

Article 5 : An ordinance regulating the siting of Wind Energy Conversion Systems in Adams County, Indiana

(adopted as Ordinance 2013-02)

- 5.1 Commercial Towers
- 5.2 Private Residential Towers

5-1 Chapter 1: Commercial Towers

- 1. Introduction
- 2. Definitions
- 3. Applicability
- 4. Prohibition
- 5. Application requirements
- 6. Design and installation
- 7. Setbacks
- 8. Use of public roads
- 9. Operation
- 10. Liability insurance
- 11. Decommissioning plan

5-1-1 Introduction

A. Title

This ordinance shall amend the Adams County Zoning Ordinance and be known, cited, and referred to as the Adams County Wind Energy Siting Ordinance.

B. Purpose

This ordinance is adopted for the following purposes:

- 1. To assure that any development and production of wind-generated electricity in Adams County is safe and effective;
- 2. To facilitate economic opportunities for local residents;
- 3. To provide a regulatory scheme for the construction and operation of WECS facilities in the county, subject to reasonable restrictions that will preserve the public health and safety.

5-1-2 Definitions

- A. **Wind Energy Conversion System ("WECS")** means all necessary devices that together convert wind energy into electricity and deliver that electricity to a utility's transmission lines, including but not limited to the rotor, nacelle, generator, WECS tower, electrical components, WECS foundation, transformer, and electrical cabling from the WECS tower to the Substation(s), switching stations, meteorological towers, communications facilities, and other required facilities and equipment, as related to the WECS project.
- B. **Applicant** means the entity or person who submits to the county, pursuant to §5-1-5 of this Ordinance, an application for the siting of any WECS or Substation or thereafter operates or owns a WECS.
- C. **Financial Assurance** means reasonable assurance from a credit-worthy party, examples of which include a surety bond, trust instrument, cash escrow, or combinations thereof.

- D. **Operator** means the entity responsible for the day-to-day operation and maintenance of the WECS, including any third party subcontractors.
- E. **Owner** means the entity or entities with an equity interest in the WECS(s); including their respective successors and assigns. Owner does not mean (i) the property owner from whom land is leased for locating the WECS (unless the property owner has an equity interest in the WECS); or (ii) any person holding a security interest in the WECS(s) solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the WECS(s) within one year of such event. All provisions of this Article shall be binding upon and enforceable against the owner and all successors and assigns.
- F. **Professional Engineer** means a qualified individual who is licensed as a professional engineer in any state in the united states.
- G. **Primary Structure** means, for each property, the structure that one or more persons occupy the majority of time on that property for either business or personal reasons. Primary Structure includes structures such as residences, commercial buildings, schools, hospitals, and day care facilities. Primary structure excludes structures such as hunting sheds, storage sheds, pool houses, unattached garages, and barns.
- H. **Substation** means the apparatus that connects the electrical collection system of the WECS(s) and increases the voltage for connection with the utility's transmission lines.
- I. **Switching Station** shall be an apparatus/structure in the system similar to a substation but not necessarily increasing voltage into the grid.
- J. **WECS Project** means the collection of WECSs and Substations as specified in the siting approval application pursuant to §5-1-5 of this ordinance.
- K. **WECS Tower** means the support structure to which the nacelle and rotor are attached, free standing, or guyed structure that supports a wind turbine generator.
- L. **WECS Tower Height** means the distance from the rotor blade at its highest point to the top surface of the WECS foundation.
- M. **BOCA** refers to the Building Officials and Code Administrators International.
- N. **Environmental Assessment** means a detailed examination of the potential impacts of the Applicant's proposed WECS Project on the environment, with an emphasis on avoiding, minimizing, and mitigating adverse impacts. The Environmental Assessment shall include a description and analysis of:
1. the need for, and alternatives to, the proposed WECS Project (including a no action alternative, renewable energy alternatives, and conventional energy alternatives);
 2. the environmental consequences of the WECS Project (including impacts to wildlife, agricultural activities, biological resources, cultural resources, aesthetics, community services, housing, utility services, view sheds, neighboring landowners and residents, etc.); and
 3. the mitigation measures to be implemented to address environmental impacts that cannot be avoided

5-1-3 **Applicability**

This ordinance governs the siting of WECSs and Substations that generate electricity to be sold to wholesale or retail markets, except that owners of WECSs with an aggregate generating capacity of 3MW

or less who locate the WECS(s) on their own property must obtain a Variance to this Ordinance. WECS may be sited and operated in all areas of Adams County other than areas zoned residential.

