

New

No. 11-09

**THE TOWN BOARD OF LAKETOWN, POLK COUNTY, WISCONSIN, DOES  
HEREBY ORDAIN THE FOLLOWING ORDINANCE REGULATING LARGE SCALE  
COMMERCIAL ACTIVITY IN THE TOWN OF LAKETOWN**

- 1. **Purpose.** The purpose of this ordinance is to promote the general welfare of the Town and its residents; to protect and enhance the rural character, environment and cultural heritage of the Town; to protect and promote the health, safety, and quality of life of the Town's inhabitants; and to encourage sustainable commercial activity in the Town that is consistent with the Town's Comprehensive Plan.
- 2. **Authority.**
  - 2.1. The authority of the Town to enact this ordinance is Wisconsin Statutes, §§ 60.22(1) and (3), 61.34, 61.35, 62.23 (other than subdivision 7 thereof), and 66.1001; the Town's police powers, the common law, and the Town's Comprehensive Plan.
  - 2.2. This ordinance is not based on any zoning power possessed by the Town, and shall not be interpreted or construed as an exercise of zoning power possessed by towns under Wisconsin law.
- 3. **Applicability.**
  - 3.1. This ordinance applies to all proposed Large Scale Commercial Activity within the Town.
  - 3.2. "Large Scale Commercial Activity" means commercial activity that takes place in the Town and that, when operational, reasonably may be expected to possess two or more of the following characteristics: (i) it generates excess vehicular traffic; (ii) it generates excess stress on the road bed, bridges and other infrastructure; (iii) it generates excess noise; (iv) it generates excess levels of odor, dust, fumes, particulate matter, or radioactive material; (v) it requires or results in a major disturbance of the currently existing soil or topography; (vi) its activities in the Town require a license or permit from the Wisconsin Department of Natural Resources, the Wisconsin Waste Facility Siting Board, the Wisconsin Division of Gaming in the Department of Administration, the United States Environmental Protection Agency, the United States Army Corps of Engineers or any division thereof, or the United States Bureau of Alcohol, Tobacco and Firearms; (vii) its activities in the Town involve incarceration or preventive detention of persons charged with or convicted of a crime or crimes; (viii) its activities in the Town are subject to regulation under the Indian Gaming Regulatory Act of 1988. If the requirements of this sub-section 3.2 are met, Large Scale Commercial Activity includes all tangible physical activities taking place in the Town in anticipation of the production of goods or providing of services, including, without limitation,

excavation and construction. Except as qualified by section 13, commercial activity that is not Large Scale Commercial Activity because it does not meet the requirements of this sub-section 3.2, becomes Large Scale Commercial Activity subject to this ordinance if at any future time such commercial activity meets the requirements of this sub-section 3.2.

**3.3.** Farming Excluded. Notwithstanding any other provision of this ordinance, Large Scale Commercial Activity does not include farming, except Large Scale Livestock Facilities.

**4. Definitions.** As used in this ordinance:

**4.1.** “Applicant” means a Business Entity that submits an Application.

**4.2.** “Application” means an application for a Large Scale Commercial Activity Permit provided for in section 6 of this ordinance.

**4.3.** “Business Entity” means an individual, sole proprietorship, general partnership, limited partnership, limited liability company, corporation, not for profit corporation, trust, cooperative, association, or any other legal entity now or hereafter recognized by law.

**4.4.** “Community Impact Statement” means a written statement containing all of the information required by section 9 of this ordinance with respect to any proposed Large Scale Commercial Activity.

**4.5.** “Complete Application” means an Application that contains all the information required by section 6 of this ordinance.

**4.6.** “Comprehensive Plan” means the then current master plan adopted by the Town pursuant to Wisconsin Statutes, §§ 60.62(4), 61.35, 62.23(2)(3) and (4), and 66.1001.

**4.7.** “Effective Date” means the date this ordinance was adopted by the Town Board.

**4.8.** “Excess levels of odor, dust, fumes, particulate matter, or radioactive material” means activities at the Site that result in concentration levels of odor, dust, fumes, particulate matter, or radioactive material at any location outside the Site that exceed the concentration levels of such odor, dust, fumes, particulate matter, or radioactive material existing at such location outside the Site before commencement of the Large Scale Commercial Activity.

**4.9.** “Excess noise” means activities at the Site that result in noise audible at any location outside the Site of 30 decibels or more between 6:00 P.M. and 8:00 A.M. or more than 60 decibels between 8:00 A.M. and 6:00 P.M.

