by a renewable energy company claiming that the towns' newly adopted ordinances violate state statute and unlawfully prevent the company from establishing a wind farm in the area.

EDP Renewables North America LLC, based in Houston, has served the towns of Eau Pleine and Brighton with legal notices demanding that the townships repeal their wind facility licensing ordinances, which were adopted last year in response to public backlash against multiple companies looking to install industrial wind turbines in Marathon and Clark counties.

Eau Pleine and Brighton are just two of 13 rural townships in western Marathon County, along with three in eastern Clark County, that adopted nearly identical ordi-

nances establishing strict regulations and requirements for wind energy operations. In its legal claims, EDP points out multiple provisions of the ordinances that are more restrictive than what the state allows.

Under state law, the Wisconsin Public Service Commission (PSC) has regulatory authority over all large wind farm operations, and local municipalities are barred from placing any restrictions on them that go beyond what the commission requires. As such, EDP is arguing that the townships' ordinances "must be repealed immediately" or the company will seek a declaratory judgment to prevent the ordinance from being enforced.

Not everyone agrees with EDP's interpretation of the law, however.

Farmland First, a group of rural landowners opposed to large-scale wind and so-

Wind ordinances

Continued from page 1

lar operations, was instrumental in getting townships to adopt the ordinances to shield residents from the potential nuisances and health hazards of turbines. The group has pledged a minimum of \$30,000 to help Eau Pleine and Brighton cover their legal costs and offered to intervene in the case with its own legal team.

Attorney Marti Machtan, one of the leaders of Farmland First, spoke to Eau Pleine residents and town board members at a March 12 meeting, which drew a standing-room-only crowd of people concerned about EDP's legal action and the township's possible liability.

Machtan urged town officials to resist EDP's attempt to eliminate the ordinance and encouraged residents not to be intimidated by the large corporation and its attorneys.

"I don't think their position is nearly as strong as they think it is," he said. "We really want to show the town we can support them and that we do have a very, very good chance of winning and making sure our rural way of life and land is protected."

Machtan acknowledged that receiving a notice of claim from a corporate lawyer is "a very scary thing," but he tried to reassure town residents and officials that their ordinance is defensible in court, despite what EDP says.

"They quote the state preemption law that says 'we can't do this,' but what they failed to quote is the health and safety language that comes after it," he said, referring to a section of the statute, 66.0401(1m)(a), that allows for local ordinances that "protect the public health and safety."

The townships have turned the claims over to their insurance companies, but Machtan said he's not confident that they will fully support the town's rights.

"I don't want to listen to an insurance company lawyer or a wind company lawyer or a PSC person saying we can't do this," he said. "I want to hear it from a judge. I think that's what the electors deserve."

EDP has been working for years to sign easements with enough landowners in Eau Pleine and Brighton in order to proceed with a project called Marathon Wind Farm (MWF), which promises to provide \$12 million in revenue to local governments and over \$35 million to landowners, according to the company's website.

It's unclear exactly how many township residents have signed up to have wind turbines installed on their land, but Machtan said "my understanding is that Marathon Wind Farm has enough land for their project." He estimated that about 3 percent



TIME TO TALK - Attorney Marti Machtan, a member of Farmland First, speaks at Eau Pleine's March 12 monthly meeting about a legal claim filed against the town.

of residents in any given township have signed contracts at this point, and only two families in Clark County have been able to back out of their agreements with RWE Renewables.

In its notice of claim, EDP says it's willing to work with town officials to amend its ordinance "so it complies with Wisconsin state law," pointing to Marathon County's ordinance as an example.

"MWF's strong preference is to find a solution that makes further legal action unnecessary and would very much like to meet with the town to discuss possible resolutions," wrote attorney Matthew D. Lee.

Machtan, however, cautioned town officials against negotiating with EDP, suggesting that any settlement would likely include a "joint development agreement" that would "handcuff" town officials in the future.

"Our view is, either pay now or pay later," he said. "If we don't work our hearts out to preserve this ordinance, it's probable that we will have lower property values, bad environmental effects, bad health effects. If we can spend some money now preventing that, I think it's well worth it."

EDP filed its claim against Eau Pleine on Sept. 5, 2024, and the town denied the claim on Jan. 5, Machtan said, so the company now has to decide whether it wants to proceed with a lawsuit.

"They have six months to either back off or sue," he said. "So, early June would be when a lawsuit would drop."

During the March 12 meeting in Eau Pleine, Machtan faced some tough questions from a few town residents who seemed skeptical about the township's

ability to prevail against a massive corporation with highly paid attorneys. Machtan engaged in a heated exchange with one resident who questioned why Farmland First wasn't protesting against other developments that eliminate prime farmland.

Machtan argued that wind farms pose a unique threat – not only because they could alter the area's rural landscape and potentially lower property values, but also due to dangers against birds, deer and other wildlife. Residents living next to wind turbines often complain about the noise and shadow flicker, and there's also reports of turbines catching on fire and possibly leaking hazardous substances into the groundwater, he noted.

