

**TOWNSHIP BOARD
BUSHNELL TOWNSHIP
MONTCALM COUNTY, MICHIGAN**

(Ordinance No. 071123-2)

At a regular meeting of the Township Board for Bushnell Township held at the Township Hall on July 11, 2023, and commencing at 6:00 p.m., the following Ordinance was offered for adoption by Township Board Member Patrick Draper and was seconded by Township Board Member Mike Fitzgerald:

**AN ORDINANCE REGULATING THE CONSTRUCTION, OPERATION,
AND DECOMMISSIONING OF COMMERCIAL WIND ENERGY
CONVERSION SYSTEMS THROUGHOUT BUSHNELL TOWNSHIP.**

THE TOWNSHIP OF BUSHNELL (THE "TOWNSHIP") ORDAINS:

Section 1. Title.

This Ordinance may be cited as the Bushnell Township Commercial Wind Energy Conversion Systems Ordinance.

Section 2. Purpose and Intent.

- A. The purpose of this Ordinance is to protect the health, safety, and welfare of the residents of the Township; provide for the safe, effective, efficient, and orderly construction, operation, and decommissioning of commercial wind energy conversion systems within the Township; protect and preserve historic agricultural and recreational activities within the Township; protect and preserve the Township's environmental and ecological assets, wetlands, and other ecological and environmentally sensitive areas; protect and preserve the open spaces, views, and rural aesthetics of the Township; and to provide regulations that balance the often-competing interests of property owners, their neighbors, and the community.
- B. It is the intent of this Ordinance to regulate the activities associated with and comprising the construction, operation, and decommissioning of commercial wind energy conversion systems. Any interpretation to the contrary contradicts the express legislative intent of this Ordinance.

Section 3. Definitions.

The following definitions will apply unless the context clearly indicates or requires otherwise:

Abandonment. A commercial wind energy conversion system, or any portion thereof, is abandoned if it has not been in substantial operation for a period greater than one year. This

includes a commercial wind energy conversion system, or any portion thereof, that was never operational or if construction has been halted for a period greater than one year.

Commercial wind energy conversion system. A commercial wind energy conversion system is defined to mean a wind energy conversion system for which the principal design, purpose, or use is to provide energy for off-premises use or for the wholesale or retail sale of generated electricity to any person or entity.

Non-participating parcel. A non-participating parcel is defined to mean a parcel not under lease, easement, or other agreement authorizing activities or impacts related to or comprising the construction, operation, or decommissioning of a commercial wind energy conversion system on the parcel.

Parcel. A parcel is defined to mean a parcel or lot as defined in the Land Division Act, PA 288 of 1967 (MCL 560.101 *et seq.*), as amended, or a condominium unit as defined in the Condominium Act, PA 59 of 1978 (MCL 559.101 *et seq.*), as amended.

Participating parcel. A participating parcel is defined to mean a parcel under lease, easement, or other agreement authorizing activities or impacts related to or comprising the construction, operation, or decommissioning of a commercial wind energy conversion system on the parcel.

Township permit. A Township permit is defined to mean a permit for a commercial wind energy conversion system issued by the Township pursuant to this Ordinance.

Wind energy conversion system. A wind energy conversion system is defined to mean any part of a system, including but not limited to wind turbines, inverters, transformers, access roads, lines, wires, conduits, gen-ties, and cables that convert wind energy into electricity and transfer the electricity to a consumer or to the electric grid.

Wind Turbine. A wind turbine is defined to mean a structure that converts wind energy into electrical energy. A wind turbine is generally comprised of a foundation, tower, rotor hub, rotor blades, and nacelle. See Figure 1.

