

## Eau Pleine responding to lawsuit

### Special meeting slated for July 23

*By Kevin O'Brien*

After consulting with an attorney on Monday, the town of Eau Pleine is planning to rescind a resolution passed last week that defends its wind licensing ordinance against a lawsuit filed by a renewable energy company. The town board will meet again on July 23 at 7:30 p.m. to consider its next steps.

The board voted unanimously at its July 9 meeting to adopt a resolution drafted by town clerk Deanna Landwehr, with help from members of Farmland First, a group that opposes industrial wind operations. At a special meeting on Monday, however, board members met in closed session with Jason Prochnow, an attorney for the town's insurance company, before returning to open session to schedule the July 23 meeting.

Town chairman Mark Landwehr said Tuesday that the town board is likely to rescind its July 9 resolution and eventually repeal its existing ordinance and replace it with a new version, based on Prochnow's advice.

Town officials were up against a deadline last week to respond to a lawsuit filed on June 20 by EDP Renewables, which demands that a judge declare the town's ordinance "null and void" so that it can proceed with a 98-megawatt wind power project in Eau Pleine and the neighboring town of Brighton. Brighton's town board has not formally responded to the lawsuit at this point, according to town clerk Nadine Willett.

EDP's lawsuit cites a portion of Wisconsin statute 66.0401, which states that local units of government cannot enact regulations on wind and solar systems that are more restrictive than those established by the Public Service Commission. However, the statute also allows exceptions for any restriction that "serves to preserve or protect the public

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health or safety."

The July 9 resolution says the wind ordinance was adopted "with overwhelming support from our residents," and it complies with state statute 66.0401(1m)(a), which specifically lists public health and safety protection as a reason for municipalities to enact more stringent regulations than the PSC.

At the start of the July 9 meeting, Landwehr said he spoke to Prochnow, who recommended the board adopt Brighton's new ordinance as a way to avoid prolonged litigation. Brighton recently repealed its original ordinance and replaced it with one that's more in line with PSC regulations, but that did not prevent EDP from including Brighton in its lawsuit.

Landwehr said the insurance company attorney believes Brighton's new ordinance "will fly in court," and promised to come from his office in St. Cloud, Minn. to defend it in front of a judge.

However, several members of Farmland First who attended the July 9 meeting urged town officials to stand by their original ordinance, which includes larger setbacks, lower noise limits and other requirements not included in PSC regulations.

Farmland First member Ryan LaSee said his group has hired an attorney, Matthew Fernholz of Waukesha, and is prepared to join the legal fight to protect a wind licensing ordinance that has been adopted by 15 townships in Marathon and Clark counties (this number excludes Brighton and the town of Rietbrock, which has a slightly different ordinance).

“We gave our word to the people that we’re committed to defending it,” he said. “If that means intervening in the lawsuit, we will do so. That means signing onto it.”

For other townships that have the same ordinance and are worried about being sued, LaSee said Farmland First’s advice is to sit tight and wait for EDP’s lawsuit to play out. If an energy company tries to ignore a town’s ordinance, he said the town should contact its attorney and have him or her issue a cease and desist letter to prevent work from being done.

LaSee said the litigation will likely be “an incredibly long process,” and he believes that “knee-jerk policy changes” are not a good response to EDP’s lawsuit. With the presidential election coming up in November, he predicted a change in administrations that will lead to federal subsidies for wind energy going away.

Still, in talking to attorneys at the Wisconsin Towns Association, Landwehr said he was warned that the town’s health and safety ordinance would not withstand a court challenge.

LaSee, however, said Farmland First approached Rep. John Spiros (R-Marshfield) about the issue, and his legislative staff found gray area in the law “that needs to be clarified by a judge.”

“One attorney says this and another attorney says the opposite,” he said. “Whoever you talk to, you get a different answer.”

Farmland First, which has previously pledged at least \$30,000 to help cover legal fees, said it is trying to rally support from other towns with the same ordinance as Eau Pleine. Landwehr confirmed that the towns of Day and Cleveland had sent Eau Pleine letters of support.

Trine Spindler, president of Farmland First’s Marathon County chapter, said the mutual support among local townships is based on keeping the original ordinances in place.

“That was the whole point of passing the same one, so that we could stand strong together,” she said. If Eau Pleine’s ordinance were to be struck down by a judge, LaSee said the decision could always be appealed, and if nothing else, this would give Farmland First and the towns more time to try and change the state statute regulating industrial wind operations.

LaSee noted that Spindler is running for the legislature in the 86th Assembly District, and Lori Voss is running in the 69th Assembly District in order to force this issue into the forefront.

“The state politicians we’ve got now have completely just let us down,” he said. “They don’t do anything but talk.”

### **EDP’s response**

Julia McPherson, a spokesperson for EDP Renewables, provided the following statement in response to the town’s initial defense of its ordinance based on public health and safety concerns: “The health and safety of the communities living near our projects and our local teams working on our sites is of the utmost importance to EDPR,” she wrote. “As the Wisconsin Wind Siting Council recently reaffirmed in its 2024 report to the Wisconsin Public Service Commission, health impacts from wind turbines have been extensively studied. These studies have consistently found wind turbines to be a safe form of energy generation.”

McPherson was also asked why the town of Brighton was included in the lawsuit even after it changed its ordinance to more closely follow the state’s PSC regulations.

“While we cannot comment on pending litigation, we do not see the new ordinance as addressing all of the concerns,” she wrote in response.

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