Though wind companies say landowners who sign their easements can still qualify for Farmland Preservation credits, Machtan questioned whether that was true under the language of the contracts.

"You can't have a power plant and call it farmland," he said.

Machtan said he truly believes that Farmland First and township residents are "up for this fight."

"You'd be amazed at what you can do creatively for not a lot of money," he told Eau Pleine residents. "I feel very strongly that we have a good chance of winning on the merits, and if we don't win on the merits, there's a lot of value in buying time."

Although Eau Pleine and Brighton are the only townships to have been served with legal notices, Farmland First is trying to rally support among other townships with similar ordinances.

Trine Spindler, a dairy farmer and Farmland First member who lives in the town of Day, went to her town's March 13 meeting and urged residents to stand by Eau Pleine and Brighton. Day, which lies within a wind farm area proposed by Alliant Energy of Madison, adopted an ordinance last year that is nearly identical to the one being challenged by EDP.

"If they end up suing them and winning, our ordinance is junk," Spindler told Eau Pleine residents.

Spindler suggested that Day's town board start by approving a letter of support for Eau Pleine and Brighton and possibly consider a monetary contribution in the future.

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Machtan, a member of Farmland First, speaks to a crowd of residents at the town of Day about a legal claim filed against the township's wind ordinance.

STAFF PHOTO/KEVIN O'BRIEN

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Spindler suggested that Day's town board start by approving a letter of support for Eau Pleine and Brighton and possibly consider a monetary contribution in the future.

"We're really worried that the ordinance won't stand, and we're not seeing any help from our legislators," she said. "We are trying to work on legislative levels, but it doesn't seem like anybody really wants to

help us out."

Spindler also urged town residents to adopt another ordinance, modeled after one developed by Arpin, that restricts the establishment of solar power operations in the township. A meeting was scheduled for April 10 at 7:30 p.m. to discuss that proposal ahead of the town's annual meeting on April 16, when residents have a chance to vote on the ordinance.

"The number one thing is not to sign up," she told the audience.

More on EDP's complaint can be found on page 12.

EDP responds

When asked for a comment about its legal action against the towns of Eau Pleine and Brighton, EDP Renewables North America, LLC released the following statement from Kris Cheney, executive vice president:

"Our primary intention has always been, and continues to be, to work directly with the townships of Brighton and Eau Pleine to identify a workable path forward. We remain willing to do so and view legal action as a less desirable alternative."

"EDPR NA has been developing, owning, and operating wind farms for more than 20 years. We take our relationships with our future neighbors very seriously and understand the vital role that local leadership plays in building a good project. We're proud of the reputation we've earned in the communities in which we operate, and that is the key reason we have been able to continue to grow over the last two decades, including being welcomed back by more than 15 communities to build additional phases onto existing projects."

"Marathon Wind Farm would bring 98 megawatts of clean, Wisconsin-sourced energy onto the local grid, strengthening the area's electricity supply, and contributing to America's energy independence. Additionally, it would provide stable revenue to approximately 50 local landowners who have chosen to exercise their private property rights to earn income from their land, add \$12 million to the local tax base, and spend an estimated \$9.8-plus million in the local economy. We welcome the opportunity to collaborate with the townships to ensure questions are answered, concerns are addressed, and a path forward is found for Marathon Wind Farm."

Colby tr

By Nathaniel Underwo

The Colby Hornets track and field team is all set and ready for the start of the 2024 season with athletes returning from a successful 2023 season. The Hornets will once again be eyeing the state conference and beyond.

This year's Colby squad is led by a coach who will be looking to build on their success from last season. The girls team won the Cloverbelt-East conference meet and finished overall and will be returning eight coaches who competed at the sectional meet in 2023. The boys team, which took fourth at the conference meet, will also have a fair number of members coming back to improve upon their performance in 2023.

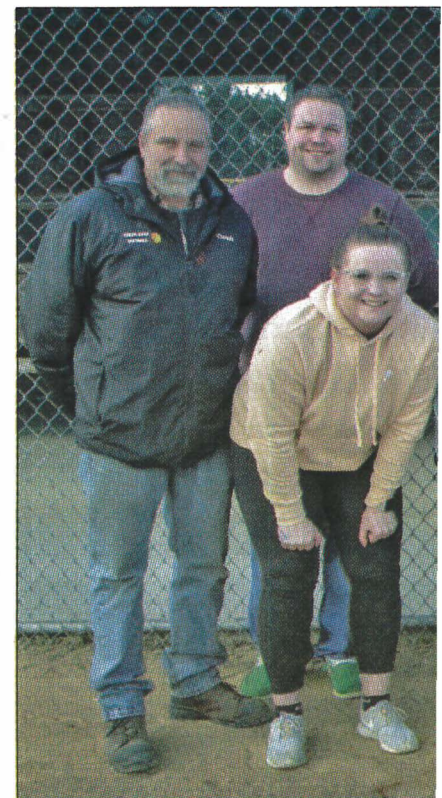
While one of their state participants graduated last year, the Hornets will have Daelyn Rieck return after taking fourth place in the discus in La Crosse and 10th place in the discus in La Crosse of her freshman campaign. The new star in the discus will continue to anchor the squad in the throwing events heading into the season.