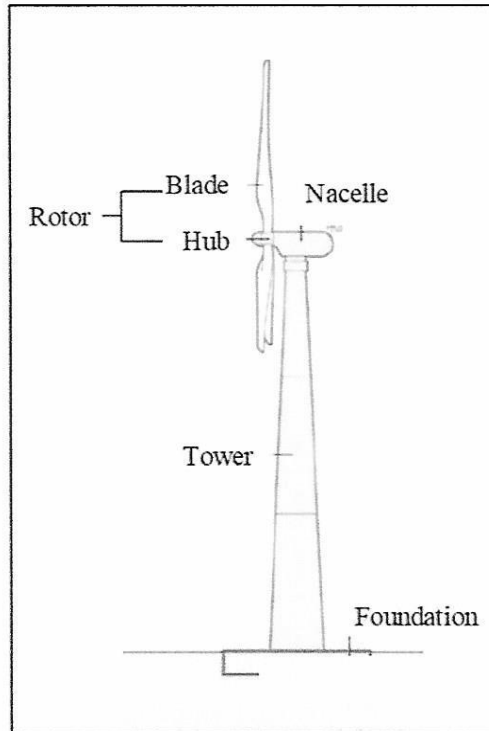


Figure 1

Wind turbine coverage area. Wind turbine coverage area is defined to mean the total area within a circle that when viewed from above the wind turbine, is centered on the wind turbine base with a diameter equal to the rotor blade diameter. See Figure 2.

Wind turbine coverage area circumference. Wind turbine coverage area circumference is defined to mean the circumference of the wind turbine coverage area. See Figure 2.

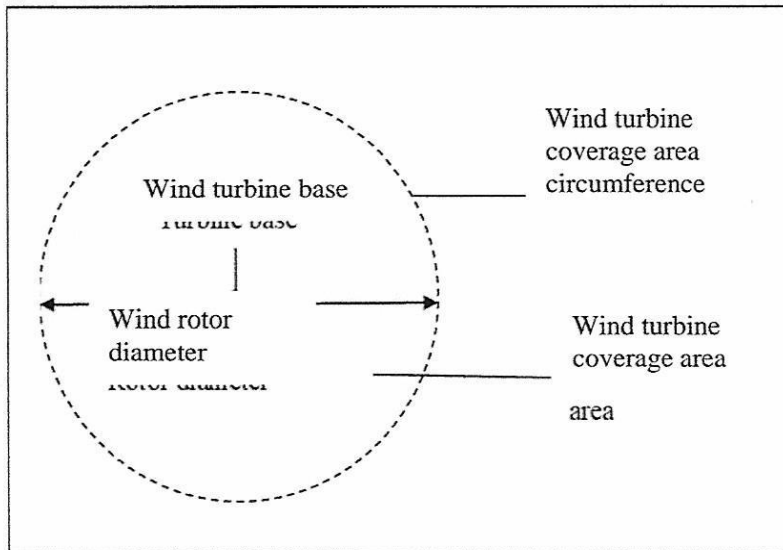


Figure 2

Wind turbine rotor diameter. Wind turbine rotor diameter is added and defined to mean the diameter of the circle swept by the rotor blades. See Figure 3.

Wind turbine rotor blade ground clearance. Wind turbine rotor blade ground clearance is defined to mean the distance as measured from the ground to the tip of the rotor blade at its lowest vertical position. See Figure 3.

Wind turbine hub height. Wind turbine hub height is defined to mean the distance as measured from the ground to the center of the rotor hub. See Figure 3.

Wind turbine tip height. Wind turbine tip height is added and defined to mean the distance as measured from the ground to the tip of the rotor blade at its most upright vertical position. See Figure 3.

