

ORDINANCE NO. 2024- 16

**AN AMENDMENT TO THE HENDRICKS COUNTY ZONING ORDINANCE
BY AMENDING CHAPTER 4 ZONING DISTRICTS, CHAPTER 14 OVERLAY
DISTRICTS, AND CHAPTER 15 DEFINITIONS**

WHEREAS, the Board of County Commissioners of Hendricks County, Indiana adopted the Hendricks County Zoning Ordinance on August 12, 2008 and which became effective on October 1, 2008;

WHEREAS, the Hendricks County Area Plan Commission has recommended that the Zoning Ordinance be amended;

WHEREAS, the Hendricks County Area Plan Commission has conducted a public hearing on the proposed amendment (TZA 01/24) and voted to forward a favorable recommendation to the County Commissioners;

WHEREAS, the County Commissioners have received and reviewed the Plan Commission's report, have considered the Plan Commission's recommendations, and find that the adoption of the recommended amendment would promote the health, safety and convenience of the people of Hendricks County; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HENDRICKS COUNTY, INDIANA AS FOLLOWS:

Amendment to "Table 4.3 Permitted and Special Exception Uses" as follows:

Communications/Utilities

Add:

Wind Energy Facility. Not Permitted or Special Exception in any district.

Amendment to "Chapter 4 Zoning Districts" as follows:

4.1 (C) Overlay Districts Established

Remove:

e. Wind Energy Facility Overlay District

Amendment to "Chapter 14 Overlay Districts" as follows:

Remove:

14.5 WIND ENERGY FACILITY OVERLAY DISTRICT (WEF-OL)

A. PURPOSE. The purpose of this section is to provide for an overlay district that will permit and regulate the development of Wind Energy Facilities in Hendricks County, subject

to reasonable conditions that will minimize impact on the underlying district and potential for conflict with other uses.

B. OVERLAY APPLICABILITY

This Section applies to all Wind Energy Facilities proposed to be constructed after the effective date of this Ordinance, except that this Section is not intended to apply to Wind Energy Conversion Systems, Noncommercial for the primary purpose of onsite use.

C. ESTABLISHMENT OF WIND ENERGY FACILITY OVERLAY DISTRICT.

A Wind Energy Facility Overlay District shall be established as regulated in Section 12.5 Zoning Map and Text Amendments. The Wind Energy Facility Overlay District boundaries shall be indicated on the official Zoning Map of Hendricks County, Indiana and shall exist as a layer of zoning regulation in addition to that of the established (underlying) zoning district.

D. PERMITTED USES, SPECIAL EXCEPTIONS, RELATION TO UNDERLYING ZONING DISTRICT, AND RELATION TO OTHER OVERLAY DISTRICTS

1. Permitted Uses, Special Exceptions

- a. Wind Energy Facility Overlay permitted use. Wind energy facilities are a permitted use in the WEF-OL district.
- b. Permitted uses in the underlying zoning district. In addition to wind energy facilities, permitted uses in the WEF-OL district shall include those uses permitted in the underlying zoning district.
- c. Special exceptions authorized in the underlying zoning district. Special exception uses permitted in the underlying zoning district are authorized as special exception uses in the WEF-OL district.

2. Relation To Underlying Zoning

- a. For wind energy facilities. For wind energy facilities, provisions of this Section shall supersede the regulations of the underlying zoning district for all specific regulations that are included within this section. If no specific and differing regulations are included, the regulations of the underlying zoning district shall apply.
- b. For all other uses. Regulations of the underlying zoning district shall apply except in those cases where they are superseded by regulations of this Section, in which case regulations of this Section shall apply.

3. Relation To Other Overlay Districts

In the case that this overlay district overlaps other overlay districts, the regulations of the WEF-OL district shall supersede the regulations of all other overlay districts. Where no special regulations are included within the WEF-OL district, the regulations of the other overlay district shall apply.