Seniors Jaznyn Heeg, Casey Reynolds, and Anna Herrmann, Pearl Feiten, and Veronica sophomore Annamarie Schmitt are all returning to compete in the sectional meet last year.

The Hornets' strength once again lies in the long distance events, where Reynolds and Schmitt all posted solid results. Reynolds was the best sprinter last season and Mateer was the triple jump while also backing up in the

See COLBY TRACK AND FIELD PH

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2024 COLBY-ABBY SOFTBALL assistant coach Austin Depner, A and Torrance Bloome. In the front row are Perez, McKinley Klabon, Lucia P. Brohm

A closer look at EDP's legal challenge

By Kevin O'Brien

About a year ago, amid a flurry of activity by companies looking to build wind power operations, multiple townships in Marathon and Clark counties adopted nearly identical ordinances that placed new restrictions and regulations on these operations.

The Wind Energy Facility (WEF) Licensing Ordinance, drafted by attorney Adam Jarchow of Clear Lake, is a 30-page document that spells out the townships' desire to protect "the health, safety and well-being" of local residents by requiring wind farm operators to obtain a license from the township before erecting any turbines or building other infrastructure.

On the first page of the ordinance, it says the state of Wisconsin's draft wind ordinance is "inadequate to reasonably protect public health and safety." The ordinance points out that the state's Wind Siting Council, which is supposed to meet every five years to update regulations, did not do so in 2019, leaving the existing state regulations outdated.

The ordinance says the Wisconsin State Constitution "legally obligates government officials to protect the health, safety and well-being of their residents," and goes on to list a wide range of concerns about industrial wind operations, from the "disruption of views and skylines" to environmental impacts, damage to town roads, and the effects of noise and vibrations on wildlife and residents. It also points to "serious legal and economic downsides for landowners entering into complicated and one-side lease/ easement agreements."

To ensure the township's interests are protected, the ordinance lays out a detailed licensing process for wind operations that gives the town board ultimate authority to approve or deny permit applications.

EDP's complaint

In a six-page notice of injury and claim filed in September of last year, EDP Renewables North America LLC, doing business as Marathon Wind Farm (MWF), the company's attorney points out that the town ordinance violates Section 66.0401(1m) of state statute, which expressly forbids local units of government from enacting any restrictions on wind operations that are more restrictive than those developed by the Wisconsin Public Service Commission (PSC).

"The wind ordinance makes it effectively, if not literally, impossible to establish a wind energy system in the town of Eau Pleine," wrote attorney Matthew D. Lee. "This contravenes state law in violation of the above authority and unlawfully restricts MWF's ability to do business in the town."

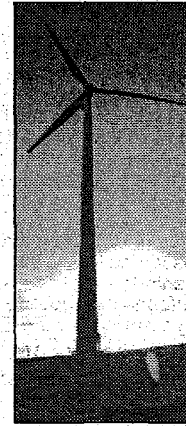
The notice includes a side-by-side comparison of the PSC regulations and those included in the town ordinance, highlighting 11 provisions that are stricter than what the state allows. Some of those provisions include the following:

- A 35-decibel around-the-clock noise limit, compared to PSC's 50-decibel limit from 6 a.m. to 10 p.m. and a 45-decibel limit from 10 p.m. to 6 a.m.

- A minimum setback between turbines and neighboring property lines of either one mile or 10 times the height of the turbine (whichever is greater), compared to the PSC's lesser of 1,250 feet or 3.1 times the maximum blade tip height from non-participating landowners and occupied community buildings.

- A guarantee from the wind company that no property within two miles of a turbine operation will lose value, versus a PSC provision for annual compensation to non-participating landowners within a half-mile of the facilities.

- A requirement for an Environmen-



tal Impact Study with comments from multiple state agencies, which is not required by PSC regulations.

- A requirement to indemnify the town for "construction, operation, maintenance, repair and removal" of wind operations, versus a PSC indemnification re-

quirement that only applies to the property owner for any damages or injuries caused by construction, operation or decommissioning of the facilities.

- Required reimbursement to the township and Wisconsin Department of Transportation for damage to roads, which is not required by PSC regulations.

- A required post-construction study paid for by the applicant through an escrow account, which is not required by PSC regulations.

- Required decommissioning based on condemnation by a state building code official or after three consecutive months of non-operation. The PSC regulations do not include a condemnation provision, and decommissioning is only required after 540 days of continuous non-generation of power or 360 days since the end of the useful life of the power system.

Attorney Marti Machtan, a member of the Farmland First group that promoted the local ordinances, recently told residents and officials in Eau Pleine that EDP's challenge of one ordinance is a threat to all of them.

"Since they're all very similar, there's a good chance that if Eau Pleine and Brighton fall, the other dozens of towns across the state fall," he said. "That's one of the reasons why we're encouraging Eau Pleine and Brighton to fight to preserve the ordinance."