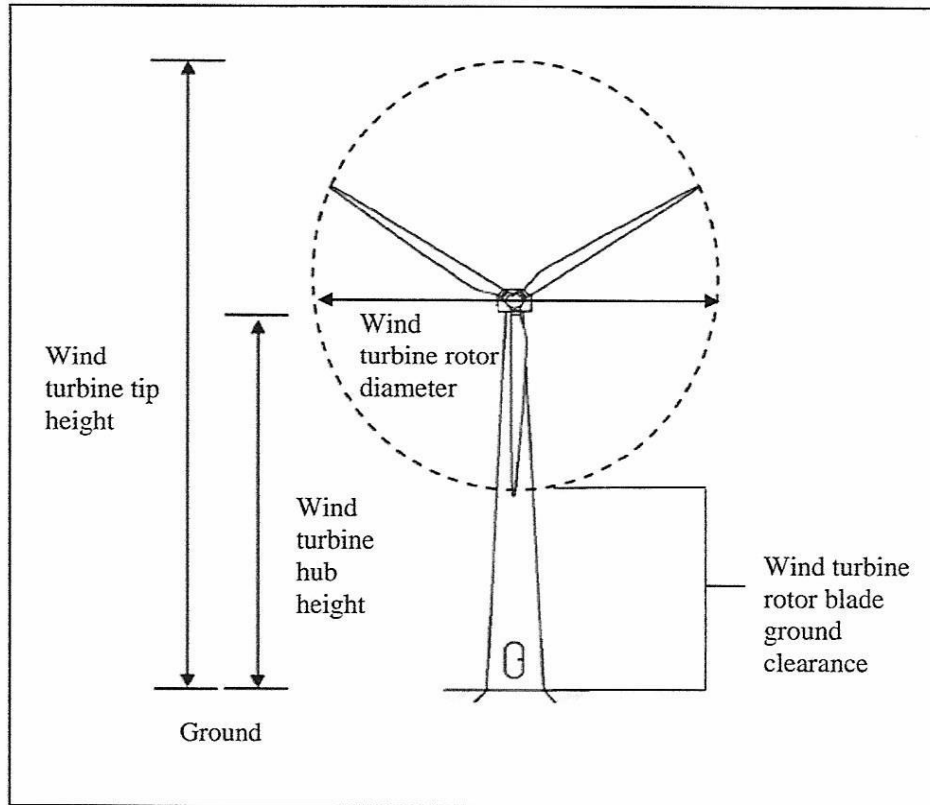


Figure 3

Section 4. General.

- A. The construction, operation, and decommissioning of commercial wind energy conversion systems must comply with the requirements of this Ordinance.
- B. The construction and operation of commercial wind energy conversion systems without a Township permit are prohibited.
- C. A Township permit is a revocable privilege granted by the Township. The application for a Township permit does not create or vest any right, title, franchise, or other property interest. The granting of a Township permit does not create or vest any right, title, franchise, or other property interest past the initial term of the permit. Township permits are non-renewable.

Section 5. Permit Application.

- A. All applications for a Township permit must be filed with the Township Clerk utilizing and complying with the Township application, forms, and processes, as adopted from time to time by resolution of the Township Board. Only complete applications will be accepted.

- B. As part of the application process, the applicant may be required to provide any information reasonably deemed by the Township to be relevant to the determination of Township permit approval.
- C. The following are required as part of any Township permit application:
1. The escrow deposit as required by Section 9.
 2. The non-refundable application fee as determined from time to time by resolution of the Township Board.
 3. The name, address, and phone number of the applicant, any authorized representatives of the applicant, the proposed commercial wind energy conversion system operator if known, and the owners of the participating parcels being utilized as a part of the commercial wind energy conversion system project.
 4. Commercial wind energy conversion system project description identifying the planned commercial wind energy conversion system capacity in megawatts; construction sequence and timeline; development phases if any; rated useful life of wind turbines, transformers, and inverters; and possible future expansions.
 5. If the applicant is not the property owner, an affidavit or evidence of an agreement establishing that the applicant has the requisite permissions of the participating parcel property owners to apply for the Township permit.
 6. Scaled renderings depicting a minimum of three views of the commercial wind energy conversion system including one view from the public right-of-way.
 7. A site plan showing the size and location of all proposed buildings, structures, and equipment including but not limited to transformers by type, inverters by type, and wind turbines by type; required setbacks; parcel lines; wind turbine coverage areas; signage; fences; vegetation; drainage systems; easements; public rights-of-way; private roads; floodplains; bodies of water; lighting; proposed access routes; gen-tie and collection lines; and land elevations. The site plan must be drawn to scale and indicate how the commercial wind energy conversion system will be connected to the electric grid.
 8. Noise impact study and noise level map depicting and describing the predicted noise levels on all impacted parcels and the surrounding environment during the construction, operation, and decommissioning of the commercial wind energy conversion system.
 9. Noise mitigation and compliance plan describing how the Township permit holder will ensure the construction, operation, and decommissioning of the commercial wind energy conversion system complies with the noise requirements of this Ordinance.