E. DEVELOPMENT PLAN APPROVAL

1. No Wind Energy Facility, or addition of a Wind Turbine to an existing Wind Energy Facility, shall be constructed or located within Hendricks County unless a development plan approving construction of the facility under Section 12.3 Development Plan Review and Approval has been obtained.

2. Any physical modification to an existing and permitted Wind Energy Facility that materially alters the size, type and number of Wind Turbines or other equipment shall require a development plan approval under Section 12.3 Development Plan Review and Approval. Like-kind replacements shall not require approval.
3. In addition to the requirements of Section 12.3 Development Plan Review and Approval, the Development Plan Review of a Wind Energy Facility shall include the following information:
 - a. An affidavit or similar evidence of agreement between the property owner and the Facility Owner or Operator demonstrating that the Facility Owner or Operator has the permission of the property owner to apply for necessary approval and permits for construction and operation of the Wind Energy Facility;
 - b. Identification of the properties on which the proposed Wind Energy Facility will be located, and the properties adjacent to where the Wind Energy Facility will be located;
 - c. A site plan showing the planned location of each Wind Turbine, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the Wind Energy Facility to the substation(s), ancillary equipment, buildings, and structures, including permanent meteorological towers, associated transmission lines, and layout of all structures within the geographical boundaries of any applicable setback;
 - d. Documents related to decommissioning;
 - e. Other relevant studies, reports, certifications and approvals as may be reasonably requested by Hendricks County to ensure compliance with this Section;
 - f. Throughout the approval process, the Applicant shall promptly notify Hendricks County of any changes to the information contained in the development plan application; and
 - g. Changes to the pending application that do not materially alter the initial development plan may be accepted without a new public hearing.

F. PERMIT REQUIRED

No Wind Energy Facility shall be constructed and operated unless an Improvement Location Permit and a Certificate of Occupancy and/or Certificate of Completion have been issued under Sections 12.10 Improvement Location Permit and 12.11 Certificate of Occupancy and Certificate of Completion.

G. DESIGN AND INSTALLATION

1. Design Safety Certification

The design of the Wind Energy Facility shall conform to applicable industry standards, including those of the American National Standards Institute. The Applicant shall submit certificates of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations.

2. Uniform Construction Code

To the extent applicable, the Wind Energy Facility shall comply with relevant and applicable local, state and national codes, and relevant and applicable international standards.

3. Controls and Brakes

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

4. Blade Clearance

The Wind Energy Facility blade must be a minimum of thirty feet above ground level.

5. Electrical Components

All electrical components of the Wind Energy Facility shall conform to relevant and applicable local, state and national codes, and relevant and applicable international standards.

6. Visual Appearance, Power Lines

- a. Wind Turbines shall be a non-obtrusive color such as white, off-white or gray.
- b. Wind Energy Facilities shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.
- c. Wind Turbines shall not display advertising, except for reasonable identification of the turbine manufacturer, Facility Owner and Operator.
- d. On-site transmission and power lines between Wind Turbines shall, to the maximum extent practicable, be placed underground.

7. Warnings

- a. A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
- b. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of ten feet from the ground.

8. Climb Prevention/Locks

- a. Wind Turbines shall not be climbable up to fifteen (15) feet above ground surface.
- b. All access doors to Wind Turbines and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.

H. SETBACKS

1. Occupied Buildings. For purposes of this Section, "Occupied Building" shall mean a residence or any building used for institutional purposes or as a public gathering place that is occupied or in use when the wind turbine permit application is submitted.
 - a. Wind Turbines shall be set back from the nearest Occupied Building located on a Participating Landowner's property a distance not less than the normal setback requirements for the underlying zoning classification or 1.1 times the Turbine Height, whichever is greater. The setback distance shall be measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building
 - b. Wind Turbines shall be set back from the nearest Occupied Building located on a Non-participating Landowner's property a distance of not less than five (5) times the Wind Turbine hub height, as measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building. This setback shall not apply to the setbacks for a new structure on a Non-participating Landowner's property. Standards of the underlying zoning district shall apply regardless of the location of any existing wind turbine on Participating property.
2. Property lines: All Wind Turbines shall be set back from the nearest property line a distance of not less than the normal setback requirements for the underlying zoning classification or 1.1 times the Turbine Height, whichever is greater. The setback distance shall be measured to the center of the Wind Turbine base.
3. Public Roads: All Wind Turbines shall be set back from the nearest public road a distance of not less than 1.1 times the Turbine Height, as measured from the right of- way line of the nearest public road to the center of the Wind Turbine base.

I. WAIVER OF SETBACKS

1. Property owners may waive the setback requirements in H(1)(b) (Occupied Buildings on Non-participating Landowner's property) and H(2) (Property Lines), if those setback requirements are greater than those of the underlying zoning classification, to a distance no less than the setback requirements of the underlying zoning classification by signing a waiver that sets forth the applicable setback provision(s) and the proposed changes.
2. The written waiver shall notify the property owner(s) of the setback required by this Ordinance, describe how the proposed Wind Energy Facility is not in compliance, and state that consent is granted for the Wind Energy Facility to not be setback as required by this Ordinance.
3. Any such waiver shall be recorded in the Recorder of Deeds Office for the County where the property is located. The waiver shall describe the properties benefited and burdened, and advise all subsequent purchasers of the burdened property that the waiver of setback shall run with the land and may forever burden the subject property.

4. Upon application, the Plan Commission may waive the setback requirement for public roads for good cause.

J. USE OF PUBLIC ROADS

1. The Applicant shall identify all state and local public roads to be used within the County to transport equipment and parts for construction, operation or maintenance of the Wind Energy Facility.
2. The County Engineer or a qualified third party engineer hired by the County and paid for by the Applicant, shall document road conditions prior to construction. The engineer shall document road conditions again thirty (30) days after construction is complete or as weather permits.
3. The County may bond the road in compliance with state regulations.
4. Any road damage caused by the applicant or its contractors shall be promptly repaired at the applicant's expense.
5. The Applicant shall demonstrate that it has appropriate financial assurance to ensure the prompt repair of damaged roads.

K. LOCAL EMERGENCY SERVICES

1. The Applicant shall provide a copy of the project summary and site plan to local emergency services, including paid or volunteer Fire Department(s).
2. Upon request, the Applicant shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for the Wind Energy Facility.

L. NOISE AND SHADOW FLICKER

1. Audible sound from a Wind Energy Facility shall not exceed fifty-five (55) dBA, as measured at the exterior of any Occupied Building on a Non-participating Landowner's property. Methods for measuring and reporting acoustic emissions from Wind Turbines and the Wind Energy Facility shall be equal to or exceed the minimum standards for precision described in AWEA Standard 2.1 - 1989 titled *Procedures for the Measurement and Reporting of Acoustic Emissions from Wind Turbine Generation Systems Volume I: First Tier*.
2. The Facility Owner and Operator shall make reasonable efforts to minimize shadow flicker to any Occupied Building on a Non-participating Landowner's property.

M. WAIVER OF NOISE AND SHADOW FLICKER PROVISIONS

1. Property owners may waive the noise and shadow flicker provisions of this Ordinance by signing a waiver of their rights.

2. The written waiver shall notify the property owner(s) of the sound or flicker limits in this Ordinance, describe the impact on the property owner(s), and state that the consent is granted for the Wind Energy Facility to not comply with the sound or flicker limit in this Ordinance.
3. Any such waiver shall be recorded in the Recorder of Deeds Office of the County where the property is located. The waiver shall describe the properties benefited and burdened, and advise all subsequent purchasers of the burdened property that the waiver of sound or flicker limit shall run with the land and may forever burden the subject property.

N. SIGNAL INTERFERENCE

The Applicant shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television or similar signals, and shall mitigate any harm caused by the Wind Energy Facility.

O. LIABILITY INSURANCE

There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least \$1 million per occurrence and \$1 million in the aggregate. Certificates shall be made available to the County upon request.

P. DECOMMISSIONING

1. The Facility Owner and Operator shall, at its expense, complete decommissioning of the Wind Energy Facility, or individual Wind Turbines, within (12) twelve months after the end of the useful life of the Facility or individual Wind Turbines. The Wind Energy Facility or individual Wind Turbines will presume to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months.
2. Decommissioning shall include removal of Wind Turbines, buildings, cabling, electrical components, roads, foundations to a depth of 36 inches, and any other associated facilities.
3. Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.
4. An independent and certified Professional Engineer shall be retained to estimate the total cost of decommissioning ("Decommissioning Costs") without regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment ("Net Decommissioning Costs"). Said estimates shall be submitted to the County after the first year of operation and every fifth year thereafter.
5. The Facility Owner or Operator shall post and maintain Decommissioning Funds in an amount equal to Net Decommissioning Costs; provided that at no point shall Decommissioning Funds be less than twenty five percent (25%) of Decommissioning Costs. The Decommissioning Funds shall be posted and maintained with a bonding company or Federal or Commonwealth chartered lending institution chosen by the Facility Owner or Operator and participating landowner

posting the financial security, provided that the bonding company or lending institution is authorized to conduct such business within the Commonwealth and is approved by the County.

6. Decommissioning Funds may be in the form of a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance as may be acceptable to the County.
7. If the Facility Owner or Operator fails to complete decommissioning within the period prescribed by Paragraph N (1) then the landowner shall have six (6) months to complete decommissioning.
8. If neither the Facility Owner or Operator, nor the landowner complete decommissioning within the periods prescribed by Paragraphs N(1) and N(7), then the County may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a Participating Landowner agreement to the County shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the County may take such action as necessary to implement the decommissioning plan.
9. The escrow agent shall release the Decommissioning Funds when the Facility Owner or Operator has demonstrated and the municipality concurs that decommissioning has been satisfactorily completed, or upon written approval of the municipality in order to implement the decommissioning plan.

Q. PUBLIC INQUIRIES AND COMPLAINTS

1. The Facility Owner and Operator shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.
2. The Facility Owner and Operator shall make reasonable efforts to respond to the public's inquiries and complaints.

R. REMEDIES

Compliance with the provisions of this Section shall be enforced under Section 13.1 Enforcement.

Amendment to “**Chapter 15 Definitions**” as follows:

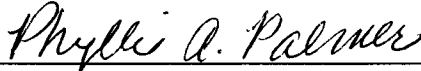
Remove:

1. Facility Owner: The entity or entities having an equity interest in the Wind Energy Facility, including their respective successors and assigns.
2. Hub Height: The distance measured from the surface of the tower foundation to the height of the Wind Turbine hub, to which the blade is attached.

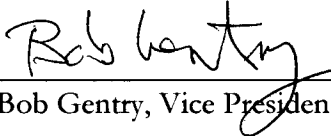
3. Non-Participating Landowner: Any landowner except those on whose property all or a portion of a Wind Energy Facility is located pursuant to an agreement with the Facility Owner or Operator.
4. Occupied Building: A residence or any building used for institutional purposes or as a public gathering place that is occupied or in use when a wind turbine permit application is submitted.
5. Operator: The entity responsible for the day-to-day operation and maintenance of the Wind Energy Facility.
6. Turbine Height: The distance measured from the surface of the tower foundation to the highest point of the turbine rotor plane.
7. Wind Turbine: A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower, and pad transformer, if any.

APPROVED, by the Board of Commissioners of Hendricks County, Indiana this 23rd day of April, 2024.

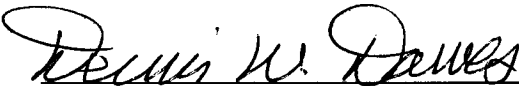
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