

## Wind ordinances challenged

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 ordinances 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 As such, EDP is arguing that the townships' ordinances "must be repealed immediately" or the company will seek a declaratory judgment to prevent the ordinance from being enforced.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 solar 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 has 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

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

STAFF PHOTO/KEVIN O'BRIEN

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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 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.

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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 town of Day 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.

"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.

**Trine Spindler**