10. Shadow flicker study, calendar, and map depicting and describing the predicted shadow flicker on all impacted parcels and the surrounding environment during the operation of the commercial wind energy conversion system.
11. Shadow flicker mitigation and compliance plan describing how Township permit holder will ensure the operation of the commercial wind energy conversion system complies with the shadow flicker requirements of this Ordinance.
12. Electromagnetic signal interference study and map depicting and describing the predicted electromagnetic signal interference on all impacted parcels and the surrounding environment during the operation of the commercial wind energy conversion system.
13. Electromagnetic signal interference mitigation and compliance describing how the Township permit holder will ensure the operation of the commercial wind energy conversion system complies with the electromagnetic signal interference requirements of this Ordinance.
14. Environmental and ecological impact study detailing the effect the construction, operation, and decommissioning of the commercial wind energy conversion system will have on all impacted parcels and the surrounding environment. The environmental and ecological impact study must address water resources, air quality, wildlife, floodplains, wetlands, unique farmlands or soils, erosion and sediment control, drainage, areas of aesthetic or historic importance, archeological or cultural concerns, utilities and infrastructure, noise, shadow flicker, light pollution, waste disposal, compliance with the requirements of Part 31 - Water Resources Protection, of the Natural Resources and Environmental Protection Act, Part 91-Soil Erosion and Sedimentation Control, Part 301 - Inland Lakes and Streams, Part 303 - Wetlands, Part 365 - Endangered Species Protection, and any other relevant factors and regulations.
15. Mitigation plan and compliance plan describing how the Township permit holder will ensure compliance with the requirements of this Ordinance and mitigate the environmental and ecological impact of the construction, operation, and decommissioning of the commercial wind energy conversion system. The environmental and ecological impact study must address water resources, air quality, wildlife, floodplains, wetlands, unique farmlands or soils, erosion and sediment control, drainage, areas of aesthetic or historic importance, archeological or cultural concerns, utilities and infrastructure, noise, shadow flicker, light pollution, waste disposal, compliance with the requirements of Part 31 - Water Resources Protection, of the Natural Resources and Environmental Protection Act, Part 91-Soil Erosion and Sedimentation Control, Part 301 - Inland Lakes and Streams, Part 303 - Wetlands, Part 365 - Endangered Species Protection, and any other relevant factors and regulations.

16. Demonstrated consultation with the U.S. Fish and Wildlife Service's Land-Based Wind Energy Guidelines.
17. A transportation plan to be utilized during the construction, operation, and decommissioning of the commercial wind energy conversion system including any applicable agreements with the Montcalm County Road Commission and the Michigan Department of Transportation.
18. A decommissioning plan demonstrating compliance with the requirements of Section 12.
19. A decommissioning estimate consistent with the requirements of Section 10.

Section 6. Permitting.

- A. Within sixty calendar days of receiving a completed Township permit application, the Township Clerk will present the application to the Township Board.
- B. The Township Board will hold a public hearing on the Township permit application prior to rendering any final determination.
- C. The Township Board is the permitting authority. Township permits will be issued if the Township Board finds that the application and proposed construction, operation, and decommissioning of the commercial wind energy conversion system comply with the requirements of this Ordinance and that the construction, operation, and decommissioning of the commercial wind energy conversion system would not be unreasonably detrimental to the health, safety, and welfare of the general public. Township permits will specify the approved commercial wind energy conversion system project capacity, site plan, noise mitigation and compliance plan, shadow flicker mitigation and compliance plan, electromagnetic interference mitigation and compliance plan, environmental and ecological mitigation and compliance plan, transportation plan, drain tile maintenance plan, and decommissioning plan. The Township Board may impose additional conditions as terms of the Township permit in order to ensure compliance with the requirements of this Ordinance.
- D. No Township permit will be issued until the requirements of Sections 10 and 11 have been met.
- E. A Township permit is only transferable with prior approval of the Township Board following a public hearing. The new permit holder must comply with this Ordinance and the terms of the Township permit.
- F. Unless revoked, a Township permit is valid for thirty-five years following the date of issuance.

Section 7. Modification and Revocation.

