

# Montgomery County Board of Commissioners

## Ordinance 2020-27

### **An Ordinance Adopting Text Amendment to Zoning Ordinance Permitting Solar Facilities and Making Technical Corrections**

**Whereas**, on June 24, 2020, the Montgomery County Plan Commission approved a favorable recommendation for text amendments to the Montgomery County Zoning Ordinance which would permit solar facilities in agricultural and industrial districts, add fees for the processing of requests for such facilities, add definitions for such facilities, and make certain technical changes to the composition of the Plan Commission, as required by a new law which became effective July 1, 2020; and

**Whereas**, the Plan Commission certified its recommendation to the Montgomery County Board of Commissioners (the “Board”), and the Board published notice that it would consider the proposed text amendment on July 13, 2020; and

**Whereas**, the proposed text amendment would add a new article, Article 13, to the Zoning Ordinance, and this Article permits solar facilities in the Agriculture and Industrial Zoning Districts and establishes regulations and procedures for the issuing of permits for such facilities, and makes changes to Article 3 regarding the composition of the Plan Commission, as required by law, adds definitions regarding solar facilities to Article 9, and adds solar facility fees to Article 12; and

**Whereas**, because this text amendment received a favorable recommendation from the Plan Commission, the Board must either adopt, reject, or amend the proposed text amendment to the Zoning Ordinance; and

**Whereas**, the Commissioners, having considered the recommendation of the Plan Commission, public comments and written correspondence from citizens regarding the proposed text amendments to the Zoning Ordinance, now find as follows:

1. The proposed text amendments to the Zoning Ordinance are consistent with the Comprehensive Plan in that it permits Solar Facilities in the Agriculture and Industrial Districts;

2. The proposed text amendments to the Zoning Ordinance pay reasonable regard to current conditions and the character of current structures and uses in each district by permitting solar facilities but providing set-backs and buffer zones between such facilities and residences;

3. The proposed text amendments to the Zoning Ordinance pay reasonable regard to the most desirable use for which land in each district is adapted by allowing solar facilities in Agricultural Districts in order to allow landowners to maximize income derived from their land and in Industrial Districts in order to allow landowners to diversify energy sources for operations and/or generate income from land not directly used for manufacturing processes;

4. The proposed text amendments to the Zoning Ordinance promote the conservation of property values throughout the unincorporated areas of the County by establishing general regulations regarding the siting of solar facilities and providing for buffers between such uses and residential uses; and

5. The proposed text amendments to the Zoning Ordinance promote responsible development and growth by regulating the siting of solar facilities in order to mitigate conflicting uses.

Whereas, the Commissioners also find that the proposed text amendments to the Zoning Ordinance should be adopted and incorporated into the County Zoning Ordinance; and

Whereas, the Auditor will record this ordinance and the text amendments to the Zoning Ordinance in the Office of the Recorder.

**IT IS, THEREFORE ORDAINED** that the proposed text amendments to the Zoning Ordinance, namely new Article 13, and changes to Articles 3, 9 and 12 attached to this ordinance, are hereby adopted and hereby incorporated into the Zoning Ordinance.

**IT IS FURTHER ORDAINED** that the Auditor will record this ordinance and the text amendments to the Zoning Ordinance in the Office of the Recorder of Montgomery County.

**IT IS FURTHER ORDAINED** that the text amendments to the Zoning Ordinance will become effective on August 1, 2020.

**IT IS FURTHER ORDAINED** that any other provision of the County Code which is not specifically amended by this ordinance shall remain in full force and effect.

Adopted this 13th day of July, 2020.

**Montgomery County Board of Commissioners:**

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James D. Fulwider, President

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John Frey, Vice President

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Dan Guard, Member

**Attest:**

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Jennifer Andel, Auditor

This ordinance was prepared by Daniel L. Taylor, Attorney-at-Law, Taylor, Chadd, Minnette, Schneider & Clutter, P.C., 105 North Washington Street, Crawfordsville, Indiana 47933. Telephone 765-361-9680.

I affirm under penalties for perjury that I have taken reasonable care to redact each social security number in this document, unless required by law.

Daniel L. Taylor

ZONING ORDINANCE – MONTGOMERY COUNTY, INDIANA

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## ARTICLE 1 – BASIC PROVISIONS

- 1.01 TITLE:** The official title of this Ordinance is: “Zoning Ordinance of Montgomery County, Indiana.”
- 1.02 AUTHORITY:** This Ordinance is adopted pursuant to the Indiana Code 36-7 et seq., and all acts supplemental and amendatory thereto.
- 1.03 COMPLIANCE:** No structure shall be located, erected, constructed, reconstructed, moved, converted, or enlarged; nor shall any structure or land be used or be designed to be used, except in full compliance with all the provisions of this Ordinance and after the lawful issuance of the permits required by the Ordinance.
- 1.04 SEVERABILITY:** If any provision of this Ordinance or the application of any provision to particular circumstances is held invalid, the remainder of the Ordinance or the application of such provision to other circumstances shall not be affected.
- 1.05 JURISDICTION AREA:** This Ordinance shall apply to all unincorporated land within Montgomery County.
- 1.06 APPLICATION:** It is not intended by this Ordinance to interfere with, abrogate or amend any existing easements, covenants, or other agreements between parties, nor is it intended by this Ordinance to repeal, abrogate, annul or in any way interfere with any existing provisions of laws or ordinances, or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings or premises provided, however, that where this Ordinance imposes a greater restriction upon the use of buildings or premises than is imposed or required by such existing provisions of law or by such rules, regulations, agreements, covenants, or permits, the provisions of this Ordinance shall control; but where such private covenants, permits, agreements, rules or regulations impose a greater restriction than is imposed by this Ordinance, the greater restriction shall control.

## ARTICLE 2 – DISTRICT REGULATIONS

**2.01 ZONE MAPS:** A “Zone Map” of Montgomery County in Montgomery County is hereby adopted as a part of this Ordinance and is marked Appendix A. The Zone Map shall be kept on file and available for examination at the Office of the Zoning Administrator.

**2.02 ZONING DISTRICTS:** The entire unincorporated area of Montgomery County is divided into the districts stated in this Ordinance as shown by the district boundaries on the Zone Maps. The districts are as follows:

- “A” Agricultural
- “C” Commercial
- “T” Industrial
- “PUD” Planned Unit Developments
- “R” Residential

The districts designated by this Section and defined by Sections 203 thru 208 of this Ordinance and Permitted Uses, Table A, shall control the zoning of all land within the jurisdiction of this Ordinance, except land defined and determined to be within the jurisdiction of Section 209, Flood Districts, of this Ordinance.

**2.03 DISTRICT BOUNDARIES:** District boundaries shown within the lines of streets, streams, and transportation rights-of-way shall be deemed to follow their centerlines. The vacation of streets shall not affect the location of such district boundaries.

**2.04 AGRICULTURAL (A) DISTRICT:** The district designated for agriculture, “A”, is intended for areas that cannot feasibly be served with public water and sewer facilities. This district will preserve and protect agricultural land from undesirable urban growth while permitting limited residential development on large-size lots that provide adequate space for private water and sewage facilities.

**2.05 COMMERCIAL (C) DISTRICT:** The district designated for business, “C”, is limited to business and certain public uses. By establishing compact districts for such uses, more efficient traffic movement, parking facilities, fire protection, and police protection may be provided.

**2.06 INDUSTRIAL (I) DISTRICT:** The district designated for industry, “I”, provides suitable space for existing industries and their expansion as well as for future industrial development. The locations of the districts are near railroads or highways in order to meet the transportation needs of industry.

- 2.07 RESIDENTIAL(R) DISTRICT:** The district designated for residential use, “R”, is limited to dwellings and public or semi-public uses which are normally associated with residential districts and those which would not detract from the residential character of the neighborhood. The purpose of this district is to create an attractive, stable, and orderly residential environment.
- 2.08 PLANNED UNIT DEVELOPMENT (PUD) DISTRICT:** This district is established to provide for the development of mixed-use zoning districts as provided for in Indiana Code §37-7-4-1500 et seq. A Planned Unit Development District is a district for which a Planned Unit Development ordinance has been adopted. The adopted ordinance establishes the land use and zoning regulations for the district.
- 2.09 FLOOD CONTROL REGULATIONS:** Montgomery County shall acknowledge the most current model floodplain ordinance from the Indiana Department of Natural Resources Division of Water.
- 2.10 USES:** The permitted uses for each district are shown on Table A. The uses that are listed for the various districts shall be according to the common meaning of the term or according to definitions in this Ordinance. Permitted uses as defined under this Section shall be subject to all the conditions and restrictions set out in this Ordinance and all provisions thereunder. Uses allowed by special exception are allowed only with the approval of the Board of Zoning Appeal in those districts provided for in the Use Table (Table A).

**TABLE A  
USE TABLE**

**A, AGRICULTURE DISTRICT  
PERMITTED USES**

- |                                       |   |
|---------------------------------------|---|
| 1. Accessory Uses                     | 15. Machine & Welding Shops                       |
| 2. Agriculture & Agriculture Building | 16. Manufactured/Mobile Homes                     |
| 3. Airports                           | 17. Mineral Excavations                           |
| 4. Bed & Breakfast                    | 18. Private Air Strips                            |
| 5. Cemeteries                         | 19. Private Clubs & Camps                         |
| 6. Churches                           | 20. Public Parks & Playgrounds                    |
| 7. Commercial Recreational Uses       | 21. Recycling Collection Points                   |
| 8. Essential Services                 | 22. Riding Stable                                 |
| 9. Farm Equipment Sales & Service     | 23. Schools; Public & Parochial                   |
| 10. Fertilizer, Sales & Storage       | 24. Single-Family Dwellings                       |
| 11. Grain Elevators & Feed Mills      | 25. Tanks, Bulk Storage                           |
| 12. Greenhouses & Nurseries           | 26. Telecommunications Facilities                 |
| 13. Golf Courses                      | 27. Veterinary Hospitals                          |
| 14. Home Occupations/Day Care         | 28. Confined Feeding Operations                   |
|                                       | 29. Solar Energy Systems, Farms and<br>Facilities |

**C, COMMERCIAL DISTRICT  
PERMITTED USES**

- |                                       |                                     |
|---------------------------------------|-------------------------------------|
| 1. Accessory Uses                     | 17. Print Shops                     |
| 2. Automobile sales, service & repair | 18. Private Clubs                   |
| 3. Churches                           | 19. Public Parks                    |
| 4. Cleaning & Laundry plants          | 20. Public & Parochial Schools      |
| 5. Commercial Recreation Uses         | 21. Public Transportation Terminals |
| 6. Commercial Schools                 | 22. Recycling Collection Points     |
| 7. Convenience Stores                 | 23. Research Laboratories           |
| 8. Day Care Centers                   | 24. Residential, upper-story        |
| 9. Drive-In Business                  | 25. Restaurants                     |
| 10. Essential Services                | 26. Retail Business                 |
| 11. Farm implement sales & service    | 27. Service Stations                |
| 12. Funeral Homes                     | 28. Supply Yards                    |
| 13. Hospitals & clinics               | 29. Theaters                        |
| 14. Hotels & Motels                   | 30. U-Store warehouses              |
| 15. Machine & Welding Shops           | 31. Veterinary Hospitals & Clinics  |
| 16. Offices                           | 32. Wholesale Businesses            |

**I, INDUSTRIAL DISTRICT  
PERMITTED USES**

- |   |  |
|---|--|
| 1. Airports                             | 16. Recycling Centers                          |
| 2. Asphalt Mixing Plants                | 17. Recycling Collection Points                |
| 3. Automobile Sales, Service, & Repair  | 18. Research & Testing Laboratories            |
| 4. Automobile & Truck Body Shop         | 19. Service Stations                           |
| 5. Bulk Fuel Storage                    | 20. Stockyards & Slaughterhouses               |
| 6. Concrete Mixing Plants               | 21. Supply Yards                               |
| 7. Convenience Stores                   | 22. Tanks, Bulk Storage                        |
| 8. Essential Services                   | 23. Telecommunications Facilities              |
| 9. Farm Equip. Sales, Service, & Repair | 24. Truck & Railroad Terminals                 |
| 10. Fertilizer Plants                   | 25. U-Store Warehouses                         |
| 11. General Manufacturing               | 26. Warehouses                                 |
| 12. Grain Elevators & Feed Mills        | 27. Water & Sewage Treatment Plants            |
| 13. Machine and Welding Shops           | 28. Wholesale Business                         |
| 14. Mineral Excavation                  | 29. Micro Wind System or tower                 |
|   | 30. Solar Energy Systems, Farms and Facilities |

**I, INDUSTRIAL DISTRICT  
SPECIAL EXCEPTION USES**

1. Wind Turbines
2. WECS
3. Sanitary Landfill
4. Waste Transfer Station
5. Meteorological Testing Towers more than 120 feet in height

**R, RESIDENTIAL DISTRICTS  
PERMITTED USES**

- |                               |                                 |
|-------------------------------|---------------------------------|
| 1. Accessory Uses             | 11. Multi-family Dwellings      |
| 2. Bed & Breakfast            | 12. Nursery Schools             |
| 3. Churches                   | 13. Nursing Homes/Asst living   |
| 4. Condominiums               | 14. Public Parks & Playgrounds  |
| 5. Essential Services         | 15. Public & Parochial Schools  |
| 6. Funeral Homes              | 16. Recycling Collection Points |
| 7. Home Occupations/Day Care  | 17. Residential Subdivisions    |
| 8. Garden Homes               | 18. Single-Family Dwellings     |
| 9. Duplexes                   | 19. Two-Family Dwellings        |
| 10. Manufactured/Mobile Homes |                                 |

**2.11 LOT AND YARD REQUIREMENTS:** The minimum lot area, minimum width of lot, minimum depth of front yard, minimum width of each side yard, and minimum depth of rear yard for each district shall be as shown on the following table:

District	Minimum Lot Area (Square feet)	Minimum Lot Area Per Family (Square feet)	Minimum Road Frontage (Feet)	*Minimum Set Back Front Yard (Feet)	Minimum Width Side Yard (Feet)	Minimum Depth Rear Yard (Feet)
A	43,560	100% of tract	100	60	20	20
C	3,000	3,000	30	60	10	10
R	7,000***	2,500	40	60	5	5
I	20,000	N/A	100	60	20	20

\* Front setbacks are measured from the right-of-way of the street or road on which the lot has frontage.