5-1-4 Prohibition

No entity shall construct or operate a wind energy conversion system (WECS) without having fully complied with the provisions of this ordinance.

5-1-5 Application Requirements

Prior to the construction of a WECS, the applicant shall obtain approval for the following:

1. An application for a Special Use from the Adams County Board of Zoning Appeals ("BZA") to permit a WECS in any zone other than residential zoned land, as described below and in §2-4-3 of the Adams County Zoning and Land Use Ordinance (the "Zoning Ordinance"),
2. A request for Variance for any Variances anticipated on the WECS project, as described below and in §2-3-5 of the Zoning Ordinance, and
3. An Improvement Location Permit from the Adams County Building and Zoning Administrator, as described below and in §8-5-1 of the Zoning Ordinance. An applicant must make initial contact, in writing, with the Adams County Director of Building and Planning at least ninety (90) days before making application for Special Use, Variance and/or Improvement Location Permit under this article.

A. The application for a Special Use

1. The application shall be filed with the BZA and include the following items:
 - a. A WECS Project summary, including, to the extent available:
 1. A general description of the project, including its approximate name plate generating capacity; the potential equipment manufacturer(s), type(s) of WECS(s), number of WECS(s), and name plate generating capacity of each WECS; the maximum height of the WECS tower(s) and maximum diameter of the WECS(s) rotor(s); the general location of the project; and
 2. A description of the Applicant, Owner, and Operator, including their respective business structures.
 - b. The name(s), address(es), and phone number(s) of the Applicant(s), Owner, and Operator, and all property owner(s) with WECS on their properties, if known. The name, address, and phone number of each Applicant, Owner, and Operator, and of each property owner with any portion of the WECS Project proposed to be constructed on such owner's property, if known. If not known at the time of application, the application shall be supplemented when such information becomes known to Applicant.
 - c. A topographic map of the project site and the surrounding area which shall encompass an area at least a half mile radius from the proposed project site with contours of not more than two (2) foot intervals. The topographic map shall clearly detail the water shed and all Adams County legal tile and open drains.
 - d. A site plan at an appropriate scale showing (standard sheet of 36 inches by 24 inches and individual tower site not greater than 1 inch equals 20 feet): the proposed location of the wind energy facility (including planned locations of each WECS tower, guy lines, and anchor bases (if any); WECS access roads; Substations; electrical cabling; and ancillary equipment). In addition, the site plan shall show: Primary Structures within one half of

one mile of any WECS; property lines, including identification of adjoining properties; setback lines; public roads; location of all above-ground utility lines within a distance of two (2) time the WECS tower height of any WECS tower; recognized historic or heritage sites as noted by the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources; and any wetlands based upon a delineation prepared in accordance with the applicable US Army Corps of Engineer requirements and guidelines.

- e. Location of all existing underground utility lines associated with the WECS site.
- f. An Environmental Assessment, as defined at §5-1-2.N, identifying and assessing the potential impacts of the construction and operation of the WECS Project on the environment. Prior to determining whether to approve the Application for Special Use, the BZA shall retain an independent environmental professional who shall review the Environmental Assessment and make a recommendation that the Environmental Assessment:
 - 1. Be approved as submitted;
 - 2. Be approved subject to the implementation of mitigation measures identified by the environmental professional; or
 - 3. Be disapproved.

Both the Environmental Assessment and the environmental professional's recommendation shall be made available to the public for review and comment, and shall be subject to a public hearing before the BZA. The cost of such Environmental Assessment shall be at the applicant's expense. In determining whether to approve the Application for Special Use, the BZA shall give due consideration to the impacts identified in the Environmental Assessment, the recommendations of the environmental professional, and comments and information submitted by the public

- 2. In determining whether to approve the Application for Special Use, the BZA shall determine whether the Application satisfies all of the requirements in §2-4-3 of the Zoning Ordinance, and makes written findings thereof.
- 3. The Special Use granted by the BZA for a WECS Project shall be valid for a period of one (1) year, after which the Special Use shall terminate and be of no further force or effect if construction in earnest of the approved WECS has not commenced. The applicant shall be granted a one (1) year extension to two (2) years from the date of the BZA approval if the Applicant presents its request for an extension to the BZA and provides a report to the BZA which shows the progress made on the WECS project. Thereafter, an additional extension shall be at the BZA's discretion.
- 4. The fee for the Application for a Special Use shall be payable at the time of submission of the Application. The fee shall be assessed at the rate of \$5,000.00 per MW per WECS tower, with a minimum fee of \$20,000.00 per WECS tower. The application fee shall be used to defray the costs associated with processing the application for a Special Use, including professional fees and expenses.
- 5. Annual fee. In addition to the application fee, an annual fee of five thousand dollars (\$5,000.00) per tower shall be paid to the county each year thereafter. Said annual fee shall be paid on or before February 1st of each year for the prior calendar year. The annual fee shall begin the first full month after the tower begins producing power. The first year shall be prorated based upon the number of months of operation of the tower. Any such fee not paid shall be assessed as a lien upon the tower.

B. The application for Variance

1. Contemporaneously with the Application for a Special Use, the Applicant shall submit an Application for Variance for any variances sought as part of the WECS project. A single application for Variance may be submitted for all variances sought.
2. In determining whether to approve the Application for Variance, the BZA shall determine whether the Application satisfies the requirements set forth in §2-3-5 of the Zoning Ordinance, and make written findings thereof.
3. The fee for any variances is included in the Application fee.

C. The application for Improvement Location Permit

1. The applicant shall apply to the Building Commissioner for an Improvement Location Permit, as described in §8-5-1 of the Zoning Ordinance. In addition to the information required on the Improvement Location Permit application, the applicant shall provide the following information to the Building Commissioner prior to the issuance of an Improvement Location Permit:
 - a. Location of all above-ground and under-ground utility lines within a radius equal to two (2) times the height of the proposed WECS tower.
 - b. Location of all underground utility lines associated with the WECS site.
 - c. Dimensional representation of the structural components of the tower construction including the base and footings.
 - d. Schematic of electrical systems associated with the WECS including all existing and proposed electrical connections.
 - e. Manufacturer's specifications and installation and operation instructions or specific WECS design information.
 - f. Certification by a registered professional engineer that the tower design is sufficient to withstand wind load requirements for structure as defined by BOCA.
 - g. All turbines shall be new equipment commercially available. Used, experimental, or proto-type equipment still in testing shall be approved by the BZA as per the normal special exception process.
 - h. Necessary recorded access easements and necessary recorded utility easements, copies of which shall be submitted to the Adams County Building Commissioner.
 - i. No appurtenances other than those associated with the wind turbine operations shall be connected to any wind tower except with express, written permission by the BZA.
 - j. A transportation plan showing how vehicles would access the site and describing the impacts of the proposed energy project on the local and regional road system during construction and operation.
 - k. A revegetation plan for restoring areas temporarily disturbed during construction.
 - l. A fire protection plan for construction and operation of the facility.

- m. Any other item reasonably requested by the BZA.
 - n. A drainage plan for construction and operation must be developed and approved by the Adams County Drainage Board.
 - o. An erosion control plan must be developed in consultation with the Adams County Soil and Water Conservation District.
2. Each WECS tower shall require an improvement location permit. The fee for each Improvement Location Permit shall be \$2,500.00, which shall be used to defray the costs of professional services, as well as other expenses associated with the issuance of Improvement Location Permits.

5-1-6 Design and Installation

A. Design Safety Certification

- 1. WECSs shall conform to applicable industry standards. Applicant shall submit certificate(s) of design compliance that wind turbine manufacturers have obtained from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energy, or an equivalent third party.
- 2. Following the granting of siting approval under this Ordinance, a Professional Engineer shall certify, as part of the building permit application that the foundation and tower design of the WECS is within accepted professional standards, given local soil and climate conditions.

B. Controls and Brakes

All WECS shall be equipped with a redundant braking system. This includes both aerodynamic over speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for over speed protection.

C. Electrical Components

- 1. All electrical components of the WECS shall conform to applicable local, state, and national codes, and relevant national and international standards.
- 2. Electrical Collection Cables all WECS electrical collection cables between each WECS shall be located underground unless they are located on public or utility rights-of-way or with prior county approval. All transmission lines that are buried should be at a depth consistent with or greater than local utility and telecommunication underground lines standards or as negotiated with the land owner or the land owner's designate until the same reach the property line or a substation adjacent to the property line.
- 3. All electrical cables crossing any county legal drain or private mutual tile shall be buried at a depth of at least five (5) feet below the existing legal drain or mutual tile unless the county surveyor specifically gives written approval of a lesser depth.

D. Color

- 1. Towers and blades shall be painted white or gray or another non-reflective, unobtrusive color.
- 2. The applicant for the WECS shall comply with all applicable FAA requirements.

E. Warnings

1. A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
2. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of not less than 15 feet from the ground.

F. Climb Prevention

All WECS tower designs must include features to deter climbing or be protected by anti-climbing devices such as:

1. Fences with locking portals at least six feet high; or
2. Anti-climbing devices 15 feet vertically from the base of the WECS tower.
3. Locked WECS tower doors.

G. Blade clearance

The minimum distance between the ground and any protruding blade(s) utilized on a WECS shall be seventy-five (75) feet, as measured at the lowest point of the arc of the blades. The minimum distance shall be increased as necessary to provide for vehicle clearance in locations where over-sized vehicles might travel.

H. Noise and vibration

Sound pressure levels shall be measured by engineers from the Institute of Noise Control Engineering (INCE) before and after installation of turbines to each adjacent non-participant property line. Post installation sound pressure levels shall not exceed preconstruction sound levels more than 5dB and shall not exceed 45dB to adjacent non-participant property lines. Owner/operator shall incur all costs for measurements. There shall be no conflict of interests of the testing company or testing engineer. The data is to be reported and recorded to the proper designated county authority.

I. Utility Interconnection

The WECS, if interconnected to a utility system, shall meet the requirements for interconnection and operate as set forth in the electrical utility's then-current service regulations applicable to WECS.

J. Waste Management

All solid waste whether generated from supplies, equipment, parts, packaging, or operation or maintenance of the facility, including old parts and equipment, shall be removed from the site within forty-five (45) days of the date of receiving notice from a County representative. All HAZARDOUS WASTE generated by the operation and maintenance of the facility, including but not limited to lubricating materials, shall be handled in a manner consistent with all local, state, and federal rules and regulations.

K. Lighting

1. Except with respect to lighting required by the FAA all lighting shall be shielded so that no glare extends substantially beyond the boundaries of the wind farm facilities.
2. Any WECS thereof declared to be unsafe by the Adams County Building Inspector by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures set forth in the County Ordinances governing the removal of Nuisances.

L. Ordinance Governing Shadow Flicker

WECS towers shall be designed and sited so that shadow flicker and/or blade reflection will not fall on a non-participating residence or any area designed to be occupied or inhabited by humans or confined animals. Exceptions to this standard may be made based on the following condition only if the flicker or reflection does not exceed 45 hours per year or 30 minutes per day. (special consideration shall be made for schools and churches to be designed for zero flicker during any period when the school or church is in session).

- M. All repairs, maintenance and general upkeep of WECS shall be carried out in such a way that all WECS are of the same color. All repairs and all removal of graffiti shall be completed within 45 days of the date that notice is given by a County Representative. All WECs shall be maintained in a sightly manner.
- N. The owner of the WECs shall not impede the natural flow of water from adjacent property owners nor prohibit any neighboring property owner from access to county legal drains.
- O. The applicant shall post a bond in a form acceptable to Adams County in the sum of One Million Dollars (\$1,000,000.00) for each turbine proposed to be constructed during the project. The purpose of the bond shall be to secure and guarantee the completion of the project according to the standards of this ordinance and to secure and cover any damage to county infrastructure which may be uncured. Upon completion and approval of the project by the Adams County Building Inspector and after a period of one year from the date of completion, said bond shall be released.
- P. **Compliance with additional regulations:**
Nothing in this ordinance is intended to preempt other applicable state and federal laws and regulations.

5-1-7 Setbacks

- A. No WECs shall be constructed in any setback, dedicated public easement or dedicated public right-of-way without prior written authorization from the county.
- B. The minimum setback distance for turbines of 1.0MW or more from a residence, church, business or school shall be 600 feet or 1.5 times the height of the tower (measuring from the base of the tower to the top of the blade at its highest point), whichever is greater. All distances shall be measured from the center of the foundation at the base of the tower. There shall be no Variance from or permit granted for the placement of a turbine from a residence of less than 600 feet or 1.5 times the height of the tower as above determined. In addition to the minimum setback requirement of 600 feet from all residences, the applicant for a wind turbine shall also obtain the written approval for the construction and placement of a turbine from the owners of all real estate located within a distance of one quarter (1/4) mile or one thousand three hundred twenty (1,320) feet from the base of the wind turbine tower. Such written approval must be presented to the board at the hearing on application for Variance. Further, in the event that a wind turbine manufacturer has established guidelines or standards for a safe distance from its wind turbine, then that manufacturer's wind turbine shall not be placed closer to a residence, school, business or church than the wind turbine manufacturer's recommended safety distance. However, under no circumstance shall a wind turbine tower be located closer than 600 feet or 1.5 times the height of the tower, whichever is greater.
- C. The setback distance for the WECS will be 1500 feet from any platted community under the zoning jurisdiction of a municipality. Distance shall be measured from the center of the foundation at the base of the WECS to the closest Corporate Limit boundary line.
- D. The setback distance for a substation or switching station shall be six hundred (600) feet from any occupied residence, church, business, or school. Said setback shall be measured from the fence surrounding the substation or switching station. There may be a Variance from this setback

requirement with both the written authorization of the owner(s) of the residence and the approval of the Board.

5-1-8 Use of Roads/Services

An applicant, owner, or operator proposing to use any county road(s), for the purpose of transporting WECS or substation parts and/or equipment for construction, operation, or maintenance of the WECS(s) or substation(s), shall prior to construction:

A. Enter into a Transportation Agreement

The Applicant / Developer shall enter into a transportation agreement with the commissioners or Adams County, the Superintendent of the Adams County Highway Department and the Adams County Surveyor, which transportation agreement will separately address and provide for:

1. Which roads may be used by the Developer and its contractors;
2. A timeline for when all repairs must be complete;
3. Permits;
4. Overhead crossings;
5. Installation requirements for transmission line poles;
6. Financial assurance;
7. Road repairs during construction;
8. Driveways;
9. Road improvements;
10. Local traffic coordination;
11. Global positioning system (GPS) to map the routes and locations of all heavy equipment;
12. Identification of pre-construction road conditions;
13. Liability

B. Identify all such public roads, public bridges, county legal tiles, private tiles, culverts, ditches, and all other county services;

1. Roads and roadways

- a. Any proposed routes that will be used for construction and maintenance purposes shall be identified. If the route includes a public road, it must be approved by the Adams County Highway Supervisor. The supervisor shall conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage.
- b. Any road damage caused by the construction of the WECS Project equipment, the installation of same, or the removal of same, must be repaired to the satisfaction of the Adams County Highway Supervisor. The supervisor shall choose to require either remediation of road repair upon completion of the project or are authorized to collect fees for oversized load permits. Further, a corporate surety bond in an amount to be fixed by a Professional Engineer may be required by the supervisor to insure the county that future repairs are completed to the satisfaction of the unit of local government. The cost of bonding is to be paid by the applicant. Newly constructed WECS access roads may not impede the flow of water.
- c. Any damages to witness posts, perpetual corner stones, and any other surveying markers shall be replaced by the applicant to the specifications of the Adams County Surveyor or his designee, or in the alternative shall reimburse Adams County for the cost of time and materials in repairing any such damages.
- d. Any damages to tiles up to 20 feet on either side of the area traversed by any heavy equipment shall be repaired by or at applicant's cost.

2. **Dust control**
Reasonable dust control measures will be required by the county during construction of the WECS.
3. **Sewer and Water**
Any facility shall comply with existing septic and well regulation as required by the Adams County Health Department and the State of Indiana Department of Public Health.
4. **Drainage Repair**
All damages to waterways, drainage ditches, field tiles, or any other infrastructures caused by the construction or maintenance of the WECS, must be completely repaired to near original condition, and so as not to impede the natural flow of water. All repairs must be completed within a reasonable amount of time and be approved by the Adams County Surveyor. Reasonable time is defined as 30 days from the date any such damage occurs or is discovered, or as dictated by the Adams County Project Coordinator.

5-1-9 Operation

A. Maintenance / Inspection

1. The Owner or Operator of the WECS must submit, on an annual basis, a summary of the operation and maintenance reports to the County. In addition to the above annual summary, the Owner or Operator must furnish such operation and maintenance reports as the County reasonably requests.
2. Any physical modification to the WECS that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification. Like-kind replacements shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement), the owner or operator shall confer with the Building Commissioner to determine whether the physical modification requires re- certification.
3. The Adams County Building Commissioner staff, along with licensed 3rd party professionals retained by the County for the specific purpose of conducting inspections of the WECs shall have the right, at any reasonable time and with sufficient prior notice, to accompany the owner or operator, or his agent, on the premises where a WECs has been constructed, to inspect all parts of said WECs installation and to require that repairs or alterations be made. The owner or operator of a WECs may retain a licensed 3rd party professional engineer familiar with WECS systems to prepare and submit to the Adams County Building Commissioner staff a written report which addresses the repairs or alterations requested, and which suggests alternate methods for addressing the concerns or provides evidence that said repairs or alterations are unnecessary, within fifteen (15) days after receiving notice from the Adams County Building Commissioner staff that repairs or alterations are requested, or within a longer period of time mutually acceptable to both parties. The Adams County Building Commissioner staff will consider any such written report and determine whether the repairs or alterations should be made as originally requested or as suggested in the written report. In the event of a dispute between the Adams County Building Commissioner staff and the owner or operator, or a 3rd party professional engineer retained by them, as to the repairs or alterations which are required, the decision of the Building Commissioner shall be final.
4. Inspections, at a fee to be determined from time to time by the Adams County Plan Commission and paid by the applicant, may be made by the Adams County Building Commissioner, or by a qualified inspector for equipment of this type selected by the Adams County Building Commissioner, no more than once annually to certify the safety and maintenance of the WECS and accessory structures.

B. Interference

The WECS Project and each WECS Tower shall be designed, sited, and operated so that they do not interfere with emergency communications, or with television, telephone, microwave, satellite, navigational, internet, or radio reception. The owner and operator shall be jointly and severally responsible for the full cost of any remediation necessary to provide equivalent alternate service or correct any problems, including relocation or removal of any WECS tower and associated facilities. The owner/operator shall respond within five business days to any request for communications or signal interference investigation by any emergency agency or by any landowner or resident located within a two-mile radius of a WECS tower. Testing for interference shall commence within ten business days of the request. The owner/operator shall be responsible for eliminating the interference, or providing equivalent alternate service, within ten business days from a determination that the interference is attributable to the operation of the WECS tower or associated facilities.

C. Coordination with Local Fire Department

1. The Applicant, Owner, or Operator shall submit to the local fire department a copy of the site plan.
2. Upon request by the local fire department, the Owner or Operator shall cooperate with the local fire department to develop the fire department's emergency response plan.
3. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.

D. Materials Handling, Storage, and Disposal

1. All solid wastes related to the construction, operation, and maintenance of the WECS shall be removed from the site promptly and disposed of in accordance with all federal, state, and local laws.
2. All hazardous materials or waste related to the construction, operation, and maintenance of the WECS shall be handled, stored, transported, and disposed of in accordance with all applicable local, state, and federal laws.

5-1-10 Liability Insurance

The owner or operator of the WECS(s) shall maintain a current general liability policy at all times covering bodily injury and property damage and name Adams County, Indiana as an additional insured with limits of at least:

- A. Five million dollars (\$5,000,000.00) per claim of bodily injury, death, disability, or dismemberment and fifteen million dollars (\$15,000,000.00) in the aggregate for each incident.
- B. Property damage liability policy limits shall be a minimum of two million dollars (\$2,000,000.00) per claim and ten million dollars (\$10,000,000.00) in the aggregate for each incident. The amounts of the above liability insurance shall be the minimum amount of coverage. Said amounts shall be adjusted annually based upon changes in the "Consumer Price Index" (CPI) as determined by the US Department of Labor, Bureau of Labor Statistics, with January 1, 2012 being the base period for calculating future changes in the CPI. A copy of the policy of insurance coverage shall be filed with the Auditor of Adams County annually.

5-1-11 Decommissioning Plan

Prior to receiving siting approval under this ordinance, the county and the applicant, owner, and/or operator must formulate a decommissioning plan to ensure that the WECS Project is properly decommissioned. The decommissioning plan shall include:

- A. Assurance that the facilities are properly decommissioned upon the end of the project life or facility abandonment. Applicant's obligations with respect to decommissioning shall include removal of all physical material pertaining to the project improvements to a depth of 48" beneath the soil surface, and restoration of the area occupied by the project improvements to as near as practicable to the same condition that existed immediately before construction of such improvements. Prior to issuance of a building permit, the Applicant shall provide a contractor cost estimate for demolition and removal of the WECS facility, which plan and cost shall be approved by the County Director of Building and Planning and the Adams County Attorney, and will provide financial assurance in an amount at least equal to said demolition and removal contractor cost estimate, through the use of a bond from an "A" rated or better insurance company, or other security acceptable to the County, for the cost of decommissioning each tower to be constructed under that building permit, which security shall be released when such tower is properly decommissioned as determined by the Adams County Building Commissioner. The contractor cost estimate for the decommissioning and the corresponding bond shall be updated at the Applicant's expense on the five (5) year anniversary of the completion of the turbine and every five (5) years thereafter. Proof of such security shall be updated and maintained with the auditor of Adams County, Indiana on an annual basis. In the event of abandonment by the owner or operator, the applicant will provide an affidavit to the Adams County Building Commissioner representing that all easements for wind turbines shall contain terms that provide financial assurance, including access to the salvage value of the equipment, for the property owners to ensure that facilities are properly decommissioned within twelve (12) months of expiration or earlier termination of the project.
- B. The Applicant's, Owner's, or Operator's failure to materially comply with any of the above provisions shall constitute a default under this ordinance.
- C. Prior to implementation of the existing County procedures for the resolution of such default(s), the appropriate County body shall first provide written notice to the owner and operator, setting forth the alleged default(s). Such written notice shall provide the owner and operator a reasonable time period, not to exceed 60 days, for good faith negotiations to resolve the alleged default(s).
- D. If the County determines in its discretion, that the parties cannot resolve the alleged default(s) within the good faith negotiation period, the existing County ordinance provisions addressing the resolution of such default(s) shall govern.

5-1-12 Residential Property Value Protection Plan:

- A. The Applicant must provide the Residential Property Value Protection Plan (RPVPP) to all non-participating property owners who: (1) own residential property located within two (2) miles from the base of any proposed WECS tower that is part of the WECS project, and (2) have not signed any mitigation waivers. For the purposes of this Ordinance, "Residential Property" shall mean real property on which is located an existing residence or a residence that is under construction. A residence shall be considered "under construction" if a building permit authorizing such construction has been issued by Adams County and remains in effect. The term "non-participating property owner" refers to a landowner who has not entered into a lease agreement with the Applicant, Owner, or Operator concerning the WECS project.
- B. Prior to being issued a Special Use for its WECS project, the Applicant shall give personal, written notice to each owner of residential property who meets the criteria set forth in Paragraph A above that their property is eligible for the RPVPP. Copies of such notices shall be filed with the BZA. The notice shall explain that the property owner is eligible for the RPVPP as described in and provided by the residential value protection agreement in the form set forth in exhibit a to this ordinance. The property owner may choose to utilize the Exhibit A form, in which case both the property owner and the applicant shall enter into the agreement set forth in Exhibit A. The agreement form given in Exhibit A is provided for the convenience of the applicant and eligible property owners, and Adams County makes no representations or warranties concerning such form.

- C. The written notice referenced in paragraph B above shall also provide that if the property owner prefers, it may choose to enter into negotiations with the applicant for a different property value protection agreement than the one provided in Exhibit A. In that event, the property owner and applicant may utilize whatever agreement form is negotiated between them. If the parties are unable to reach agreement as to the use of a different form; then at the request of the property owner, the parties shall use the exhibit a form.
- D. Any property owner eligible for the RPVPP may choose to waive its right to take advantage of the RPVPP.
- E. If a property owner has not selected and entered into an agreement as described in Paragraphs B or C above within ninety (90) days of receipt of the notice referenced in Paragraph B above, such property owner shall be deemed to have waived its right to take advantage of the RPVPP.
- F. Prior to receiving a Special Use for the WECS project, the applicant shall provide to the BZA, for each non-participating property owner meeting the eligibility criteria of Paragraph A above, evidence of the residential property value protection agreement entered into by such property owner and the applicant, or evidence of a waiver by the property owner of the right to have such an agreement.
- G. Prior to receiving authorization for a Special Use for the WECS project, the applicant shall secure financial assurance, and file proof of same with the BZA, sufficient to guarantee the applicant's performance of its obligations under each of the agreements entered into pursuant to this §5-1-12, but in no event shall such financial assurance be for less than fifty percent (50%) of: (i) the then current assessed value of the residence as made by Adams County (for existing residences), or (ii) the projected total cost of construction (for residences under construction). Such financial assurance shall be for the benefit of each property owner who enters into an agreement with the applicant pursuant to this §5-1-12, and shall remain in effect throughout the term of each such agreement.
- H. The applicant may not at any time assign or transfer any portion of its interest in the WECS Project unless and until the assignee or transferee shall have assumed in writing the obligations and duties set forth in each and every property value protection agreement pertaining to the WECS project that has been entered into by the applicant.
- I. This section 5-1-12 shall remain in effect for a period of seven (7) years after the wind turbine becomes operational and shall be enforceable only by the owner of the property at the time of the execution of a RPVPP agreement, and shall have made the financial assurance arrangements and demonstration required under §5.1.12.G above. This section 5-1-12 shall not be assignable or transferable by the property owner, but shall remain in effect for any heir or devisee of the property owner.
- J. Except as otherwise provided in an agreement entered into between the applicant and an eligible property owner, agreements made pursuant to this §5-1-12 shall be for a term of seven (7) years after each agreement's effective date, and shall be enforceable only by the owner of the property who executes the agreement and its heirs, devisees, personal representatives, and permitted successors and assigns.

5-1-13 Requirements of these ordinances may be waived by the Adams County Board of Zoning Appeals upon application and after public hearings.

5-2 Chapter 2: Non-Commercial-Private Towers

A private wind energy conversion system shall meet the following standards:

5-2-1 Permitting and Application Requirements are as Follows:

- A. Prior to receiving an Improvement Location Permit the applicant must provide a map of the project area, including distances of the proposed WECS turbine from all property lines, public easements and right-of-ways, wells and septic systems, and overhead transmission or distribution lines or dwellings, and all county legal tiles and open drains.
- B. The applicant must submit turbine technical specifications with the application. At a minimum, the specifications must include; rated power generating capacity, rotor diameter, swept area, and the level of sound generated. If manufacturer's specifications are not available, the applicant may submit results from a reliable testing entity such as the National Renewable Energy Laboratory or the Small Wind Certification Council. If no specifications are available, the applicant must submit a report from a qualified engineer.
- C. The applicant must submit tower specifications with the application including type and height of tower (guyed, lattice, monopole, etc.) And combined height of the tower and turbine with vertically extended blade.
- D. The applicant must apply for a Special Use permit to install a residential WECS in any area that is zoned residential or in any area that has been subdivided in an agricultural zone.

5-2-2 Design and Installation Standards Shall Be as Follows:

- A. The minimum distance between the ground and any protruding turbine blades is thirty (30) feet.
- B. Installation of any WECS tower may not be nearer than 1.1 times the height of the tower including the blade at its highest point, to any property lines, dedicated roadway, railroad right-of-way, or overhead electrical transmission or distribution lines. Distance shall be measured from the center of the foundation at the base of the tower.
- C. No WECS turbine may be attached to any dwelling structure, including by guy wires.
- D. For all guyed towers install either (A) visible reflective colored objects such as flags, reflectors, or tape on the anchor points of guy wires and along the guy wires up to a height of not less than 15 feet from the ground, which flags, reflectors, or tape shall be maintained over time by owner; or (B) a single visible fence to a height of not less than four (4) feet such that it surrounds the tower and all anchor points of the guy wires.
- E. All electrical components of the WECS shall conform to applicable local, state, and national codes, and relevant national and international standards.
- F. All WECS turbines shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Stall regulation shall not be considered a sufficient braking system for over-speed protection.
- G. Towers and blades shall be painted with non-reflective white or gray color. The applicant shall comply with all applicable federal aviation administration color requirements. No advertising or signage shall be allowed on a WECS, except for Manufacturers name on the nacelle.
- H. All blades shall utilize stick-free surface coatings to minimize ice buildup.
- I. Sound pressure levels may not exceed 45 decibels at six feet in height at any adjacent lot line.
- J. Electricity generated from the WECS may not be sold to a utility. Net metering is permitted.

- K. Minimal lighting should be used. All lighting shall be in compliance with applicable federal aviation administration regulations and the lighting requirements of this ordinance. Red strobe lights are preferred during the night to reduce impacts on migrating birds and red pulsating incandescent lights should be avoided. White strobe lights at night are not allowed. All lighting shall be shielded so that no glare extends substantially beyond the WECS tower.
- L. All WECS shall be installed with anti-climbing devices.
- M. The applicant must comply with all utility company set back requirements prior to being issued a building permit to erect a residential WECS.

Adoption:

Effective date. This ordinance shall take effect upon its passage and publication as required by law.

Part of county code of ordinances. Upon this ordinance becoming effective, the same shall thereupon and thereafter be known as Article 5 of "the code of the County of Adams, State of Indiana" and shall then be and become a part of such County Code of Ordinances.

Repealer. All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict hereby repealed.