- A. Following the issuance of a Township permit, modification of the Township permit

terms must be approved by the Township Board.

1. Application for modifications will be made in accordance with Section 5 in the same manner as an initial application.
 2. Approval of modifications will be made in accordance with Section 6 in the same manner as the initial application.
- B. A Township permit may be revoked by the Township Board for the following reasons:
1. Violation of this Ordinance or terms of the Township permit.
 2. Fraud or misrepresentation in the Township permit application.
 3. Failure to maintain decommissioning financial security as required by Section 10.
 4. Failure to maintain insurance as required by Section 11.
- C. Prior to the revocation of a Township permit, the Township holder must be given written notice of the basis for the revocation and a hearing before the Township Board.

Section 8. Commercial Wind Energy Conversion System Requirements.

- A. The construction and operation of commercial wind energy conversion systems are prohibited on parcels less than twenty acres in size.
- B. The construction and operation of commercial wind energy conversion systems are not permitted on property enrolled in the Farm Land and Open Space Preservation Program under Part 361 of the Natural Resources and Environmental Protection Act, PA 451 of 1994 (MCL 324. 36101 *et. seq.*), as amended.
- C. Wind turbines may not exceed a maximum wind turbine tip height of 450 feet.
- D. Wind turbines must have a minimum wind turbine rotor blade ground clearance of 75 feet.
- E. Wind turbines must be painted with a single, subdued, non-reflective, matte finish.
- F. Wind turbines must have automatic braking, governing, or feathering systems to prevent uncontrolled rotation or over-speeding.
- G. Wind turbines must have lightning protection consistent with industry best practices.
- H. Wind turbines must be designed or retrofitted to limit noise generation to the extent feasible.
- I. Wind turbines must be equipped with ice-detection and ice-prevention or de-icing technology in order to prevent unsafe operation and ice throws.

- J. Total shadow flicker must not exceed thirty hours per year or thirty minutes per day, whichever is less, on any non-participating parcel.
- K. Total shadow flicker must not exceed three hours per year on any residential dwelling occupied or legally permitted to be occupied on any participating parcel as of the date of the Township permit approval.
- L. All above-ground structures and equipment including but not limited to wind turbines, transformers, and inverters must be setback a minimum of 500 feet from the parcel lines of participating parcels, a minimum of 1,320 feet from the parcel lines of non-participating parcels, and a minimum of 500 feet from all public rights-of-way. Wind turbine setbacks will be measured as the shortest straight line from the parcel line to the wind turbine area circumference.
- M. All above-ground structures and equipment including but not limited to wind turbines, transformers, and inverters must be setback a minimum of 1,000 feet from all residential dwellings occupied or legally permitted to be occupied on participating parcels as of the date of the Township permit approval. Wind turbine setbacks will be measured as the shortest straight line from the residential dwelling to the wind turbine area circumference.
- N. Lighting of the commercial wind energy conversion system must be limited to the minimum light necessary for safe operations. Lighting must be compliant with Federal Aviation Administration requirements and wildlife friendly to the extent feasible. Unless prohibited by the State of Michigan or a federal agency having jurisdiction, wind turbines will utilize aircraft detection lighting systems.
- O. The noise pressure level generated by a commercial wind energy conversion system must not exceed 45 dBA Lmax as measured at the perimeter of all non-participating parcels.
- P. The noise pressure level generated by a commercial wind energy conversion system must not exceed 45 dBA Lmax as measured at all residential dwellings occupied or legally permitted to be occupied on participating parcels as of the date of the Township permit approval.
- Q. The noise pressure level generated by a commercial wind energy conversion system must not exceed 45 dBA Lmax as measured at the perimeter of all public rights-of-way.
- R. To the extent feasible, unless otherwise required by the State of Michigan or federal agency having jurisdiction, all collection lines, wires, conduits, cables, and gen-tie lines connecting the wind turbine, transformers, inverters, and point of connection to the electric grid must be located underground.