\*\* From the top of the slope

\*\*\* If the lot or site is served by sanitary sewer. If the lot or site is not served by sanitary sewer, then the minimum lot area is 43,560 square feet (1 acre).

## ARTICLE 3 – PLAN COMMISSION

**3.01 ADVISORY PLAN COMMISSION:** The Montgomery County Board of Commissioners previously adopted Ordinance 2006-06 (amended by Ordinance 2006-20 and Ordinance 2008-9) in order to establish the Montgomery County Advisory Plan Commission. The Plan Commission has the authority to conduct public hearings and make recommendations to the Montgomery County Board of Commissioners regarding the adoption and amendment of the Comprehensive Plan, applications for amendments to the zoning maps (rezones), applications for adoption or amendment of a Planned Unit Development district ordinance, amendments to the Subdivision Control Ordinance, and the adoption and amendment of this Zoning Ordinance. The Plan Commission also has the authority to grant waivers from the requirements of the Subdivision Control Ordinance if such waivers are specifically authorized in the Subdivision Control Ordinance. The Plan Commission also has the authority to conduct public hearings and make determinations and decisions regarding plats, replats, amendments, and vacations of plats, development plan reviews and other matters as provided for in the Montgomery County Zoning Ordinance and Subdivision Control Ordinance. The adoption of this Ordinance supplements the ordinances previously adopted by the Board of County Commissioners.

**3.02 DUTIES AND POWERS:** The Plan Commission will have all of the authority, powers, duties and responsibilities provided by this Ordinance and Indiana Code §36-7-4-200 series, 36-7-4-300 series, and 36-7-4-400 series.

**3.03 COMPOSITION:** The Plan Commission consists of nine (9) members, appointed as follows:

- (A) One member appointed by the Board of County Commissioners from its membership;
- (B) One member appointed by the County Council from its membership;
- (C) The County Surveyor or the Surveyor's designee, as long as the Surveyor's designee is a resident of Montgomery County;
- (D) The County Extension Educator, so long as the Educator is a resident. If the Educator is not a resident of Montgomery County, he or she may serve on the Commission to and until October 1, 2021. Thereafter, the County Extension Board will select a resident of Montgomery County who is a property owner with agricultural interest to serve on the Commission, and the non-resident Educator will serve the Commission in a nonvoting advisory capacity;
- (E) Five citizen members appointed by the Board of County Commissioners. Of these citizen members, not more than three may be from the same political party. Each of these five citizen members must be either a resident of the unincorporated area of the County or a resident of the County who is also the owner of real property located in whole or in part in the unincorporated area of the County. However, at least three of these citizen members must reside in the unincorporated area of the County.

**3.04 CITIZEN MEMBER ELIGIBILITY:** Each citizen member of the Plan Commission will be appointed because of the member's knowledge and experience in community affairs, the member's awareness of the social, economic, agricultural, and industrial problems of the area, and the member's interest in the development and integration of the area. A citizen member may not hold an elective office, as defined by Indiana Code §3-5-2-17, or any other appointed office in municipal, county, or state government, except for membership on the Board of Zoning Appeals as required by Indiana Code §36-7-4-902

**3.05 TERMS:** The member appointed by the Board of County Commissioners from its membership and the member appointed by the County Council have ~~has~~ a term of office that is coextensive with the members' term of office on the appointing authority Board unless the appointing authority Board appoints another of its members to serve at the Board's first regular meeting of the year. The Surveyor's term is coextensive with the member's term of office. The County Extension Educator's term is coextensive with the member's term of office. A property owner appointed by the County Extension Board when the Educator is not a resident of Montgomery County has a term of one (1) year. All citizens members have four-year terms. These terms expire on the first Monday of January of the fourth year after the member's appointment.

**3.06 REMOVAL:** The appointing authority may remove a member of the Plan Commission for cause. If the appointing authority wishes to remove a member, the authority must mail notice to the member at the member's residential address. This notice must state the reasons for the removal. A member who is removed may, within 30 days after receiving the notice of removal, appeal the removal to the circuit court or superior court of Montgomery County.

**3.07 VACANCIES:** If a vacancy occurs among the Plan Commission members who are appointed, then the appointing authority will appoint a new member to serve the unexpired term of the vacating member. The new member must meet the same requirements as the vacating member, including residency requirements. The appointing authority must appoint this new member within 90 days after the vacancy occurs. If a vacancy occurs in the Office of the County Surveyor while the Surveyor is serving on the Plan Commission, the County Engineer will participate with the Plan Commission during the time the Office of Surveyor is vacant. During this time, the County Engineer has all the powers and duties of a regular member.

**3.08 ABSENCES:** A member who misses three consecutive regular meetings of the Plan Commission may be treated by the appointing authority, in its discretion, as if the member has resigned.

**3.09 RULES OF PROCEDURE:** The Plan Commission has the authority to adopt rules of procedure for the proper administration of the Zoning Ordinance, Subdivision Control Ordinance and its other statutory duties and responsibilities.



**3.10 QUORUM:** A quorum of the Plan Commission consists of a majority of the entire membership of the Commission who are qualified to vote.

**3.11 ACTION BY THE COMMISSION:** Action by the Plan Commission is not official unless it is authorized at a regular or special meeting by a majority of the entire membership of the Commission.

**3.12 OFFICERS:** At its first regular meeting of each year, the Plan Commission will elect from its membership a president and vice president. The vice president may act as president during the absence or disability of the president. The Plan Commission may appoint and affix the duties of a secretary. The secretary is not required to be a member of the Commission.

**3.13 FEES:** The Plan Commission may establish a schedule of reasonable fees to defray the administrative costs associated with processing and hearing administrative appeals and petitions for rezoning, special exceptions, special uses, contingent uses, and variances, the cost of issuing permits, and the cost of other official action.

## ARTICLE 4 – BOARD OF ZONING APPEALS

**4.01 COMPOSITION:** There is created and established the Advisory Board of Zoning Appeals to be known as the Montgomery County Board of Zoning Appeals, which shall have the duties and powers as established by Indiana Code 36-7-4-900 et seq. The Montgomery County Board of Zoning Appeals shall consist of five members, appointed as follows:

(1) Three citizen members appointed by the County Commissioners, of whom one must be a member of the plan commission and two must not be members of the plan commission;

(2) One citizen member appointed by the County Council, who must not be a member of the plan commission.

(3) One member appointed by the plan commission from the plan commission's membership, who must be a county agricultural agent or a citizen member of the plan commission other than the member appointed under subdivision (1).

**4.02 ELIGIBILITY:** None of the members of the Board of Zoning Appeals may hold elective office or any other appointed office, except as permitted by Indiana Code §36-7-4-902, in a municipal, county or state government. A member of the Board of Zoning Appeals must be either a resident of the unincorporated area of the County or be a resident of the County and also an owner of real property located in whole or in part in the unincorporated area of the County. However, at least a majority of the total number of citizen members must be residents of the unincorporated area of the County.

**4.03 TERMS:** The initial members of the Board of Zoning Appeals will have the following terms:

A. The member appointed by the Plan Commission under 4.01(3) will have a term of one year;

B. The citizen members appointed by the Board of County Commissioners under 4.01(1) will have terms of 2 years, 3 years and 4 years, as designated by the Board of County Commissioners at the time of the initial appointments; and

C. The citizen member appointed by the County Council under 4.01(2) will have a term of four years.

When the initial term of office expires, each new member will have a term of four years. Each term expires on the first Monday of January of the first, second, third or fourth year, respectfully, after the year of the member's appointment.

**4.04 VACANCIES:** If a vacancy occurs among the members of the Board of Zoning Appeals, the appointing authority will appoint a member for the unexpired term of the vacating member.

**4.05 ABSENCES:** A member of the Board of Zoning Appeals who misses three consecutive regular meetings of the Board may be treated by the appointing authority, in its discretion, as if the member has resigned.

**4.06 QUORUM:** A quorum consists of a majority of the entire membership of the Board of Zoning Appeals.

**4.07 ACTION:** Action of the Board of Zoning Appeals is not official unless it is authorized by a majority of the entire membership of the Board of zoning Appeals.

**4.08 OFFICERS:** At the first regular meeting of each year, the Board of Zoning Appeals will elect a chair and vice chair from its membership. The vice chair may act as chair during the absence or disability of the chair. The Board may also appoint a secretary and such employees as are necessary for the discharge of its duties.

**4.09 GENERAL:** The Montgomery County Board of Zoning Appeals shall hold meetings, keep minutes and, pursuant to notice, shall conduct hearings, compel the attendance of witnesses, take testimony, and render decisions in writing, all as required by law. When permitting any appeal, variance, or change of a non-conforming use, the Montgomery County Board of Zoning Appeals may impose such conditions and requirements, as it deems necessary for the protection of adjacent property and the public interest. The Board of Zoning Appeals further shall have the following specific powers and duties in connection with the implementation of this Ordinance.

- A.** To grant, grant with modifications, or deny any application for a special exception.
- B.** To hear and decide an appeal from any order, requirement, decision or determination made by the Zoning Administrator, hearing officer, or staff in the administration or enforcement of this Ordinance.
- C.** To hear and decide an appeal from any order, requirement, decision or determination made by any administrative board, other than the Plan Commission, in the administration or enforcement of this Ordinance.
- D.** To exercise all powers conferred on it by law, local ordinance or rule in the manner so prescribed, including to invoke any legal, equitable, or special remedy available by law or this Ordinance for the enforcement of the provisions of this Ordinance or actions taken thereunder. This Section shall not be construed as a limitation on the Board's powers.
- E.** To adopt rules and procedures for the administration of the Board's duties provided such rules do not conflict with this Ordinance.

**4.10 VARIANCE OF USE:** The Board of Zoning Appeals has the authority to approve or deny applications for variances of use from the requirements of the Zoning Ordinance. In approving a variance of use, the Board may impose reasonable conditions and approve voluntary commitments. A variance of use may be approved by the Board if the Board finds as follows:

- A. The approval will not be injurious to the public health, safety, morals and general welfare of the community;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- C. The need for the variance arises from some condition peculiar to the property involved;
- D. The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
- E. The approval does not interfere substantially with the Comprehensive Plan.

In deciding whether to grant a variance, the Board of Zoning Appeals may exercise its discretion.

**4.11 VARIANCE FROM DEVELOPMENT STANDARDS:** The Board of Zoning Appeals has the authority to approve or deny applications for variances from the development standard of the Zoning Ordinance. In approving a variance from development standards, the Board may impose reasonable conditions and voluntary commitments. A variance from the development standards may be approved by the Board if the Board finds as follows:

- A. The approval will not be injurious to the public health, safety, morals and general welfare of the community;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
- C. The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

In deciding whether to grant a variance, the Board of Zoning Appeals may exercise its discretion.

**4.12 SPECIAL EXCEPTIONS:** The Board of Zoning Appeals has the authority to approve or deny applications for special exceptions. Special exceptions are those uses that, because of their unique characteristics and potentially adverse impact upon the immediate area, as well as the unincorporated area of the County as a whole, require a greater degree of scrutiny and review of site characteristics and impacts to determine their suitability in a given location. Therefore, the determination of a special exception is contingent upon the request meeting a set of

development standards. The Board may approve a special exception with supplemental conditions or deny the request. Only the owner of real property may file an application for a special exception. The Board may approve a special exception only if it finds:

A. The requested special exception is listed as a special exception for the specific zoning district in which the property is located;

B. The granting of the special exception will not be detrimental to or endanger the public's health, safety, or general welfare;

C. The granting of the special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity or substantially diminish or impair property values within the specific zoning district;

D. The site will be adequately served by essential public facilities and services, such as roads and highways, police and fire protection, drainage structures, refuse disposal, water and sanitary sewer, and schools or that the persons or agencies responsible for the establishment of the proposed special exception are able to adequately provide for such services;

E. The granting of the special exception will not create excessive additional requirements at public expense for public and services, nor be detrimental to the economic welfare of the community or result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance;

F. At least one year has elapsed since any denial by the Board of Zoning Appeals of any prior application for a special exception that would have authorized substantially the same for all or part of the site, unless the board determines that conditions in the area have substantially changed.

G. For the purpose of supplementing the consideration of the application, the Board will also take into consideration the extent to which the following facts, favorable to the applicant, have been established by the evidence:

(1) In what respects the proposed special exception meets the requirement and standard of this Ordinance and its relationship and compatibility to adjacent properties;

(2) The method by which the proposed special exception makes adequate provision for public services, provides adequate control over vehicular traffic and furthers the amenities of light, air, recreation and visual enjoyment; and

(3) Whether the proposed special exception is in accordance with the general objectives and findings of the Comprehensive Plan.