**4.10.** “Excess stress on the road bed, bridges and other infrastructure” means truck or heavy equipment traffic with a Gross Vehicle Weight or GVW in excess of

1,500,000 pounds per day into or out of the Site on more than 30 days per year. Gross Vehicle Weight or GVW means the licensed capacity of the vehicle as that is determined under section 341.25 Wisconsin Statutes.

- 4.11. "Excess vehicular traffic" means more than 80 vehicle units per day into or out of the Site on more than 30 days per year. A vehicle less than 10,000 pounds Gross Vehicle Weight (GVW) is one unit; a vehicle from 10,000 to 49,999 pounds GVW is 2 units; a vehicle of 50,000 or more GVW is three units. Gross Vehicle Weight or GVW means the licensed capacity of the vehicle as that is determined under section 341.25 Wisconsin Statutes. Farm tractors, farm equipment and vehicles transporting milk, grain or other non-manufactured agricultural products are not included in the calculation of vehicle units.
- 4.12. "Large Scale Commercial Activity Permit" means a permit issued by the Town Board pursuant to this ordinance authorizing the Applicant to engage in specified Large Scale Commercial Activity subject to such reasonable restrictions and conditions as may be set forth in such permit.
- 4.13. "Large Scale Livestock Facility" means a facility located in the Town on which at anytime is located more than 700 animal units calculated under Rule NR 243.05 of the Wisconsin Administrative Code. A Large Scale Livestock Facility is Large Scale Commercial Activity subject to this ordinance.
- 4.14. "Major Disturbance of the Currently Existing Soil or Topography" means an activity that requires or results in a disturbance that affects more than 50% of the Site or more than 250,000 square feet, whichever is less. A disturbance is created by covering the land with a structure, re-grading of the topography, removal of the top soil or paving.
- 4.15. "Site" means the physical location in the Town where Large Scale Commercial Activity takes place and includes all contiguous real property at such location owned or leased by the Business Entity engaged in Large Scale Commercial Activity.
- 4.16. "Town" means the Town of Laketown, Polk County, Wisconsin.
- 4.17. "Town Board" means the Town Board of the Town serving from time to time.
5. **Large Scale Commercial Activity Permit Required.** From and after the Effective Date, no Business Entity may engage in Large Scale Commercial Activity without first obtaining a Large Scale Commercial Activity Permit.
6. **Permit Application.** Any Business Entity desiring to engage in Large Scale Commercial Activity shall submit an Application to the clerk of the Town. The Application shall contain the following:
  - 6.1. The name, address, telephone number, fax number and e-mail address of the Applicant.

- 6.2. The location within the Town where the Applicant proposes to engage in Large Scale Commercial Activity.
  - 6.3. A detailed description of the proposed Large Scale Commercial Activity including an analysis of the factors contained in the above definition of Large Scale Commercial Activity.
  - 6.4. A description of any litigation or enforcement proceedings in which the Applicant and/or Affiliates have been involved as a party in the 60 month period preceding the date of the Application pertaining to the environmental consequences of activities engaged in by the Applicant and/or Affiliates.
7. **Application Processing Fee.** The Applicant shall be legally obligated to pay all reasonable expenses incurred by the Town in processing an Application. When an Application is submitted to the clerk of the Town it shall be accompanied by a certified check payable to the Town in the amount of \$2,500, as advance payment of all reasonable expenses incurred by the Town in processing the Application. From time to time, the Town Board, by resolution, may require the Applicant to provide additional funds to pay such expenses, and, pending receipt of such additional funds, the Town Board may hold in abeyance the processing of the Application. Reasonable expenses incurred by the Town in processing an Application are all costs incurred by the Town that but for the Application would not have been incurred, including, but not limited to, the costs of notice, printing, staff salaries and benefits; fees for hearing examiners, attorneys, accountants, economists, engineers, scientists, and similar professionals, and the cost of Community Impact Statements. The treasurer of the Town shall deposit any funds provided by the Applicant under this section 7 in a separate bank account and assure that such funds are used exclusively to pay such costs. Any such funds that exceed the reasonable expenses incurred by the Town in processing an Application shall be returned to the Applicant upon issuance or denial of a Large Scale Commercial Activity Permit or upon withdrawal of an Application by the Applicant.
8. **Standards.** Before granting or denying an Application, the Town Board shall determine whether the proposed Large Scale Commercial Activity satisfies, or reasonably may be expected to satisfy, each of the following standards:
  - 8.1. The proposed Large Scale Commercial Activity is consistent with the Town's Comprehensive Plan.
  - 8.2. The proposed Large Scale Commercial Activity will not result in any material adverse environmental impact within the Town.
  - 8.3. The overall community impact of the proposed Large Scale Commercial Activity will be positive, and it will not result in any material negative community impact within the Town. Community impact shall be determined with reference to the information set forth in the Community Impact Statement prepared with respect to the proposed Large Scale Commercial Activity.

- 8.4. The Applicant is financially capable of remedying any material adverse environmental or community impacts caused by the proposed Large Scale Commercial Activity.
  - 8.5. The proposed Large Scale Commercial Activity is compatible with the Town's rural character as described in the Comprehensive Plan and the preservation of such character.
  - 8.6. The proposed Large Scale Commercial Activity will not have a material adverse impact on the quiet enjoyment of the home of any inhabitant of the Town, provided such home was owned and occupied by such inhabitant at the time the Application was filed with the clerk of the Town.
9. **Community Impact Statement.** A Community Impact Statement required by this ordinance shall address in detail each of the following:
- 9.1. The economic impact on the Town of the proposed Large Scale Commercial Activity, including, but not limited to, its impact on taxes and employment and its compatibility with an economy in which the principal unit of economic production is the family owned farm.
  - 9.2. The environmental impact on the Town of the proposed Large Scale Commercial Activity, including, but not limited to, its impact on air quality, noise levels, traffic intensity, surface and ground water quality and quantity, wild life and plant life, and the relationship among living things.
  - 9.3. The impact of the proposed Large Scale Commercial Activity on the Town's physical infrastructure, including, but not limited to, roads, utilities, parks and recreational facilities located in the Town.
  - 9.4. The impact of the proposed Large Scale Commercial Activity on the health and safety of the inhabitants of the Town.
  - 9.5. The impact of the proposed Large Scale Commercial Activity on the cost of governmental services in the Town, including, but not limited to, the cost of police, fire protection, schools, welfare, waste disposal, and road maintenance and construction.
  - 9.6. The impact of the proposed Large Scale Commercial Activity on the rural character of the Town as described in the Comprehensive Plan, including, but not limited to, impact on agriculture and quiet enjoyment of the countryside.
  - 9.7. The impact of the proposed Large Scale Commercial Activity on any place, structure, or object located in the Town that has a special character, historic interest, aesthetic interest, scenic view, or other significant value.

- 9.8.** With respect to each negative community impact identified in the Community Impact Statement, a statement of measures that can be taken to mitigate such negative impact.
- 10. Procedure for Processing Applications.** Upon receipt of an Application the Town Board shall proceed as follows:
- 10.1.** No later than 30 days after receipt of an Application, the clerk of the Town shall publish a class 1 notice pursuant to Wisconsin Statutes, § 985.07(1) in the official newspaper of Polk County, Wisconsin, briefly describing the proposed Large Scale Commercial Activity and giving the location at which the public may review the Application and all supporting materials.
- 10.2.** Copies of the published notice shall be mailed by first class mail to owners of land within one mile of the boundaries of the Site of the proposed Large Scale Commercial Activity.
- 10.3.** No later than 45 days after receipt of an Application, the Town Board shall determine whether the Application is a Complete Application. If the Town Board determines the Application is not a Complete Application, it shall inform the Applicant in writing of the respects in which the Application is incomplete. Thereafter, the Applicant may supplement the Application with additional information. No later than 30 days after receipt of such additional information, the Town Board shall determine whether the supplemented Application is a Complete Application. If, after the Applicant has had an opportunity to supplement the information, the Town Board determines the supplemented Application is not a Complete Application, it shall deny the Application without prejudice to the right of the Applicant to submit a new Application.
- 10.4.** If the Town Board determines the Application is a Complete Application, it shall cause to be prepared a Community Impact Statement with respect to the proposed Large Scale Commercial Activity .
- 10.5.** Within 45 days following the completion of the Community Impact Statement provided for in sub-section 10.4 of this ordinance, the Town Board shall convene a public information hearing regarding the proposed Large Scale Commercial Activity. Such hearing shall be preceded by a class 1 notice pursuant to Wisconsin Statutes, § 985.07(1) published at least 15 but not more than 30 days before the hearing in the official newspaper of Polk County, Wisconsin, informing the public of the completion of the Community Impact Statement with respect to the proposed Large Scale Commercial Activity and giving the location at which the public may review such statement and all supporting materials. Any inhabitant of the Town who requests a copy of such statements shall be provided a copy free of charge.
- 10.6.** If a contested case hearing is not convened as provided in sub-section 10.7 of this ordinance, the Town Board, no earlier than 30 days or later than 60 days

following the public information hearing provided for in sub-section 10.5 of this ordinance, shall either grant or deny the Application. The Application shall be granted if the Town Board decides that, based on all information in the record and otherwise available to it and reasonably relied upon, the proposed Large Scale Commercial Activity satisfies each of the Standards set forth in section 8 of this ordinance, otherwise the Application shall be denied. A written copy of the Town Board's decision shall be mailed by first class mail to the Applicant and to each person who has filed a request for a copy of the decision with the Clerk of the Town.

- 10.7.** No later than 45 days after the public information hearing provided for in sub-section 10.5 of this ordinance, the Town Board may convene a contested case hearing regarding the Application. The Town Board shall convene such a contested case hearing if requested to do so by any person who is a resident or citizen of the Town, by any person that owns real estate in the Town or by any person that would be directly affected by the proposed Large Scale Commercial Activity. Such demand shall be in writing and shall be submitted to the clerk of the Town no later than 30 days after the public information hearing provided for in sub-section 10.5 of this ordinance. Once commenced, any such contested case hearing may be continued from time to time to allow for orderly resolution of the issues involved in such proceeding. Such contested case hearing shall be conducted under the rules set forth in Chapter 68 Wisconsin Statutes. Any person that owns real estate in the Town or by any person that would be directly affected by the proposed Large Scale Commercial Activity may intervene in such contested hearing with all of the rights of a party to adduce evidence, examine and cross examine witnesses, submit briefs and argue points of fact and law.
- 10.8.** If a contested case hearing is convened as provided in sub-section 10.7 of this ordinance, the Town Board, no later than 45 days following the completion of the hearing and the filing of briefs, if requested by the officer presiding at the contested case hearing, shall either grant or deny the Application. The Application shall be granted if the Town Board finds that, based upon substantial and reliable evidence adduced at the hearing the proposed Large Scale Commercial Activity satisfies each of the Standards, otherwise the Application shall be denied. In such contested case hearing the Applicant shall have the burden of persuasion. The decision of the Town Board shall be based upon a written analysis of whether the evidence adduced at the hearing demonstrates the proposed Large Scale Commercial Activity either does or does not satisfy each of the Standards set forth in section 8 of this ordinance. A written copy of the Town Board's decision shall be mailed by first class mail to the Applicant and to each person who has filed a request for a copy of the decision with the Clerk of the Town.
- 10.9.** Notwithstanding sub-sections 10.6 and 10.8 of this ordinance, the Town Board may, after conducting a contested case hearing pursuant to sub-section 10.7, grant an Application if the Town Board concludes that even though the proposed Large Scale Commercial Activity does not satisfy each of the Standards in section 8, the

evidence adduced at such hearing clearly and convincingly demonstrates the public interest will be better served by granting the Application than by denying it. Any such decision shall be accompanied by a written analysis explaining the basis of the Town Board's decision. A decision granting a Large Scale Commercial Activity Permit under this sub-section 10.9 shall not take effect until 30 days after it is issued by the Town Board. A written copy of the Town Board's decision shall be mailed by first class mail to the Applicant and to each person who has filed a request for a copy of the decision with the Town Clerk.

**10.10.** A Large Scale Commercial Activity Permit may be subject to reasonable restrictions and conditions on the Large Scale Commercial Activity permitted as determined by the Town Board and set forth in the permit.

**10.11.** Any decision of the Town Board granting or denying an Application shall be reviewable in the Circuit Court for Polk County pursuant to section 68.13 Wisconsin Statutes.

**11. Time Requirements.** The Town Board shall strive in good faith to meet the time requirements set forth in this ordinance. The failure of the Town Board to meet any such time requirements shall not, however, result in an automatic grant or denial of an Application.

**12. Enforcement.** The Town Board may commence an action in Circuit Court to enjoin any violation of this ordinance. In addition, any person with a substantial interest, including, but not limited to, an interest in environmental protection or the preservation of the rural character of the Town, that is injured or threatened with injury from proposed or actual Large Scale Commercial Activity may commence an action in Circuit Court to enjoin any violation of this ordinance. This provision is not exclusive, and is not intended to displace or otherwise affect any other remedy existing at law or equity to redress any harm resulting from Large Scale Commercial Activity.

**13. Pre-Existing Facilities.** This ordinance does not apply to any facility in operation in the Town on the Effective Date, provided, however, this ordinance shall apply to any such facility at such time as its owner or operator proposes to expand it so that the criteria set forth in section 3.2 or the related definitions are exceeded by more than 10%.

**14. Severance.** If any part of this ordinance is finally determined by a court of competent jurisdiction to be invalid, the remainder of this ordinance shall remain in full force and effect.