- S. Commercial wind energy conversion systems must be constructed and operate in accordance with all applicable laws, ordinances, codes, rules, and regulations.
- T. Commercial wind energy conversion systems must be constructed, operated, and decommissioned in a manner that does not produce unreasonable negative environmental and ecological impacts.
- U. Commercial wind energy conversion systems must be constructed and operated in a manner that does not produce unreasonable electromagnetic interference.
- V. To the extent feasible, all existing drain tile within the access roads and wind turbine coverage areas must be properly maintained in working order during the construction, operation, and decommissioning of commercial wind energy conversion system.
- W. If the commercial wind energy conversion system experiences a fire; leakage of hazardous materials; personal injury resulting in loss of life, limb, or eyesight; or other extraordinary or catastrophic event, the Township permit holder must notify the Township no later than the second business day following the event.

Section 9. Escrow Account.

- A. The applicant must fund an escrow account at the time of application for a Township permit.
- B. The escrow account must remain funded for sixty calendar days following the Township Board's final determination regarding the Township permit application.
- C. The escrow account amount will be determined from time to time by resolution of the Township Board and is intended to cover the Township's cost regarding technical or legal matters related to the processing of the Township permit application.
- D. The Township may draw upon the escrow account to cover the Township's actual costs regarding technical or legal matters related to the processing of the Township permit application.
- E. The applicant will be entitled to the return of all unused funds of the escrow account sixty calendar days following the Township Board's final determination on the Township permit application.
- F. If the Township, requires the applicant to replenish the escrow account and the applicant fails to do so within fourteen calendar days after receiving notice, then the application will be deemed abandoned, and the Township will take no further action regarding the Township permit application.
- G. The escrow account will be maintained by the Township consistent with the applicable Government Accounting Standard Board requirements. The Township may deposit escrow funds into any account with a depository financial institution. The Township

need not segregate the escrow funds or deposit the escrow funds into an interest-bearing account. The applicant will not be entitled to any interest on the escrow funds.

Section 10. Decommissioning Financial Security.

- A. To ensure the proper and timely decommissioning of the commercial wind energy conversion system, the permit holder must maintain financial security from the issuance of the Township permit through the completion of final decommissioning.
- B. The financial security must be in the form of 1) a surety bond with terms acceptable to the Township naming the Township as the sole obligee or 2) an irrevocable letter of credit with terms acceptable to the Township naming the Township as the sole beneficiary. The duration of the financial security will be termed to the completion of the decommissioning of the commercial wind energy conversion system as required by Section 12.
- C. The amount of financial security will be determined by the Township Board on a case-by-case basis and reasonably approximate the cost of decommissioning the permitted commercial wind energy conversion system. The financial security amount will not include salvage values. The applicant will provide the Township with an initial decommissioning estimate at the time of application for the Township permit.
- D. The financial security will be reviewed every five years by the Township Board. The Township permit holder will provide the Township Board with a then-current decommissioning estimate. Any increase or modification to the financial security must be provided to the Township within thirty calendar days of request.
- E. Required financial security must be filed with the Township Clerk following approval of the Township permit by the Township Board and prior to the issuance of the Township permit. Failure to file the required financial security with the Township Clerk within thirty days of Township permit approval will be deemed an abandonment of the Township permit.

Section 11. Insurance Requirements.

- A. Insurance must be maintained by the Township permit holder in full force and effect from the issuance of the Township permit through the completion of final decommissioning.
- B. The Township permit holder must maintain commercial general liability insurance on terms reasonably acceptable to the Township naming the Township as an additional insured. Insurance must be carried in an amount not less than Five Million Dollars (\$5,000,000.00) per wind turbine for injury and damage arising out of a single occurrence.

- C. The insurance certificate must contain a clause stating that coverage may not be canceled, revoked, or modified without a minimum of thirty days' notice to the Township.
- D. In lieu of the commercial general liability insurance requirements set forth in subsections 11(B)-(C), a self-insured Township permit holder may enter into an indemnification agreement with the Township on terms acceptable to the Township. Such indemnification will be for an amount not less than Five Million Dollars (\$5,000,000.00) per wind turbine for injury and damage arising out of a single occurrence.
- E. The insurance requirements of this section 11 must be met following approval of the Township permit by the Township Board and prior to the issuance of the Township permit. Failure to file the required insurance with the Township Clerk within thirty days of Township permit approval will be deemed an abandonment of the Township permit.