The listing of a special exception within a zoning district does not constitute a presumption that such special exception will be approved. Rather, each application for a special exception will be evaluated on an individual basis, in relation to its compliance with the conditions and standard of the Zoning Ordinance and the standards for each district in which the special exception would be located if approved. A special exception permit only authorizes the particular use at a particular location for which the special exception is approved. A special exception permit will automatically expire if the special exception is discontinued or abandoned for a period of twelve months. The approval of a special exception does not authorize development, construction, reconstruction, alteration or moving of any building or structure. Rather, the grant merely

authorizes the preparation, filing and processing of applications for such permits or approvals as may be required by the rules, regulations and ordinances of the County. In deciding a special exception, the Board of Zoning Appeals must grant the special exception if the applicant satisfies the seven (7) criteria contained in this section. When granting a special exception, however, the Board of Zoning Appeals may impose conditions which are appropriate under the circumstances of the case.

**4.13 NON-CONFORMING USES:** Any legal non-conforming use created by the adoption of this Zoning Ordinance may not be enlarged or expanded without the approval of the Montgomery County Board of Zoning Appeals.

**4.14 NOTICE:** Whenever a public hearing is required, the Board of Zoning Appeals will fix a reasonable time for the hearing and publish notice in accordance with Indiana Code §5-3-1-2 and Indiana Code §5-3-1-4. In addition, the Board will provide notice to interested parties by mailing a notice of the public hearing to such parties at least 14 days prior to the public hearing. The applicant will pay for the cost of providing notice, including the cost of publishing notice and mailing notice to interested persons. The Board will, by rule, determine who are interested parties, how notice is to be provided to them and who is require to provide the notice.

**4.15 PROHIBITED CONTACT:** No person may communicate with any member of the Board of Appeals before the hearing with the intent to influence the member's action on a matter pending before the Board

## ARTICLE 5 – ADMINISTRATION AND ENFORCEMENT

**5.01 ADMINISTRATION RESPONSIBILITY:** The Montgomery County Advisory Plan Commission and Zoning Administrator shall establish the procedure and responsibilities for the administration and enforcement of this Ordinance.

**5.02 PERMITS:** No permit shall be issued unless the proposed structure or use of structure or land is in complete conformity with the provisions of the Montgomery County Zoning Ordinance, Subdivision Control Ordinance and other rules, regulations and ordinances of the County.

- A. Except as provided in this Ordinance, an improvement location permit shall be obtained before any structure in the Commercial, Residential, Planned Unit Development, and Industrial zoning districts may be constructed.
- B. If a septic permit is required, then said permit, issued by the Montgomery County Department of Health, should be presented to the Zoning Administrator prior to an issuance of an Improvement Location Permit.
- C. If a Building Permit is required by County ordinance, a building permit must be obtained from the Building Commissioner. Nothing in this Ordinance negates the requirements of the County Building Code, rules, regulations and ordinances.
- D. No improvement location permit shall be required for:
  - (1) Routine maintenance, repair, or remodeling of existing structures not involving any change of use or additional lot coverage.
  - (2) Essential Services;
  - (3) Lot and yard improvements such as children’s playhouses, drives, fences, concrete patios, decks, play equipment, retaining walls, sidewalks, and landscaping, unless such lot or yard improvements are on, over or within ten (10) feet of a septic system or utility easement. If these improvements are on, over or within ten (10) feet of a septic system or utility easement, then an improvement location permit is required.
  - (4) Anything constructed within the Agricultural District.
- E. All applications for permits shall be accompanied by a plot plan that shows the following items clearly and completely;

- (1) The location, dimensions, and nature of the property; and;
- (2) The location and dimensions of any existing or proposed structures; (no structure shall be located on an easement, existing sanitary sewer, septic system, water utility facility or water well); and
- (3) All adjoining thoroughfares and any existing or proposed access to these thoroughfares; and
- (4) The existing and proposed use of all structures and land; and
- (5) Such other information as may be necessary to determine conformance with this Ordinance.

F. All applications for permits shall be made by the recorded owner (or the recorded owners' contractor) of the lot on which the improvement is to be located. Contract purchasers, equitable owners, lessees, or other holders of less than a fee simple interest shall not make applications.

**5.03 FEES:** All fees and assessments allowable by State Statute or this Ordinance for permits shall be promulgated by the Montgomery County Advisory Plan Commission. The Montgomery County Advisory Plan Commission may modify the fees and assessments at any time.

**5.04 VIOLATIONS AND PENALTIES:** Any structure or use that violates this Ordinance shall be deemed to be a common nuisance and the owner of the structure or land shall be liable for maintaining a common nuisance. Any person or legal entity that is found by a Court of competent jurisdiction to have violated any provision of this Ordinance may be fined not more than Two Thousand Five Hundred Dollars (\$2,500.00) per offense, plus costs, and attorney fees where the action is not brought pursuant to I.C. 36-7-4-1013, and have judgment entered accordingly. Each day that a violation exists is a separate violation. The Plan Commission, Board of Zoning Appeals and Zoning Administrator may request the County Attorney to prosecute any violations, and the enforcing authority may also request injunctive relief in order to prevent a violation of this Ordinance.



## **ARTICLE 6 – WIND TURBINES & WIND ENERGY CONVERSION SYSTEMS**

**6.01 PURPOSE AND SCOPE:** This article establishes general guidelines for the siting and use of wind turbine generators, meteorological (MET) testing towers and related devices and structures. This article is intended to:

- A.** Protect residential areas from any potentially adverse visual or noise impacts of wind turbine generators or related devices and structures.
- B.** Provide for a land use that will provide an energy source with low associated environmental impacts and protect the health, safety, and welfare of Montgomery County residents.
- C.** Provide for the removal of abandoned or noncompliant wind turbine generator towers, meteorological (MET) towers, or related devices and structures.
- D.** Allow restricted use of wind turbine generator towers and meteorological towers of limited height.

### **6.02 APPLICABILITY**

- A.** Micro Wind System towers and meteorological testing towers less than 120 feet in height shall be permitted as listed under Table A and are subject to the standards of section 6.03. These towers are not, however, subject to Section 6.04 & 6.06. Portions of sections 6.03 & 6.05 may be waived for micro wind systems when deemed appropriate by the Zoning Administrator.
- B.** All Wind Farms, Large Wind Turbines, and WECS, and all related devices and structures are only allowed if a special exception is granted by the Board of Zoning Appeals, as provided for in Article 4, are subject to all of the standards and requirements of this Article and only allowed in Industrial Districts. Meteorological testing towers (MET) towers 120' feet in height to 325 feet, and all related devices and structures for the above shall only be allowed as a special exception in Industrial Districts with approval in by the Board of Zoning Appeals in accordance with this Article and the provisions in Article 4 for special exceptions.

## 6.03 GENERAL REQUIREMENTS

- A. Minimum Site Area.** The minimum site area for a wind turbine generator or a meteorological testing towers (MET) tower erected prior to a wind turbine generator shall be as necessary to meet required setbacks and any other standards of this ordinance.
- B. Setbacks.**
1. Micro towers and any associated features shall be set back from any adjoining property lot line, road right-of-way, railroad right-of-way or overhead electrical transmission or distribution lines a minimum distance equal to the total height of the structure.
  2. Each proposed large wind turbine generator or meteorological testing tower shall meet the following applicable setback requirements:
    - a. Each wind turbine generator or meteorological testing towers (MET) and any associated features shall be set back from any adjoining property lot line, road right-of-way, railroad right-of-way or overhead electrical transmission or distribution lines a minimum distance of 2,640 feet or 5 times the height of the tower from the base to the tip of the blade in vertical position, whichever is greater. The Board of Zoning Appeals may, during consideration of a special exception application, increase the setback up to 3,200 feet if it finds that such increased set back is necessary to protect the interests of adjacent residential property.
    - b. Wind Farms and WECS' occupying multiple parcels may have internal property line setbacks waived by execution of a written document signed by all land owners sharing such a property line. All such documents shall be recorded in the office of the Montgomery County Recorder within 45 days of the signing of each wind lease agreement and said document shall be cross referenced to the current recorded deed. The wind developer may not submit a memorandum of lease containing multiple lease contracts to the Montgomery County Recorder. Signed wind lease contracts not submitted to the Montgomery County Recorder's office within 45 days of signing are null and void in Montgomery County.
    - c. The setback distance for the WECS shall be one mile from any town or city or school. Distance shall be measured from the center of the foundation at the base of the WECS to the closest Corporate Limit boundary line or school property, respectively.

- C. Minimum Rotor Wind Vane or Blade Clearance.** The lowest point of the arc created by rotating wind vanes or blades on a wind turbine generator shall be no less than 50 feet or 1/3 of the tower height whichever is greater.
- D. Maximum Noise Levels.** Any proposed wind turbine generator shall produce sound levels that are no more than 32 decibels as measured on the dB(A) scale at the property lines of the site in question. For all towers other than micro wind systems the following shall be provided:
1. A noise study by a licensed acoustician chosen by the Montgomery County Board of Zoning Appeals and paid for by the wind developer shall be submitted with any application for a wind turbine generator tower. Said study shall be prepared by a qualified professional acoustician with no less than three years of experience conducting WECS and community noise sound studies and shall include the following, at a minimum:
    - a. A description and map of the project's noise producing features, including the range of noise levels expected, and the basis of the expectation;
    - b. A survey and report prepared by a qualified acoustician with no less than three years of experience conducting WECS community noise sound studies and wind development that analyzes the preexisting ambient noise (including seasonal variation) and the potentially affected residences, schools, public buildings or other noise sensitive land uses located within 2 miles of the proposed project site. Study shall include decibels for both A and C weighted scales.
    - c. A description and map of the cumulative noise impacts and any problem areas identified.
    - d. A description of the project's proposed noise control features and specific measures proposed to mitigate noise impacts for sensitive land uses.
- E. Maximum Vibrations.** Any proposed wind turbine generator shall not produce vibrations humanly perceptible beyond the property on which it is located or cause vibration that could be detected in nearby structures or damage underground wells.

**F. 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. All transmission lines that are buried should be at a depth of 10 feet until the same reach the property line or a substation adjacent to the property line.

**G. Interference with Reception.** Any wind turbine generators shall be constructed and operated so that they do not interfere with public safety communications, emergency medical communications, emergency management communications, television, microwave, GPS for agricultural use, military defense radar, navigational or radio reception to neighboring areas.

**H. State or Federal Requirements.** Any proposed wind turbine generator or meteorological testing tower shall meet or exceed any additional local, state, or federal standards and regulations.

**I. Aesthetics and Lighting.** Any proposed wind turbine generator or meteorological testing tower shall meet the following requirements:

1. Each wind turbine generator or meteorological testing tower shall, be subject to any applicable standards of the FAA. When said towers are not subject to FAA regulation said tower shall be marked or identified in order to easily be identified for low-level aviation operations as noted below;
  - a. Towers shall be painted utilizing a pattern used to mark structures based on size and shape, which is eight equal alternating horizontal bands from the base to the tip of the tower of alternating stripes of aviation orange and white.
  - b. Each tower shall have lighting that shall be shielded as much as possible so that no glare extends beyond the boundaries of the facility. In the instance that "strobe" lighting is required it should be configured so that it is alternating lighting; white light during daylight, red light at night.
2. Each wind turbine generator, including all accessory structures, shall, to the extent possible, use materials, and colors that will blend them into the natural setting and surrounding buildings.

3. Each wind turbine generator tower shall be artificially lighted, as required by the FAA in which instance all lighting shall be shielded as much as possible so that no glare extends substantially beyond the boundaries of the facility. In the instance that “strobe” lighting is required it should be configured so that it is alternating lighting; white light during daylight, red light at night.
4. Each wind turbine generator tower and meteorological tower may be a monopole, monotube or lattice style construction and shall be self-supporting. Towers shall not include guy wires.

**J. Signs.** A sign no more than 4 square feet in area displaying an address and telephone number for emergency calls and informational inquiries shall be posted at the wind turbine generator or meteorological testing tower erected prior to a wind turbine generator. No wind turbine generator tower or MET tower or site shall include an advertising sign.

**K. Not Essential Services.** Wind turbine generators and meteorological testing towers shall be regulated and permitted pursuant to this Article of the Zoning Ordinance and shall not be regulated or permitted as essential services, public utilities, or private utilities.

**L. Removal of Abandoned or Unsafe Wind Turbine Generators or Meteorological Testing Towers.**

1. Any wind turbine generator or meteorological testing tower that is not operated for a continuous period of 6 months shall be considered abandoned.
2. Any tower found to be unsafe or not in compliance with the special exception conditions related to noise or shadow flicker placed upon it by the Board of Zoning Appeals (BZA) or this Ordinance, shall be found to be in violation of the special exception approval.
3. The owner of any wind turbine generator tower or meteorological testing tower that is abandoned or in violation of the special exception approval shall remove the same within twelve (12) months of receipt of notice from the Zoning Administrator of such abandonment or violation.
4. In addition to removing the wind turbine generator, or meteorological testing tower, the owner shall restore the site to its condition prior to location of the wind turbine generator or meteorological testing tower (excluding replanting of original vegetation and trees), subject to reasonable wear and tear and shall stabilize soils through use of ground cover. All concrete and rebar must be

removed from the soil.

5. Failure to remove an abandoned wind turbine generator or meteorological testing tower within the twelve (12) month period provided in this subsection shall be grounds for the Zoning Administrator to pursue the violation as prescribed under this Ordinance.
6. A decommissioning plan approved by the Montgomery County Plan Commission and County Commissioners providing for the method and payment of the anticipated cost of removing a WECS at the end of its serviceable life or upon it's becoming a discontinued or abandoned use to ensure that the WECS is properly decommissioned.

a. Content

A decommissioning plan, for all systems except micro wind systems shall include, at a minimum, the following:

- (I). Assurance - Written assurance that the WECS will be properly decommissioned upon the expiration of its serviceable life or in the event of its discontinuance or abandonment.
- (ii). Cost estimates for all WECS except Micro WECS, an estimate of the costs of decommissioning and removing the WECS upon the expiration of its useful life, or in the event of its discontinuance or abandonment. The cost estimates shall be made by a professional engineer, contractor, or other person with expertise or experience in decommissioning and removal of WECS, and shall be updated every five (5) years for approval by the Montgomery County Advisory Plan Commission.
- (iii). Financial assurance the cost of removal and site restoration is the full responsibility of the applicant and/or owner/operator. In order to provide the greatest possible financial assurance that there will be sufficient funds to remove the wind energy system and to restore the site, the following steps shall be followed:
  - 1). For each wind energy system, the applicant/owner/operator shall determine an amount of money equal to the estimated removal and restoration cost.
  - 2). The Zoning Administrator shall require independent verification of the adequacy of this amount.

3). This money shall be secured in the form of an irrevocable letter of credit, payable upon demand by Montgomery County, in a form acceptable to the Plan Commission, for the full cost of the estimated removal and restoration, in an amount determined by the Montgomery County Advisory Plan Commission and approved by the Montgomery County Commissioners. No deductions for salvage value or other credits are allowed from the estimated cost of removal and restoration.

(iv). Abandonment Verification under penalties for perjury, that all easements and/or leases for the WECS contain terms that provide financial assurances to the property owners to ensure that the WECS are properly decommissioned within one (1) year of the expiration of its serviceable life or in the event of its discontinuance or abandonment.

**M. Climb Prevention.** All Tower designs must include features to deter climbing or be protected by anti-climbing devices, when applicable, 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 tower.
3. Locked tower doors.

**N. 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 in a timely manner consistent with industry standards. 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.

**O. 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.

**P. Warnings.** A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and Substations.

**Q. 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 agreed upon by the Montgomery County Surveyor.

**R. Use of Roads.**

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: Identify all such public roads and services;

1. Roads

- 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 Montgomery County Highway Superintendent and Montgomery County Board of Commissioners. The Superintendent 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 Montgomery County Highway Superintendent. The Superintendent may 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 Superintendent to ensure 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.
- c. Newly constructed WECS access roads may not impede the flow of water.
- d. All repairs must be completed in the time period agreed upon by the Montgomery County Highway Superintendent.
- e. Throughout the life of the project as repairs to WECS are made, road repairs will be completed each time the company's equipment traverses Montgomery County roads if the Montgomery County Highway Superintendent deems repairs be necessary, at the wind developer's expense.
- f. The location of all WECS access roads must be approved by the Montgomery County Plan Director and may not be located closer than 2,000 feet from any residence as measured from the center of the access road to the corner of the residence.



S. **Dust Control.** Reasonable dust control measures will be required by the County during construction of the WECS.

**T. Sewer and Water.**

1. Any facility shall comply with existing septic and well regulation as required by the Montgomery County Health Department and the State of Indiana Department of Public Health.
2. Wells within one mile of each site shall be inspected by a licensed certified Indiana well installed prior to and following construction. All expenses associated with the inspections shall be at the expense of the developer. Any damage caused by vibration or the operations of WECS or their construction shall be repaired at the expense of the developer and construction companies and these companies are required to provide commercial water tanks and water to affected homes until an investigation is complete and problems, if caused by WECS construction or operation, are mitigated.

U. **Height.** The following height limitations apply to this Article:

Use	Height Limitation
Micro Wind System tower	120 feet
MET tower	325 feet
Wind Farms, Wind Turbines, WECS	600 feet

**V. Fire Prevention and Emergency Response Plan and Requirements.**

1. Description of the potential fire and emergency scenarios that may require a response from fire, emergency medical services, police or other emergency responders.
2. Designation of the specific agencies that would respond to potential fire or other emergencies.
3. Description of all emergency response training and equipment needed to respond to a fire or other emergency including an assessment of the training

W. The site plan and other documents shall illustrate and describe mitigation measures to minimize potential impacts on the natural environment including, but not limited to wetlands, avian and wildlife (migratory bird patterns and bat

population effects), other fragile ecosystems, historical/cultural sites and antiquities.

- X. **Shadow Flicker.** At no time shall a wind turbine's tower, nacelle, or blades create shadow flicker on any non-participating landowner's residential property. For the purpose of this section a nonparticipating landowner shall be defined as a landowner on which a tower does not physically sit.
  
- Y. **Property Value Guarantee** will be offered by the wind developer to all residents and landowners within two miles of a wind turbine. Fair market value will be established by, at minimum, two reputable appraisers of the Montgomery County Plan Commission's choice to establish baseline data for property values at the wind developer's expense. If the property value of a home decreases and a home or landowner is unable to sell his property after the wind turbines are erected, the developer will pay that landowner the difference or buy the property at the baseline fair market value determined prior to construction of the wind project.
  
- Z. Prior to meeting with landowners in Montgomery County to secure leases and holding private meetings with residents, the wind developer must notify every household and landowner within five miles of a planned wind project of their intentions to develop a wind farm in the area via certified letter. The wind developer must also contact the Montgomery County Zoning Administrator and inform the Montgomery County Planning Commission of their intent to develop a wind farm in Montgomery County prior to notice being sent to residents and landowners and prior to meeting with landowners to secure wind lease contracts in Montgomery County.

#### **6.04 SPECIAL EXCEPTION APPROVAL REQUIRED**

- A. Unless exempted under Section 6.02, all wind turbine generators and anemometer towers shall be subject to special exception approval and all requirements for special exception uses contained in this Article and in this ordinance for special exceptions generally. In addition to the general standards of approval for special exception, all special exceptions regulated under this Article shall comply with the following standards of approval:
  - 1. The use shall meet all general requirements listed above in Section 6.03.
  - 2. All irrevocable letters of credit and bonds required by this Article must be submitted to the Zoning Administrator at the time of the application for special exception.

3. As specified in Section 6.03 a Noise Study is submitted including satisfactory mitigation measures to assure that no nearby residential uses will be subjected to noise impacts greater than 32 dBA at the property line.
4. The special exception, if granted by the BZA, for a proposed project shall be valid for a period of one (1) year in which to apply for an Improvement Location Permit, after which, approval shall terminate and be of no further force or effect if construction in earnest of the approved tower/s has not commenced.

## **B. APPLICATION REQUIREMENTS**

Prior to the construction of a WECS, the Applicant shall obtain approval for the following: (1) an Application for a Special Exception from the Montgomery County Board of Zoning Appeals (“BZA”) to permit a WECS in any zone list under table A, (2) Request for Variance for any variances anticipated on the WECS Project, and (3) Drainage approval as required under the Montgomery County Stormwater and Erosion Control Ordinance when deemed necessary, (4) an Improvement Location Permit from the Zoning Administrator.

1. The Application for Special Exception
  - a. The application shall be filed with the Montgomery County Board of Zoning Appeals and include the following items:
    - (i). A WECS Project summary, including, to the extent available:
      - (1) Each turbine’s point location, including its name plate generating capacity; the make and model of the WECS that will be installed; the maximum height of the WECS Tower(s) measured from the base to the tip of the blade in vertical position and diameter of the WECS(s) rotor(s); and (2) a description of the Applicant, Owner, and Operator, including their respective business structures.
    - (ii). The name(s), address (es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s) with WECS or associated utility lines on their properties. All leases for properties with WECS must be filed in the Montgomery County Recorder’s Office within 45 days of the contract being signed agreeing to a wind lease or said contract is null and void in Montgomery County.
    - (iii). A topographic map of the project site and the surrounding area which shall encompass an area at least a quarter mile radius from the proposed project site with contours of not more than five-foot intervals.

- (iv). 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; WECS access roads; Substations; electrical cabling; and ancillary equipment). In addition, the site plan shall show: Primary Structures within 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) times 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 U. S. Army Corps of Engineer requirements and guidelines.
- (v). Location of all existing underground utility lines associated with the WECS site.
- (vi). All required hearing filing fees as prescribed by this ordinance.

2. The Application for Improvement Location Permit

- a. The Applicant shall apply to the Zoning Administrator for an Improvement Location Permit. In addition to the information required on the Improvement Location Permit Application and those documents required under section 6.03, the Applicant shall provide the following information to the Zoning Administrator prior to the issuance of an Improvement Location Permit:
  - (i). Location of all utility lines within a radius equal to two (2) times the height of the proposed WECS.
  - (ii). Location of all underground utility lines associated with the WECS site.
  - (iii). Dimensional representation of the structural components of the tower construction including the base and footings.
  - (iv). Schematic of electrical systems associated with the WECS including all existing and proposed electrical connections.
  - (v). Manufacturer's specifications and installation and operation instructions and an un-redacted operations safety manual for the model of WECS that will be installed.

- (vi). Certification by a registered professional engineer that the tower design is sufficient to withstand wind load requirements for structure as defined by BOCA.
- (vii). All turbines shall be new equipment commercially available. Used, experimental or proto-type equipment still in testing shall be approved by the Board of Zoning Appeals as per the normal special exception process.
- (viii). Necessary recorded access easements and necessary recorded utility easements, copies of which shall be submitted to the Montgomery County Board of Zoning Appeals.
- (ix). 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 Board of Zoning Appeals.
- (x). 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.
- (xi). A revegetation plan for restoring areas temporarily disturbed during construction.
- (xii). A fire protection plan for construction and operation of the Facility.
- (xiii). Any other item reasonably requested by the Zoning Administrator or Board of Zoning Appeals.
- (xiv). A drainage plan for construction and operation must be developed under the standards of the Montgomery County Stormwater and Erosion Control Ordinance.
- (xv). An erosion control plan must be developed and provided in compliance with the Montgomery County Stormwater and Erosion Control Ordinance and all other local, state, and federal regulations.

**B.** Each WECS Tower and MET tower shall require an Improvement Location Permit.

## **6.05 OPERATION**

### **A. Interference**

If, after construction of the WECS, the Zoning Administrator receives a written complaint related to interference with local broadcast residential television, telecommunication, communication or microwave transmissions, the Owner or operators shall be notified in writing and the Owner or Operator shall take reasonable steps to respond to minimize the complaint. Applicant, owner and/or operator shall take such actions as may be required to mitigate interference with electromagnetic communications, such as public safety communications, emergency medical communications, emergency management communications, radio, telephone, microwaves, GPS for agricultural use, military defense radar or television signals caused by any WECS. In addition, the applicant, owner and/or operator shall comply with the following:

1. Failure to remedy a complaint - If the Zoning Administrator determines that an owner or operator has unreasonably failed to remedy verified interference with the broadcast of residential television, telecommunication, communication or microwave transmissions within ninety (90) days after owner or operator received a written complaint related thereto, the Zoning Administrator may take appropriate action to rescind the permit or approval associated to the WECS in question. This does not apply to interference with private telecommunications systems.

### **B. Coordination with Local Fire Department**

1. The WECS applicant, owner or operator shall submit to all providers of emergency services serving the WECS Project area a copy of the as-built site map in digital format, if requested.
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.

### **C. 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.
- D.** An ongoing log of maintenance activities performed on all WECS shall be submitted to Zoning Administrator on an annual basis.

#### **6.06 LIABILITY INSURANCE**

The Owner or Operator of the WECS(s) shall maintain a current general liability policy covering bodily injury and property damage and name Montgomery County as an additional insured with limits of at least \$2 million per occurrence per wind tower and \$5 million in the aggregate with a deductible of no more than \$5,000.

## ARTICLE 7 – PLANNED UNIT DEVELOPMENTS

**7.01 PURPOSE:** The Planned Unit Development (PUD) zoning district is established to provide for the development of mixed zoning classifications, densities, and uses under a common classification when presented to the Plan Commission in a well-prepared, organized and documented plan. This zoning district is intended to provide for:

- A. Greater flexibility in applying the ordinances to mixed zoning classifications;
- B. Innovative approaches to meet the demands of the housing, commercial, and business markets;
- C. The recognition of the interdependency of the above markets; and
- D. The planning and development of mixed zoning classifications to be consistent with the best interest of the jurisdictional area of the County and the applicable County ordinances.

**7.02 AUTHORITY TO VARY REGULATIONS:** In connection with approving a Planned Unit Development District, the Plan Commission and the County Commissioners shall have the authority to approve a Planned Unit Development District that varies from the provisions of this Zoning Ordinance or of the Subdivision Control Ordinance provided, however, such variation:

- A. will achieve the purposes for which planned unit developments may be approved pursuant to the requirements of this Chapter;
- B. will not violate the general purposes, goals, and objectives of the Zoning Ordinance and the County's Comprehensive Plan;
- C. will not unduly burden adjacent roadways; and
- D. will result in a development providing adequate and appropriate levels of open space and other compensating amenities both within the proposed development and to the County.

**7.03 OWNERSHIP & CONTROL:** The properties subject to any Planned Unit Development request must either be under single ownership or control, or must demonstrate consent to inclusion in the PUD request if not under a single ownership or control.

A. Properties under multiple ownership or control may be subject to a Planned Unit Development request, provided:



1. All owners of record provide a signed, notarized consent form for the petition file authorizing inclusion of the property within the PUD request; and

2. The properties included within a PUD request shall all be contiguous.

**B.** Properties included in a Planned Unit Development request may revoke consent, in writing, at any point during the PUD process until the approved PUD ordinance and any commitments are recorded with the title to the property.

**C.** A request to include a site within a PUD zoning district may originate from the County Commissioners or Plan Commission in accordance with the procedures of the Montgomery County Zoning Ordinance.

#### **7.04 MINIMUM PROJECT AREA**

**A.** There shall be no minimum project acreage for a Planned Unit Development District.

**7.05 PERMITTED USES & PUD CLASSIFICATIONS:** All land use classifications that are allowed in this Ordinance may be permitted within a PUD, unless otherwise omitted. All various types of development, i.e., residential, commercial or industrial shall meet the requirements of this Zoning Ordinance as they apply to those classifications.

**A. Planned Unit Development — Residential (PUD-R)**

1. Permitted uses may include any use allowed in any Residential zoning district, and all uses ancillary to residential character.
2. A PUD-R may not exclude group homes, residential facilities for the developmentally disabled, or residential facilities for the mentally ill.

**B. Planned Unit Development — Commercial (PUD-C)**

1. Permitted uses may include those allowed in any Commercial zoning district, any Industrial Zoning District, and all uses ancillary to Commercial or Industrial character.

**C. Planned Unit Development — Mixed (PUD-M)**

1. Permitted uses may include any use allowed in any Residential, Commercial, or Industrial Zoning District.

2. Residential areas within a PUD-M may not exclude group homes, residential facilities for the developmentally disabled, or residential facilities for the mentally ill.

## **7.06 DEVELOPMENT STANDARDS**

### **A. Standards:**

#### **1. Development Standards:**

- a. **Applicability:** Unless alternate development standards are specified in the PUD district ordinance, the default development standards of the zoning district specified in the PUD district ordinance shall apply to the PUD zoning district.
- b. **Authorization to Propose Alternate Development Standards:** The petitioner may propose the use of alternate development standards.
- c. **Alternate development standards deemed appropriate by the Plan Commission in order to accomplish the intent of the PUD shall be specified in the PUD District Ordinance that is certified by the Plan Commission and adopted by the County Commissioners.**
- d. **Any lessening or other modification of the default development standards of the zoning district specified shall be directly linked to the intent of the PUD to:**
  - (i) Provide a mixed-use development;
  - (ii) Provide a creative design; or
  - (iii) Address the unusual physical conditions of the site.
- e. **Supplemental Exhibits as Standards:** Where supplemental exhibits (including, but not limited to elevations, renderings, materials samples, and color palates) are provided as supporting documentation of a concept, style, theme, or other element of a PUD zoning district, such supplemental exhibits shall be considered a component of the Development Standards of the PUD zoning district for the purposes of Secondary Review
  - (i) Any Supplemental Exhibit provided as supporting documentation as stated above shall identify (by corresponding section and sub-section numbers) the element of the applicable PUD District Ordinance that the submitted Supplemental Exhibit illustrates.
  - (ii) Where any such Supplemental Exhibit is provided as illustration of compliance with any PUD District Ordinance standard requiring a numerical minimum, and where any such Supplemental Exhibit reflects

provision of the required element in excess of said minimum, the Supplemental exhibit shall provide notation disclosing such.

- (iii) Any conflict or confusion between supplemental exhibits and the text of the approved ordinance shall be resolved through interpretation by the Zoning Administrator.

2. Design & Construction Standards:

- a. Applicability: Unless alternate design and construction standards are adopted in the PUD district ordinance, the design and construction standards of the Montgomery County ordinances shall apply to each PUD District.
- b. Authorization to Propose Alternate Design Standards: The petitioner may propose the use of alternate design and construction standards.
- c. Alternate design standards deemed appropriate by the Plan Commission in order to accomplish the intent of the PUD shall be specified in the PUD District Ordinance that is certified by the Plan Commission and adopted by the County Commissioners.
- d. Any lessening or other modification of the default design and construction standards of the zoning district specified shall be directly linked to the intent of the PUD to:
  - (i) Provide a mixed-use development;
  - (ii) Provide a creative design; or
  - (iii) Address the unusual physical conditions of the site.

3. Procedure for Establishing Alternate Standards:

- a. Montgomery County Building Department: All proposals to deviate from the default design and construction standards of Montgomery County shall be reviewed by the Building Administrator in conjunction with the PUD district ordinance and concept plan(s).
- b. Local, State and Federal Agencies: Prior to the petition appearing before the Plan Commission for public hearing, the petitioner shall be responsible for securing the approval of the alternate standards of any local, State and Federal agencies that would have facilities affected by an alternate standard.
- c. Restriction: Failure to secure the approval of any proposed alternate standard of any agency that would have facilities affected by an alternate standard shall preclude the bringing of any Development Plan that relies on such alternative standard before the Plan Commission or County Commissioners for consideration.

**B. Definitions:**

1. **Applicability:** The definitions found in Article 9 of the Montgomery County Zoning Ordinance shall apply to every PUD zoning district.
2. **Restrictions and Prohibitions:** The petitioner shall not propose alternate definitions for words that are already defined in Article 9 of the Montgomery County Zoning Ordinance.
3. **New Definitions:** The petitioner may propose definitions for words that are not already defined in Article 9 of the Montgomery County Zoning Ordinance.
4. **Amended Definitions:** The petitioner may propose amendment of definitions for words that are already defined in Article 9 of the Montgomery County Zoning Ordinance.

**7.07 PROCEDURES FOR INITIAL REVIEW**

The complete review and approval process for a Planned Unit Development Ordinance consists of the following elements.

**A. Pre-filing Conference:**

1. A Pre-Filing conference between the petitioner and Zoning Administrator shall occur a minimum of ten (10) days prior to the filing of a proposed PUD district ordinance and concept plan.
2. Documentation necessary for a Pre-Filing conference shall include, at a minimum:
  - a. Draft PUD zoning district ordinance text; and
  - b. A Preliminary Plan;
3. Standards for the information required of the documents necessary for a Pre-Filing Conference.
4. The Pre-Filing conference shall serve as an opportunity to alert the petitioner to potential conflicts with adopted County policies, plans, and ordinances, as well as an opportunity to alert the petitioner to potential conflicts with affected utility and service providers.
5. Failure to identify potential conflicts with County policies, plans and ordinances or with affected utility and service providers at the Pre-Filing Conference will not eliminate the responsibility of the petitioner to address issues identified later in the approval process.

**B. Submittal:**

1. The submitted PUD zoning District request shall consist of:
  - a. A completed application packet from the Montgomery County Building Department;
  - b. Proposed PUD zoning district ordinance text;
  - c. Supporting information as required by the Zoning Administrator; and
  - d. Any additional information identified as necessary by the Zoning Administrator at the Pre-Filing Conference.
    - (i) Failure to provide the information listed in Section 6.07 (B) 1.a. shall result in the petition not being docketed for the next available hearing date.

**C. Technical Advisory Committee (TAC)**

1. Any proposed PUD zoning district shall appear before the Technical Advisory Committee prior to any Public Hearing.
2. Any PUD zoning district proposing to modify any adopted design or construction standard of Montgomery County shall submit a description of the proposed change.
3. Any PUD zoning district proposing to modify any adopted design or construction standard of any utility or service provider shall submit a description of the proposed change.
4. The affected Department or utility or service provider shall provide a written response to the proposed modified design or construction standard prior to any public hearing of the proposed PUD zoning district.

**D. Plan Commission informational appearance**

1. Upon completion of elements 1-4 of this Section, the proposed PUD zoning district shall appear before the Montgomery County Plan Commission for an informational presentation of the proposed PUD zoning district.
2. The informational appearance shall be conducted at a regularly-scheduled Plan Commission meeting.
3. The informational appearance shall not constitute the required public hearing for the proposed PUD zoning district.
4. The informational meeting shall be administered by County staff and appointed board members in accordance with the Rules of Procedure of the Montgomery County Plan Commission.
5. No action may be taken on any proposed PUD zoning district at an informational meeting, and no comments, proposed changes, or requested changes shall be considered binding.

#### **E. Plan Commission public hearing**

1. A petition having completed elements 1-5 of this section may undergo public hearing before the Montgomery County Plan Commission.
2. Legal notice for any public hearing on any proposed PUD zoning district shall be provided in accordance with the Montgomery County Plan Commission Rules of Procedure.
3. The public hearing for any proposed PUD zoning district shall be conducted in accordance with the terms of the Montgomery County Rules of Procedure.
4. Action by the Plan Commission at a public hearing for a proposed PUD zoning district shall take the following form:
  - a. Recommendation of approval to the Montgomery County Commissioners;
  - b. Recommendation of approval with conditions or commitments to the Montgomery County Commissioners;
  - c. Recommendation of denial to the Montgomery County Commissioners; or
  - d. Continuance of the matter to a later hearing date.

#### **F. County Commissioners**

1. A petition having undergone public hearing before the Plan Commission shall be placed on the Montgomery County Commissioners agenda within forty-five (45) days of certification of the Plan Commission recommendation.
2. County Commissioners shall consider the petition for the Planned Unit Development ordinance in accordance with the procedures for amending the Zoning Map set forth Montgomery County Zoning Ordinance and Indiana law.
3. The County Commissioners shall take the following action on the petition:
  - a. Adopt the proposed PUD zoning district;
  - b. Adopt the proposed PUD zoning district with conditions and/or commitments;
  - c. Return the proposed PUD zoning district to the Plan Commission with proposed amendments; or
  - d. Deny the proposed PUD zoning district.

### **7.08 SECONDARY REVIEW BY THE PLAN COMMISSION**

**A.** Secondary Review of any PUD zoning district shall be delegated to the Montgomery County Plan Commission, as per Indian Code §36-7-4-1511.

#### **B. Development Plan Review**

1. Development Plan Review by the Plan Commission shall serve as the secondary review of the PUD for any non-residential portion of any approved PUD zoning district.

- a. Development Plan Review will include consideration of the following:
    - i. the arrangement of the structure(s) on the site;
    - ii. the architectural styles of the project;
    - iii. the arrangement of open space and landscape improvements on the site;
    - iv. the management of traffic in a manner that creates conditions favorable to the health, safety, convenience and harmonious development of the community;
    - v. parking lots and garages;
    - vi. landscape design
    - vii. site illumination;
    - viii. the grading, drainage, and erosion control measures proposed
  - b. Any Development Plan Review of an adopted PUD zoning district may consist of the entire area of the adopted PUD zoning district, or any portion of the PUD zoning district.
  - c. Undergoing Development Plan Review of any portion of an adopted PUD zoning district shall not remove the requirement to plat any newly created, divided or otherwise modified lot in accordance with the terms of the Montgomery County Subdivision Control Ordinance.
2. Primary and Secondary Plat
- a. Primary Plat review by the Plan Commission shall serve as the secondary review of the PUD for any residential portion of any approved PUD zoning district.
  - b. Secondary Plat review of any approved PUD zoning district shall be in accordance with the terms of the Montgomery County Subdivision Control Ordinance.

## **7.09 PHASING, EXTENSIONS AND ABANDONMENT**

### **A. Phasing Schedule**

- 1. The phasing schedule submitted as a component of the approved PUD zoning district shall govern the timing of the development of the PUD zoning district.
- 2. Secondary Review by the Plan Commission for the components of the PUD zoning district identified in the approved phasing schedule (either Development Plan Review or Primary Plat) shall be completed successfully within the timeline established by the approved phasing schedule.
  - a. Failure to complete a Secondary Review for a component of a PUD zoning district within the timeframe established by the phasing schedule shall require amendment of the PUD zoning district prior to seeking any additional Secondary Review for any other component of the PUD zoning district.

- b. While such amendment is pending and until such amendment is approved, no permits shall be issued in that portion of the PUD subject to the pending amendment.
3. All approvals subsequent to the required Secondary Review approval (ex: final/secondary plat, ILP, etc...) shall be completed within the timeline for said approval established by the Montgomery County Zoning Ordinance or Subdivision Control Ordinance.

#### **B. Extensions of Time**

1. Any request for any extension of time shall be completed prior to the expiration of the time period in question.
  - a. Extensions of time filed, but not approved, by the expiration of the time period in question shall be considered denied upon the expiration of the time period in question.
2. Administrative: A single extension of time to complete Secondary Review of any component of a PUD zoning district may be granted by the Zoning Administrator.
  - a. Any such extension shall be for a maximum of six (6) months.
  - b. Any such extension shall be requested in writing, confirmed in writing, added to the petition file, and reported to the Plan Commission at the next scheduled meeting.
  - c. The required Secondary Review of the component of the PUD zoning district shall be completed prior to the expiration of the six (6) month extension.
3. Any other request for an extension of time shall be considered an amendment to the adopted PUD zoning district.

#### **C. Abandonment**

1. Abandonment shall be deemed to have occurred when no improvements have been made pursuant to the approved Secondary Review for twenty-four (24) consecutive months, or upon the expiration of two (2) years from the date of approval of last component of the PUD zoning district receiving approval.
2. An amendment shall be initiated to the zoning map, as provided by law, so that the land will be zoned into a category or categories that most nearly approximate its then existing use or such other zoning category or categories that the legislative body deems appropriate.



## **7.10 RECORDING**

### **A. Recording Prior to Construction**

1. Prior to the issuance of any Improvement Location Permit or any development occurring:
  - a. A copy of the approved PUD zoning district ordinance text shall be recorded with the title to the subject site;
  - b. Any concept plan, graphic or other visual rendering adopted as a component of the PUD zoning district ordinance shall be reduced to a legible, recordable form and recorded with the title to the subject site; and
  - c. Any written commitments attached during the approval of the PUD zoning district shall be placed on the form adopted by the Montgomery County and recorded with the title to the subject site.

## **7.11 AMENDMENT**

### **A. Amendment**

1. A detailed amendment shall be required when proposing to:
  - a. Modify or terminate a condition of approval;
  - b. Modify or terminate a commitment of approval;
  - c. Increase the density or intensity of the project (e.g. additional structures, additional square footage, etc...);
  - d. A new right-of-way is proposed;
  - e. A right-of-way is proposed to be removed from the approved PUD zoning district, concept plan, Development Plan Review or Primary Plat for the project;
  - f. The ratio of platted lot area to common area and/or open space is being increased;
  - g. The boundary of the area included in the PUD zoning district is being expanded to include additional area or contracted to exclude areas previously included in the approved PUD zoning district.
2. A detailed amendment shall follow the same procedures for approval as the approval of the PUD, with the exception of the following: (a) No Informational Appearance before the Plan Commission shall be required (amendment petitions may proceed directly to Public Hearing after all other preliminary steps).

## **B. Considerations**

1. In consideration of any proposed amendment, the Plan Commission shall evaluate the following:
  - a. Consistency of the proposed amendment with the intent of the original PUD zoning district;
  - b. Consistency of the proposed amendment with the recommendations of all current adopted Montgomery County land use policies and plans (ex: Comprehensive Plan, Parks Master Plan, Thoroughfare Plan, Trail and Sidewalk Plan, et al).
  - c. Changes to physical site conditions and to the physical conditions of properties abutting the subject site; and (d) Changes to market demand, demographic shifts, geopolitical considerations, and other policy and legal environmental changes.

## ARTICLE 8 – AMENDMENTS

**8.01 AUTHORITY:** The ratification, amendment, or repeal of this Ordinance, shall at all times be controlled by the form, procedures, and authorization as set forth in I.C. 36-7-4-600 et. seq. and any and all amendments thereto.

**8.02 PETITIONS:** Petitions for amendments shall be filed with the Montgomery County Advisory Plan Commission, and the Petitioner, upon such filing, shall whether or not the proposed amendment is enacted, pay a filing fee as established by the Montgomery County Advisory Plan Commission and the cost of public notice that is required.

## ARTICLE 9 – DEFINITIONS

**9.01 GENERAL:** Certain words used in this Ordinance are defined below. Words used in the present tense shall include the future; the singular number shall include the plural, and the plural the singular; the male gender shall include the female gender and the female gender shall include the male gender; and the word “shall” is mandatory and not permissive.

- A. BOARD OF ZONING APPEALS:** The Montgomery County Board of Zoning Appeals.
- B. BUILDING SET BACK LINES:** A line extending across a lot establishing the minimum open space to be provided between the front line of buildings and the front lot line in a recorded subdivision.
- C. COMMISSION OR PLAN COMMISSION:** The Montgomery County Advisory Plan Commission.
- D. COMPREHENSIVE PLAN:** The most recent Comprehensive Plan of Montgomery County on file with the Montgomery County Recorder.
- E. COUNTY COMMISSIONERS:** The legislative body of the county government.
- F. DIRECTOR:** The Director of the Montgomery County Advisory Plan Commission.
- G. EASEMENT:** A right of use over the property of another.
- H. ESSENTIAL SERVICES:** The erection, construction, alteration or maintenance by public utilities, legislative bodies, or municipal or other governmental agencies of underground or overhead gas, electrical, conduit, steam, water, sewage, drainage or other distribution systems, including, but not limited to poles, wires, mains, drains, sewers, pipes, signals, hydrants, public way signs, transmission equipment, towers, antennas, microwave disc, and any other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of service by such public utilities, legislative bodies, or municipal or other governmental agencies. This definition shall also include municipal buildings.
- I. FRONT YARD:** The space not containing any structures or storage areas between a structure or storage area and a public way street, road, or right-of way.

- J. FRONTAGE:** The width of a lot measured along a continuous and straight line connecting the side lot lines at a point where said side lot lines intersect the right-of-way line of a street, road, or highway from which such lot has legal access.
- K. GARBAGE COLLECTOR:** A business operation owned by a legislative body or private entity to collect, but not dispose of, refuse, garbage, or trash whether by contract or private pay.
- L. JUNK:** Scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or zinc, and all other scrap metals and their alloys, and bones, rags, used cloth, used rubber, used rope, used tinfoil, used bottles and cans, or old used machinery, used tools, used appliances, used fixtures, used utensils, used lumber, used boxes and crates, used pipe or pipe fixtures, used automobiles, trucks, or airplanes, tires, and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition, but are subject to being dismantled.
- M. JUNKYARD:** Any place where junk, waste, discarded, or salvage materials are bought, exchanged, sold, stored, baled, packed, disassembled, or handled, including automobile wrecking yard, house wrecking, and structural steel materials and equipment, but not including the purchase or storage of used furniture and household equipment used or salvaged materials as a part of a manufacturing operations. Any site in which vehicles are cannibalized shall be determined to be a junkyard.
- N. LEGISLATIVE BODY:** The governing body of an incorporated town, city, or county.
- O. LOT, MINIMUM AREA:** The horizontal projection area of a lot computed exclusive of any portion of the right-of-way of any Public Way.
- P. LOT OF RECORD:** Any lot that individually, or as part of a subdivision, has been recorded in the office of recorder of the Deeds of the County.
- Q. LOT, WIDTH OF:** The calculated measurement at the front property line.
- R. MICRO WIND SYSTEM:** A free standing or building-mounted wind system that has a nameplate capacity (manufacturer's rating) of 10 kilowatts or less, and does not exceed a total height of 120 feet. Micro wind systems are subject to regulations in all zoning districts.

- S. **MUNICIPAL BUILDING:** A building or structure housing a Legislative Body Office or a non-commercial public use, including, but not limited to, police, fire, library, and utility structures.
- T. **NON-CONFORMING STRUCTURE:** A structure designed, converted, or adapted for use prior to the adoption of the ordinance prohibiting the structure.
- U. **NON-CONFORMING USE:** Any use or arrangement of land or structure legally existing at the time of enactment of the Montgomery County Zoning Ordinance or any of its amendments, which does not conform to the provisions of the Montgomery County Zoning Ordinance or the Montgomery County Subdivision Control Ordinance.
- V. **OWNER:** Any individual, firm, association, syndicate, co-partnership or corporation having proprietary interests in the land upon which the proposed request for action is requested.
- W. **PUBLIC WAY:** A Public Way includes any highway, street, avenue, road, boulevard, lane, court, alley, places, or any designed parcel used for public transportation.
- X. **REAR YARD:** That area of a lot encompassing the space between the nearest foundation of a building to a rear lot line and the rear lot line, extending to the side lines of the lot, and measured as the shortest distance from that foundation to the rear lot line, which shall be that yard at the opposite end of the lot from the front yard.
- Y. **RECYCLING COLLECTION POINT:** A tract of land and/or structure that is used for the collection of recyclables on a periodic basis by a non-for-profit organization, a fraternal group, a school district or a church group.
- Z. **RECYCLING CENTER:** A structure used commercially for collecting, storing, or purchasing materials for recycling, such as, but not limited to, aluminum, copper, or brass.
- AA. **RIGHT-OF-WAY:** A strip of land occupied or intended to be occupied by a public way, pedestrian way, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or sewer main, special landscaping, drainage swale, or for other special uses.
- BB. **SANITARY LANDFILL:** A parcel of land used for the disposal of accumulations of refuse or other discarded materials.

- CC. SET BACK:** The distance between the right-of-way of a public way and a principal and/or accessory structure.
- DD. SOLAR ENERGY SYSTEMS, FARMS AND FACILITIES:** Any solar collector or other solar energy device, group of devices (solar array, solar farm or solar distribution facility), or structural design feature of a building whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, water heating.
- EE. SPOT ZONING:** The process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners. The extension or expansion of an adjacent area of a zoning classification shall not be construed as spot zoning.
- FF. SUPPLY YARD:** A commercial establishment storing or offering for sale wholesale building supplies, steel supplies, coal, heavy equipment, feed and grain, and similar goods. A supply yard does not include the wrecking, salvage, cannibalizing, dismantling, or storing of automobiles or similar vehicles.
- GG. USE:** The purpose or activity for which the lot, parcel, tract, building, or structure thereon is designated, arranged, or intended, or for which it is occupied or maintained.
- HH. WATER & SEWAGE TREATMENT PLANT:** A building, structure or facility where water and/or sewage are treated and processed for the health and safety of the public by either a Legislative Body or private enterprise.
- II. WIND ENERGY CONVERSION SYSTEM (WECS):** The equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, wind tower, transformer, turbine, vane, wind farm collection system, wire, or other component used in the system.
- JJ. WIND FARM:** Two or more large or small wind systems on a single property or aggregated properties for the purpose of converting and then storing or transferring energy from the wind into usable forms of energy.
- KK. WIND FARM COLLECTION SYSTEM:** All the low-voltage wiring and cabling connecting any wind turbine with another wind turbine or to a place where voltage is stepped up, commonly known as a substation or switching

station, and all wiring or cabling connecting a turbine, system, switching station or substation to electrical transmission lines or interconnectivity facility that connects the system to the electrical service grid.

**LL. WIND TURBINE GENERATOR:** A tower, pylon, or other structure, including all accessory facilities, upon which any, all, or some combination of the following are mounted and are a part of a micro wind system, small wind system, or large wind system: 1. A wind vane, blade, or series of wind vanes or blades, or other devices mounted on a rotor for the purpose of converting wind kinetic energy into electrical energy. 2. A shaft, gear, belt, or coupling device used to connect the rotor to a generator, alternator, or other electrical or mechanical energy-producing device. 3. A generator, alternator, or other device used to convert the mechanical energy transferred by the rotation of the rotor into electrical energy.

**MM. WIND TURBINE GENERATOR HEIGHT:** The distance between the ground and the highest point of the wind turbine generator tower including blades, when a blade is at its highest point of rotation.

**NN. YARD:** An open space on the same lot, parcel, or tract with a building or structure unoccupied and unobstructed from its lowest level upward, except as otherwise permitted by the ordinance.

**OO. YARD, FRONT:** A yard extending across the full length of the front lot line between the side lot lines.

**PP. YARD, REAR:** A yard extending along the full length of the rear lot line between the side lot lines.

**QQ. YARD, SIDE:** A yard extending along a side from the front to the rear yard.

**ADDITIONAL TERMS:** Terms not specifically defined herein shall have the meanings set forth in by the interpretation of the Montgomery County Board of Zoning Appeals.



## ARTICLE 10 –CONFINED FEEDING OPERATIONS

**10.01 DEFINITIONS:** The following definitions apply to this article and to the Zoning Ordinance:

(A) **Animal Unit:** The term “animal unit” is a unit of measurement calculated by multiplying the number of animals contained in a Confined Feeding Operation (CFO) or Concentrated Animal Feeding Operation (CAFO) site by the animal unit factor corresponding to the species, gender, age, etc. of the animals on the site. Animal units are used to determine separation distances for CFO/CAFO sites.

(B) **Animal Unit Factor:** See Table in Section 10.03(G)(3) of this article.

(C) **Clean Record:** The term “clean record” means a record with the Indiana Department of Environmental Management (IDEM) that is without any violations during the previous five (5) year period.

(D) **CFO/CAFO Applicant:** The terms “CFO Applicant” and “CAFO Applicant” refer to a person or persons, legal entity or legal entities who apply to the Montgomery County Zoning Administrator for approval of CFO/CAFO site(s).

(E) **Confined Feeding Operation:** The term “Confined Feeding Operation” means:

(1) any confined feeding of at least:

- (a) 300 cattle;
- (b) 600 swine or sheep;
- (c) 30,000 fowl; or
- (d) 500 horses.

(2) any Animal Feeding Operation (AFO), as defined in 327 IAC 19-2-3,

(a) electing to be subject to Indiana Code 13-18-10; or

(b) that is causing a violation of

- (i) water pollution control laws;
- (ii) any rules of the Environmental Rules Board established under Indiana Code 13-13-8; or
- (iii) the provisions of Indiana Code 13-18-10.

For purposes of this definition, “confined feeding” means the confined feeding of animals for food, fur, or pleasure purposes in lots, pens, ponds, sheds, or buildings where animals are confined, fed, and maintained for at least 45 days during any 12 month period and where ground

cover or vegetation is not sustained over at least 50% of the animal confinement area. The term confined feeding does not include (1) a livestock market where animals are assembled from at least 2 sources to be publicly auctioned or privately sold on a commission basis and that is under state or federal inspection or (2) a livestock sale barn or auction market where animals are kept for not more than 10 days. A confined feeding operation and is also referred to as a CFO. (Authority 327 IAC 19-2-7).

(F) Concentrated Animal Feeding Operation: The term “Concentrated Animal Feeding Operation” is defined in 40 Code of Federal Regulations §122.23 and is also referred to as a CAFO.

(G) Existing CFO/CAFO: The terms “existing CFO” and “existing CAFO” mean a completed CFO/CAFO site permitted by the Indiana Department of Environmental Management as of the effective date of this Article.

(H) Homestead: For purposes of CFO/CAFO site evaluation, at least ten percent (10%) of a residence held as joint tenant, tenant in common, tenant be the entireties, shareholder, partner, member, beneficiary or other legally recognized equity interest holder. Ownership by a person’s spouse, child and/or parents may also qualify as a homestead.

(I) IDEM: The term “IDEM” means the Indiana Department of Environmental Management.

(J) Manure: The term “manure” means any animal feces or urine, any biological material such as bedding which has been in contact with animal manure or urine, and any storm water, groundwater, or process water that has been comingled with animal feces or urine.

(K) Manure Application: The term “manure application” means the method of applying manure by injection or land application. Surface application on an established crop refers to a green established crop.

(L) Odor Abatement: For the purposes of the CFO/CAFO site evaluation, the term “odor abatement” means the methods of odor control. Acceptable methods of odor abatement are listed in Table 10-1.

(M) Public Use Area: The term “public use area” means land owned by the United States of America, the State of Indiana, or a political subdivision of the State of Indiana with facilities that attract the public to congregate and remain in the area for significant periods of time.

(N) Shelter Belt. The term “shelter belt” means facilities and structures designed to control impacts of CFOs/CAFOs, as provided in and in accordance with the Natural Resources Conservation Service (NRCS) Conservation Practice Standard for Windbreak/Shelterbelt Establishment Code 380.

(O) Truck Turnaround. For purposes of CFO/CAFO site evaluation, the term “truck turnaround” means a cul-de-sac or T-shaped turnaround area provided so as to prevent semi-trailers from backing off of or onto a road. The truck turnaround area must be adequate for a semi-trailer to turn around on the site and must be covered in an all-weather surface.

(P) Use of Attachment with Application. For purposes of CFO/CAFO site evaluation, the term “use of attachment with application” means an attachment used in the process of manure application to cover exposed area of the equipment and control of spray manure.

(Q) Water Conservation: The term “water conservation” means the methods that significantly reduce the amount of water used in the CFO/CAFO, such as wet/dry feeders or other feeding and watering systems.

(R) Violations, IDEM or EPA: The term “violation, IDEM or EPA” means an enforcement action resulting in an Agreed Order or a Commissioner’s Order within the preceding five (5) years from the Indiana Department of Environmental Management, a Consent Agreement or Final Order within the preceding five (5) years from the United States Environmental Protection Agency, or a finding from a court of law that a person or persons, or a legal entity or legal entities, has caused a substantial endangerment to human health or the environment. A legal entity shall be deemed to have incurred a violation if an owner, member, shareholder, or interest holder of at least ten percent (10%) of the entity has incurred a violation personally.

## **10.02 PURPOSE AND APPLICABILITY**

(A) Purpose. The purpose of this article is to incorporate into the Montgomery County Zoning Ordinance a system for evaluating sites for CFO/CAFO facilities. It is acknowledged that agriculture is an essential component of the Montgomery County economy and the progress of the agriculture industry must be recognized and planned for in the Montgomery County Zoning Ordinance.

(B) Applicability. The standards and regulations contained in this article apply to the location and planning of CFO and CAFO sites in Montgomery County. Certain provisions do not apply to existing CFOs and CAFOs. However, the standards and regulations apply to any new CFOs and CAFOs, as well as the expansion of existing CFOs and CAFOs.

(C) Other Regulation Authority. It is acknowledged that CFOs and CAFOs are permitted and regulated by the Indiana Department of Environmental Management and regulated further by the Office of the Indiana State Chemist, the Indiana State Board of Animal Health and other federal and state agencies. The purpose of this article is to determine, under Montgomery County’s zoning authority, the appropriate location for CFOs and CAFOs. Nothing in this article

should be read to conflict with existing federal or state regulation of CFOs and CAFOs or to regulate these facilities or their operation.

### 10.03 SITING REQUIRMENTS

(A) Approval Required. No person or entity will start construction of or operate a new CFO/CAFO or expand an existing CFO/CAFO without first obtaining approval from the Montgomery County Zoning Administrator as required by this article.

(B) Permitted Zoning Districts. A CFO or CAFO may be located only on a parcel of land in an Agriculture zoning district.

(C) Lot Size. A CFO or CAFO may be located only on a parcel not less than the acreage required to meet State and Local agency ordinances and restrictions, regardless of the amount of space or acreage to be allotted for the barns or operating facilities.

(D) Minimum Front Yard Set Back: The minimum front yard setback is two hundred fifty (250) feet from the centerline of any road to the nearest foundation of the CFO/CAFO. If a CFO/CAFO abuts more than one road, then the front yard setback will apply to each property line with road frontage.

(E) Minimum Side Yard Set Back: The minimum side yard setback is two hundred fifty (250) feet from the side property lines to the nearest foundation of the CFO/CAFO.

(F) Minimum Rear Yard Set Back: The minimum rear yard setback is two hundred fifty (250) feet from the rear property line to the nearest foundation of the CFO/CAFO.

(G) Minimum Road Frontage: The minimum road frontage is one hundred fifty (150) feet.

(H) Permitted Entrances: A CFO/CAFO site may have no more than one (1) entrance to a county road, and the applicant must obtain a driveway permit from the Montgomery County Highway Department prior to construction of the entrance. A CFO/CAFO site may have up to two (2) entrances to a State Highway or State Road, and the applicant must obtain a driveway permit from the Indiana Department of Transportation prior to construction of the entrance (s).

(I) Required Minimum Separation Distances:

(1) Residential Structure not located on the proposed site: the application separation distances are:

(a) Foundation to Foundation: at least 2,640 feet, as measures from the foundation of the CFO structure to foundation of the residential structure. This

residential separation distance allowed to be reduced to 1,320 feet with use of not more than four odor mitigation tactics in (10.1); and

- (b) Property Line to Property Line: Separation distance, from the property line of the CFO parcel to property line of the residential structure parcel is at least 1,320 feet. This Separation distance can be reduced to 660 feet with use of not more than four odor mitigation tactics in table (10.1);
- (c) Calculation of Separation Reduction: The Separation Distance Reduction provided for in this subsection is calculated by multiplying each mitigation tactic used by 0.125 and then multiplying that product times the default separation distance. The maximum reduction is 50% of the applicable separation distance.

**Separation Distance Reduction -Table 10.1**

1. Deep pit	Minimum 14-month storage pit pumped once per year.
2. Berm and Vegetation screens	Combination of berm and vegetation screen around perimeter of site.
3. Dietary program	Diet changed every 21 days to minimize nutrient excretion into pit.
4. Power washing	Animal barns washed and cleaned every 6 months to minimize dust particles that carry odor.
5. Slatted floors	Animals stay clean and reduces manure build up that creates odor
6. Pit additives	Chemicals or Biologicals that reduce omission of odor by reducing pH levels.
7. Solid-liquid Separation	Separating urea from solid fecal matter mechanically or with sedimentation basin.
8. Air Treatment	Trapping air vented and treating prior to discharge to atmosphere.
9. Anaerobic Digester	Process by which microorganisms break down biodegradable material in the absence of oxygen.

- (2) School or educational institution – 5280 feet;
- (3) Church or religious institution – 2640 feet;
- (4) Open legal drain, stream or river (without a 20-foot filter strip) – 500 feet;
- (5) Open legal drain, stream or river (with a 20-foot filter strip) – 300 feet;
- (6) Municipality – 5280 feet

- (7) Residential Subdivision – 2640 feet
- (8) Public Use Area – 5280 feet
- (9) Water Well (other than one used to service CFO/CAFO) – 500 feet;
- (10) High Employment Centers (100+ full-time equivalent employees) – 2640 feet
- (11) Business or commercial use (not otherwise specified above) – 2640 feet.
- (12) Nucor Road – 3960 feet

(J) Separation Distance Calculation Standards

- (1) The minimum distance from residential property does not apply to a residence owned by the CFO/CAFO operator;
- (2) The minimum distances contained in (I) for neighboring residential homes will be increased based upon the number of head of livestock. This calculation is made by multiplying the number of head of livestock by the animal unit factor to determine the animal unit value. This animal unit value is then multiplied by a factor of 0.5 to create the adjusted separation distance from neighboring residential homes. The minimum separation distance will be 2640 feet even if the adjusted separation distance is less. The adjusted separation distance calculation is only used to increase the minimum separation distance.
- (3) For purposes of calculating adjusted separation distances, the following animal unit factors will be used:

Animal Type	Animal Unit Factor
A. Dairy Cattle	
1. Mature Cow or Bull	1.4
2. Heifer	0.7
3. Calf	0.2
B. Beef Cattle	
1. Slaughtered Steer or Stock Cow	1.1
2. Feeder Cattle or Heifer	0.7
3. Cow and Calf Pair	1.3

4. Calf	0.2
C. Swine	
1. Boars or Sows, including litters	0.45
2. Finishers or gilts	0.4
3. Nursery pigs	0.07
D. Horse	1.0
E. Sheep and Lambs	0.1
F. Chickens	
1. Laying Hen or Broiler (liquid manure system)	0.011
2. Laying Hen or Broiler (dry manure system)	0.005
G. Turkeys	
1. Over 5 pounds (finishers)	0.018
2. Under 5 pounds (starters)	0.005
H. Ducks	0.01
I. Other animals not listed above	Avg. weight of animal in pounds divided by 1,100 lbs.

(K) Truck Turnaround: A cul-de-sac or T-shaped turnaround area provided so as to prevent semi-trailers from backing off of or onto a road. The truck turnaround area must be adequate for a semi-trailer to turn around on the site and must be covered in an all-weather surface.

(L) Clean Record: The proposed owner of the CFO is without any violations during the previous five (5) year period from (IDEM) Indiana Department of Environmental Management.

(M) Neighboring Property Owner Waiver: A landowner, other than the CFO applicant, may waive the applicable separation distance by executing a written, irrevocable waiver which is in recordable form and in a form acceptable to the Montgomery County Zoning

Administrator. This waiver must be submitted with the application, must create a covenant which runs with the land in perpetuity, and must be recorded in the Office of the Montgomery County Recorder.

(N) Separation distances apply to CFO only. The separation distances provided for in this Article apply only to the siting of CFO facilities and do not in any manner restrict the rights of a landowner, other than the land on which the CFO is located, to use, develop and enjoy the landowner's real estate. These distances cannot be used by the applicant or any other person or entity against any other party or as a basis to restrict or limit the use, development or enjoyment of such real estate.

#### **10.04 PROCEDURE**

(A) Applications. All applications for siting approval must be submitted to the Montgomery County Zoning Administrator.

(B) Determination of Completeness: The Zoning Administrator will determine within ten (10) days of receipt of the application whether the application contains all information necessary for consideration. If the Administrator finds that the application is not complete, the Administrator will notify the applicant in writing of the information needed to make the application complete. The applicant must then provide the necessary information to the Administrator within 30 days. If the applicant does not provide the information within 30 days, the Administrator will consider the application to be withdrawn. When the Administrator determines an application is complete, the Administrator will process the application and make a decision on the application within 30 days of the determination that the application is complete.

(C) Application Fee: The applicant will tender with the application the fee in the amount of \$500.00. This is a nonrefundable fee.

(D) Determination of Siting: The Zoning Administrator will determine whether the proposed site meets the siting standards and regulations of this Article and the requirements of the Zoning Ordinance. If the proposed site does not meet the siting standards, the Administrator will reject the application and notify the applicant in writing.

(E) Manure Application. All manure application methods must comply with the requirements of IDEM, the Office of the Indiana State Chemist, the Natural Resources Conservation Service, and any other federal or state regulatory body or agency with jurisdiction.



### **10.05 INSPECTIONS AFTER ISSUANCE OF CERTIFICATE APPROVING SITE**

The Zoning Administrator has the right to inspect the CFO/CAFO after issuance of a certificate of approval, and all applicants consent to the Administrator's entry upon the site for the purpose of inspection.

### **10.06 VIOLATIONS AND REMEDIES**

In the event that after the issuance of a certificate of approval, the Zoning Administrator determines that the CFO/CAFO is in violation of this article, the Administrator may impose a fine for the violation and seek enforcement of this article as provided for by Section 5.04 of the Zoning Ordinance.

### **10.07 APPEALS**

Any person may appeal an order, requirement, decision or determination of the Zoning Administrator in the administration of this article to the Board of Zoning Appeals. All such appeals must be in writing and filed with the secretary of the Board of Zoning Appeals within thirty (30) days of the decision of the Zoning Administrator.

## **ARTICLE 11 – URBAN OVERLAY DISTRICT**

### **11.01 PURPOSE**

The purpose of the Urban Overlay District (UO) is to promote and protect the public health, safety, comfort, convenience, morals and general welfare by providing for consistent and coordinated standards of development for land adjacent to or within one-half (1/2) of one mile of the corporate limits of the City of Crawfordsville. These standards are a tool designed to ensure harmonious development of land near the City of Crawfordsville and to promote development which is structurally and aesthetically similar to development in the City. The district's character, vitality, quality and functionality are important to Montgomery County in the promotion of economic development, a high quality of life, and harmonious development, and the creation of the district will accomplish these purposes through:

1. the promotion of coordinated development in land near the boundaries of the City;
2. the establishment of high standards for development on properties in the district, including buildings, signs, parking, lighting and other site improvements;
3. the establishment of development and use standards that will promote the quality, scale, character, and type of development consistent with existing and future development in the City.

### **11.02 BOUNDARIES**

The boundaries of the Urban Overlay District are those areas of the unincorporated area of Montgomery County adjacent to and within one-half (1/2) of one mile of the corporate boundaries of the City of Crawfordsville. If any portion of a parcel is located in the boundaries of the Urban Overlay District, the standards, rules and regulations of the District apply to the entire parcel.

### **11.03 APPLICATION**

The standards and regulations contained in this Article do not affect the use of the land. Rather, these standards and regulations impose additional development standards over the underlying use of the land as provided for in the Montgomery County Zoning Ordinance. The standards and regulations apply only to development occurring after the effective date of this Article.

### **11.04 OPEN SPACE**

All Planned Unit Developments in the District must provide for open space which is at least ten percent (10%) of the gross acreage of the Planned Unit Development, less rights-of-way. All such open space must be designated for recreational or scenic use, landscape buffers for adjoining uses, or set aside for future public facilities.

### **11.05 PLANNED UNIT DEVELOPMENT STANDARDS**

All Planned Unit Developments for residential or mixed-use development must be at least five (5) acres. All residential lots in a PUD must have lot sizes of at least 7,000 square feet and must have a minimum

lot width of at least 60 feet. If adjacent to single-family neighborhood(s), the PUD must provide that all two-family and multi-family uses are located in the center of the PUD rather than in the area adjacent to the single-family neighborhood. All mixed-use PUDs which contain residential use must contain at least fifty percent (50%) single family use and not more than thirty percent (30%) for two-family or multi-family use and not more than twenty percent (20%) for non-residential use. For purposes of calculating the percentage of use, the total number of square feet of use will be used.

**11.06 BULK STANDARDS**

For purposes of this district, the following standards apply:

Standard (in feet)	Agricultural	Residential	Commercial	Industrial
Minimum Lot Size				
A. Single Family with sewer	8,500	8,500		
B. Per Unit with sewer		3,500		
C. Single Family without sewer	43,560	43,560		
Lot Width	250	60	200	100
Front Yard Set Back	100	25	40	30
Side Set Back	50	5	20	30
Rear Yard Set Back	50	25	40	30
Maximum Height – Principal	35	35	35	55
Maximum Height – Accessory	None	18	18	18
Minimum Floor Area – single family		950		
Minimum Floor Area – 2-family/multi-family		500/unit		

**11.07 PARKING**

(A) Parking Space Size. All off-street parking must meet the following standards:

Type	Width and Length
Parallel	9 x 22
Right Angle	9 x 20
60-degree angle	9 x 18
45-degree angle	9 x 17
Compact car	8 x 15

(B) Minimum Number of Spaces: The number of required spaces must meet the requirements of Appendix B of the City of Crawfordsville Zoning Ordinance (shown as Table 11-1).

(C) Miscellaneous Standards: All off-street parking areas containing more than five (5) parking spaces must be graded and designed to manage storm water. All parking areas must provide lighting that is non-polluting and that reflect away from adjacent properties. If the parking area extends to the property line, wheel stops or other parking devices must be installed in order to prevent parking which extends over the property line.

(D) Minimum Number of ADA Spaces: The number of Americans with Disability Act (ADA) spaces required is as follows:

Number of Required Spaces	Required ADA Spaces
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-1000	2% of total
1001 +	20 plus 1 for each 100 over 1,000

### 11.08 STACKING REQUIREMENTS

For Commercial uses, the following drive-thru stacking standards apply:

Type of Use	Number of Cars	Measured
Bank	4 per teller lane	Teller or box
Restaurant Order Area	6	Order Box
Restaurant Pick Up Area	4	Order Box to Pick Up Area
Car Wash Automated	6/stall	Entrance
Car Wash Self-Serve	3/stall	Entrance
Gasoline Pump Island	2/pump	Pump Island

### 11.09 SIGNS

All signs, except those exempt or prohibited by the City of Crawfordsville Zoning Ordinance, may be no more than 5 square feet in area for each foot of width of the principal structure associated with the sign. Signs may not blink, flash or flutter and may not change in light intensity or brightness.

### 11.10 STREET LIGHTS

For all residential subdivisions, street lighting must be constructed every 250 feet of the street, on opposite sides of the street in a stagger, and at the entrance and all street intersections.

### 11.11 OFF-STREET LOADING REQUIREMENTS

The following requirements for off-street loading apply:

Type of Use	Floor Area	Number of Spaces
Manufacturing, Distribution, Wholesale, Storage, Warehousing	10,000 – 25,000	1
	25,001-60,000	2

	60,001 – 100,000	3
	Each 50,000 above `100,000	1
Office, Hotel, Motel, Retail Sales	10,000 – 60,000	1
	60,001-100,000	2
	Each 50,000 above 100,000	1
Other		As determined by Zoning Administrator

**Article 12 – FEE SCHEDULE**

**12.01 FEE SCHEDULE:** The following fees are required for applications pursuant to the Zoning Ordinance:

Item	Type of Application	Fee	Other
1	Rezone	\$300 for 2 acres or less; \$300 plus \$25 for each additional acre in excess of 2 acres	(1) Certified mail (return receipt requested) postage to all adjacent and other property owners, as required by zoning ordinance or Indiana law – paid by applicant to postal service; and (2) Publication of Notice of public hearing in the <i>Journal Review and The Paper 24-7</i> – paid by applicant to newspapers.
2	Variance	\$200	(1) Certified mail (return receipt requested) postage to all adjacent and other property owners, as required by zoning ordinance or Indiana law – paid by applicant to postal service; and (2) Publication of Notice of public hearing in the <i>Journal Review and The Paper 24-7</i> – paid by applicant to newspapers.
3	Special Exception	\$200	(1) Certified mail (return receipt requested) postage to all adjacent and other property owners as required by Indiana law – paid by applicant to postal service; (2) Publication of notice of public hearing in the <i>Journal Review and The Paper 24-7</i> – paid by applicant to newspapers.
4	CFO	\$500	(1) Certified mail (return receipt requested) postage to all property owners required by zoning ordinance – paid by applicant to postal service.
5	Planned Unit Developments (original and amendments)	\$750	(1) Certified mail (return receipt requested) postage to all adjacent and other property owners as required by Indiana law – paid by applicant to postal service; and (2) Publication of notice of public hearing in the <i>Journal Review and The Paper 24-7</i> – paid by applicant to newspapers
6	Stormwater Review, traffic study, fiscal study or other required study	Cost of Study to County	Paid by applicant directly to reviewing engineer or engineering firm, traffic engineer or traffic engineering firm, fiscal consultant or other consultant.
7	Solar Energy System, Farm or Facility Permit	\$500 for projects of 100 acres or less; \$550 for projects of more than 100 acres but not more than 200 acres; \$600 for projects of more than	

		200 acres but not more than 300 acres; \$650 for projects of more than 300 acres but not more than 400 acres; \$700 for projects of more than 400 acres but not more than 500 acres; \$750 for projects of more than 500 acres but not more than 600 acres; \$800 for projects of more than 600 acres but not more than 700 acres; \$850 for projects of more than 700 acres but not more than 800 acres; \$900 for projects more than 800 acres but not more than 900 acres; \$950 for projects more than 900 acres but not more than 1,000 acres; \$1,000 for projects more than 1,000 acres.	
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## SECTION 13—SOLAR FARMS AND FACILITIES

**13.01 Purpose.** The regulation of solar energy systems, solar farms and facilities and other solar energy devices is authorized by Indiana Code §36-7-2-2 and is designed to protect the public health, welfare and safety. The purpose of this Section is to plan for and regulate the use, improvement, and maintenance of real property and the location, condition, and maintenance of structures and other improvements. These regulations allow solar energy systems, solar farms and facilities and other solar energy devices in certain areas, and, therefore, do not have the effect of unreasonably restricting the use of such facilities other than for the preservation and protection of the public health and safety. It is the policy of Montgomery County to promote and encourage the use of solar energy systems and facilities, and these regulations are not intended to and do not have the effect of significantly increasing the cost of such systems, decreasing the efficiency of such systems, or impeding alternative systems of comparable cost and efficiency.

**13.02 Permitted Districts.** Solar energy systems, solar farms and facilities are allowed only in the Agriculture and Industrial Zoning Districts.

**13.03. Exemptions.** Solar devices which are part of the structure of a residence or business or part of the permitted yard of a residence or business and which are designed to provide electrical power, heating or cooling, or water heating only for the residence or business are exempt from this regulation.

**13.04 Setbacks:** All ground-mounted solar panels or arrays must be at least thirty (30) feet from any property line, at least one hundred (100) feet from the center of any road, street, highway, alley or public way, at least two hundred (200) feet from the property line if adjoined by property that is zoned residential, and at least two (200) hundred feet from the property line if adjoined by property that is zoned agricultural which has a single family dwelling within five hundred (500) feet of the solar panels or arrays. When the solar facilities for a single project encompass multiple parcels, there is no required setback from a property line for the internal property lines in the project. Security fencing, access roads, and distribution poles and wires may be located within the set-backs but may not be located in a road right-of-way.

**13.05 Height Limitations:** Ground-mounted solar panels or arrays may not exceed twenty (20) feet in height as measured from the natural grade to the top of the panel or array when at its highest position.

**13.06 Permits.** Each property owner must obtain a solar farm permit prior to constructing, operating or maintaining a solar energy system, farm or facility. In order to obtain a permit, the applicant must submit to the Zoning Administrator a conceptual site plan which includes the general footprint of the solar energy system, farm or facility the number of panels, the generating capacity, the location of all fences, electrical poles and lines, the location of all other equipment and structures, the location of any and all underground electrical lines, facilities and structures,



the location of all access roads, rights-of-way and easements, drainage plan for the site which complies with the Montgomery County Storm Water Ordinance, a road use plan for construction, specifications for equipment, compliance with all applicable industry standards and safety codes, Federal Aviation Administration rules and regulations, and Federal Communications Commission rules and regulations. Within 15 days of receipt of an application for a permit, the Zoning Administrator will determine whether the application is complete. The Zoning Administrator will notify the applicant in writing of his determination. If the application is complete, the application will be reviewed by the Zoning Administrator and then by the Plan Commission as a request for a development plan review, as provided for in Section 13. If the application is not complete, the applicant must provide to the Zoning Administrative the supplemental information within sixty (60) days. If the applicant fails to provide the supplemental material for the application in a timely manner, the application will be dismissed.

**13.07 Development Plan Review:** The Plan Commission will conduct a public hearing on the application as a request for a development plan review, as provided for in Section 13 of the Zoning Ordinance.

**13.08 Issuance of Permit:** If the Plan Commission approves the development plan and the applicant has satisfied all of the requirements of this Ordinance, the Subdivision Control Ordinance, and all other applicable ordinances, rules and regulations, the Zoning Administrator will issue an improvement location permit.

**13.09 Permit Fee:** At the time of submission, the applicant will submit to the Zoning Administrator a nonrefundable fee in the amount of \$500.00, plus the following additional fee for solar energy systems, farms of facilities that are more than one hundred (100) acres:

Acres	Additional Fee
100+ to 200	\$50
200+ to 300	\$100
300+ to 400	\$150
400+ to 500	\$200
500+ to 600	\$250
600+ to 700	\$300
700+ to 800	\$350
800+ to 900	\$400
900+ to 1,000	\$450
1,000+	\$500

**13.10 Fencing:** All solar energy systems, farms and facilities shall be surrounded by a security fence not less than eight (8) feet in height and not more than twelve (12) feet in height in order to prevent unauthorized access. All gates will be locked. The applicant will place a sign, not to

exceed eight square feet in area, which contains the name and address of the operator and an emergency telephone contact number for the operator.

**13.11 Exterior Lighting.** All exterior safety lighting will be developed in a manner which precludes light trespass onto adjoining parcels and which is limited to the amount of light needed for maintenance, safety and security.

**13.12 Legal Drains:** No solar energy system, farm or facility may encroach upon the seventy-five (75) easement of any legal drain or ditch. If the construction of the solar energy system, farm or facility requires the relocation of any legal drain or ditch, such relocation must be approved by the Montgomery County Drainage Board.

**13.13 Private and Mutual Drains:** No solar energy system, farm or facility may encroach upon any private or mutual drain or ditch. If the construction of the solar energy system, farm or facility requires the relocation of any private or mutual drain or ditch, such relocation must be approved by the parties to the private or mutual drain or ditch, performed at the expense of the operator, and relocated in a manner so as not to materially impede the function of the drain or ditch. This obligation to refrain from encroaching upon any private or mutual drain or ditch continues and applies even if the encroachment is discovered after construction of the project.

**13.14 Damage to Roads:** The applicant will be allowed to use County roads to transport equipment, materials and supplies to the location for construction. Prior to the issuance of a permit, the applicant must provide to the Zoning Administrator a road use plan. This plan must be approved by the Zoning Administrator and the County Highway Superintendent. The applicant will be responsible for any road and ditch damage caused by the applicant during construction and operations. In order to ensure the applicant's financial responsibility, the applicant must provide to the County a bond, letter of credit or other surety in an amount determined by the County Engineer to be sufficient to cover the expense of remediation of damages. The amount of the bond, letter of credit or other surety required must be the County Engineer's estimate of road damages caused during the construction of solar projects. If the applicant disagrees with the determination by the County Engineer of the amount of the bond, letter of credit or other surety, the applicant may appeal this determination to the Board of Zoning Appeals. This bond, letter of credit or surety must be in an amount and in a form acceptable to the Zoning Administrator. After construction of the project, the County Engineer will inspect the roads and ditches contained in the road use plan and determine whether damage has resulted because of the applicant's project. If the County Engineer finds that such damage has occurred, the Engineer will provide written notice to the applicant of the estimated cost of the remediation. The County will cause the remediation to occur, and the Engineer will certify to the applicant the expense of the remediation. The applicant will pay to the County the certified amount within sixty (60) days of receipt of the notice of the certified amount. If the applicant fails to timely pay the remediation expense, the County will be entitled to file a claim with the bond company or holder of the letter of credit or other surety and be paid from the bond, letter of credit or other surety.

**13.15 Enforcement:** In the event of a violation of this Section, the Zoning Administrator may enforce the Ordinance using the rights and remedies provided for in Section 5.04 of the Zoning Ordinance.

THIS IS THE LAST PAGE OF TEXT FOR THE MONTGOMERY COUNTY ZONING ORDINANCE.

“I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law.”

Name: Daniel L. Taylor

# APPENDIX A

## ZONE MAP