Section 12. Decommissioning.

- A. A commercial wind energy conversion system, or any part thereof, must be fully decommissioned within 365 calendar days of abandonment.
- B. Decommissioning requires the complete removal and disposal of the commercial wind energy conversion system, including but not limited to access roads, buildings, structures, and equipment including transformers, inverters, wind turbines including foundations, signage, fences, collection lines, gen-tie lines, other lines, wires, conduits, and cables. Within one growing season the areas previously comprising the wind turbine coverage areas and access roads must be planted with perennials that will stabilize the soil and prevent soil erosion.
- C. The Township may draw upon the security posted pursuant to Section 11 and complete the decommissioning if the decommissioning as required by this Section 12 is not timely completed.

Section 13. Violation and Penalty.

- A. Any person or entity who violates this Ordinance, permits or authorizes a violation of this Ordinance, or is the landowner of the parcel upon which the violation occurs, is responsible for a municipal civil infraction punishable by a fine of not less than one thousand dollars (\$1,000) and not more than ten thousand dollars (\$10,000) in addition to costs of prosecution and any other costs permitted at law.
- B. Any permittee who violates the terms of a Township permit is responsible for a municipal civil infraction punishable by a fine of not less than one thousand dollars (\$1,000) and not more than ten thousand dollars (\$10,000) in addition to costs of prosecution and any other costs permitted at law.
- C. Each day during which any violation continues is deemed a separate offense.

- D. A violation of this Ordinance is declared to be a nuisance *per se* subject to abatement.
- E. Nothing in this Section 13 precludes the Township from pursuing other remedies available at law or equity.

Section 14. Enforcement.

- A. The Montcalm County Sherriff's Department, the Michigan State Police, the Township Ordinance Enforcement Officer, and any other individual or entity designated by resolution of the Township Board are authorized to enforce this Ordinance.
- B. Any individual or entity authorized to enforce this Ordinance may, as a condition of the Township permit, enter onto participating parcels and inspect the commercial wind energy conversion system in order to ensure compliance with this Ordinance.

Section 15. Conflict.

- A. Nothing in this Ordinance will be construed in such a manner so as to conflict with existing Township ordinances except as otherwise stated herein.
- B. Nothing in the Ordinance shall be construed in such a manner so as to conflict with federal law or any law of the State of Michigan.

Section 16. Repealer.

- A. Ordinance No. 011023 entitled "AN ORDINANCE TO IMPOSE A MORATORIUM ON THE CONSTRUCTION AND OPERATION OF OFFSITE WIND ENERGY SYSTEMS, WIND ENERGY SYSTEMS, WIND ENERGY FACILITIES, AND MET TOWERS" is hereby repealed in its entirety.
- B. Any other ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 17. Savings Clause.

The provisions of this Ordinance are severable. If any part of this Ordinance is declared void or inoperable for any reason by a court of competent jurisdiction, such declaration does not void any or render inoperable any other part or portion of this Ordinance.

Section 18. Effective Date.

This Ordinance is effective upon the expiration of the 30th day following its publication in the manner required by law.

The vote regarding the adoption of this Ordinance was as follows:

YEAS: P. Draper, M. Fitzgerald, K. Bliss, L. Belyou, C. Smith

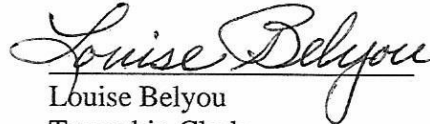
NAYS: none

ABSENT/ABSTAIN: none

ORDINANCE DECLARED ADOPTED.



Chris Smith
Township Supervisor

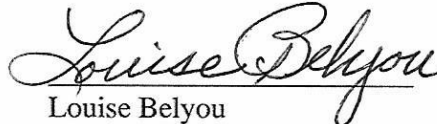


Louise Belyou
Township Clerk

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance adopted by the Bushnell Township Board at the date, time, and place as specified above, pursuant to the required statutory procedures.

Respectfully submitted,



Louise Belyou
Township Clerk

Adopted: July 11, 2023

Published:

Effective: