

**ORDINANCE NO. 2009-BC-0-07
OF THE BOARD OF COMMISSIONERS
OF MADISON COUNTY, INDIANA**

**AN ORDINANCE AMENDING TEXT OF THE MADISON COUNTY
LAND USE AND DEVELOPMENT CODE,
ORDINANCE NO. 2002-BC-0-6**

WHEREAS, the Madison County Planning Commission did on November 18, 2008, pursuant to *Indiana Code § 36-7-4-607*, in accordance with *Indiana Code § 36-7-4-604*, conduct a public hearing concerning certain amendments to the Madison County Land Use and Development Code heretofore approved; and

WHEREAS, after conducting said hearing, the Madison County Planning Commission did certify the recommendation to the Madison County Board of Commissioners; and

WHEREAS, the Madison County Board of County Commissioners did hold a public meeting to consider the recommendation submitted; and

WHEREAS, the Board of County Commissioners concur in the recommendations of the Madison County Planning Commission regarding the amendment as hereinafter set forth.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF MADISON, INDIANA THAT ORDINANCE NUMBER 2002-BC-0-6, IS HEREBY AMENDED AS FOLLOWS :

1. Part A, Article 15, Wind Energy Conversion Systems, amended to add:

Sec. 1 WIND ENERGY CONVERSION SYSTEMS

A. PURPOSE. This Zoning Code is adopted for the following purposes:

1. To assure that any development and production of wind-generated electricity in Madison County is safe and effective;
2. To facilitate economic opportunities for Madison County and its residents;
3. To assist in the reduction of carbon-based emissions; the dependence of petroleum and coal-based energy systems; and
4. To provide a regulatory scheme for the construction and operation of Wind Energy Facilities in Madison County, subject to reasonable restrictions, in order to preserve the public health, safety and general welfare.

B. INTENT

It is the intent of the Wind Energy Conversion Systems (WECS) siting regulations to provide a regulatory scheme for the construction and operation of WECS in the county; subject to reasonable restrictions these regulations will preserve the health, safety and general welfare of the public.

C. DEFINITIONS

1. **WIND ENERGY CONVERSION SYSTEM (“WECS”)** means all necessary devices that together convert wind energy into electricity and deliver that electricity to a utility’s transmission lines, including but not limited to the rotor, nacelle, generator, WECS Tower, electrical components, WECS foundation, transformer, and electrical cabling from the WECS Tower to the Substation(s), switching stations, communications facilities, and other required facilities and equipment, as related to a WECS project.
2. **APPLICANT** The owner, owners, or legal representative of real estate who makes application to Madison County for action affecting the real estate owned thereby.
3. **FINANCIAL ASSURANCE/COMMITMENT** the sources of private or public funds or combinations thereof that have been identified which will be sufficient to finance public facilities or private development necessary to support development and that there is reasonable assurance that such funds will be timely put to that end. Examples include a surety bond, cash escrow, irrevocable letter of credit or combinations thereof.
4. **METEOROLOGICAL TOWER** means a tower that provides a platform for instrumentation to evaluate meteorological conditions. For the purpose of this ordinance, a meteorological tower is a temporary structure that is intended to be on any one site for a period of five (5) years or less.
5. **OPERATOR** means the entity responsible for the day-to-day operation and maintenance of the WECS, including any third party subcontractors.
6. **OWNER** means the entity or entities with an equity interest in the WECS(s), including their respective successors and assigns. Owner does not mean (i) the property owner from whom land is leased for locating the WECS (unless the property owner has an equity interest in the WECS); or (ii) any person holding a security interest in the WECS(s) solely to secure an extension of credit, or a person foreclosing on such security interest provided that after foreclosure, such person seeks to sell the WECS(s) within one year of such event.
7. **PROFESSIONAL ENGINEER** means a qualified individual who is licensed as a professional engineer in any state in the United States.

8. **PRIMARY BUILDING/STRUCTURE** The building or structure in which the primary use of the lot or premises is located or conducted. With respect to residential uses, the primary structure or building shall be the main dwelling.
9. **SUBSTATION** means the apparatus that connects the electrical collection system of the WECS(s) and increases the voltage for connection with the utility's transmission lines.
10. **SWITCHING STATION** shall be an apparatus/structure in the system similar to a substation but not necessarily increasing voltage into the grid.
11. **WECS PROJECT** means the collection of WECS and Substations as specified in the siting approval application pursuant to this Ordinance.
12. **WECS TOWER** means the support structure to which the nacelle and rotor are attached, free standing or guyed structure that supports a wind turbine generator.
13. **WECS TOWER HEIGHT** means the distance from the rotor blade at its highest point to the top surface of the WECS foundation.
14. **BOCA** refers to the Building Officials and Code Administrators International.

D. **APPLICABILITY**

This Ordinance governs the siting of WECSs and Substations that generate electricity to be sold to wholesale or retail markets, except that owners of WECSs with an aggregate generating capacity of 1.25 MW or less who locate the WECS(s) on their property must obtain a variance to this Ordinance in order to be exempt from regulation by this ordinance. This ordinance applies to all townships.

E. **PROHIBITION**

No applicant or entity shall construct, operate, or locate within Madison County a wind energy conversion system (WECS) without having fully complied with the provisions of this Ordinance.

F. **CONFLICT WITH OTHER REGULATIONS**

Nothing in this Ordinance is intended to preempt other applicable state and federal laws or regulations, including compliance with all Federal Aviation Administration rule and regulations and shall comply with the notification requirements of the FAA. Nor are they intended to interfere with, abrogate, or annul any other ordinance, rule, or regulation, statute or other provision of law. In the event that any provision of these regulations imposes restrictions different from any other ordinance, rule, regulation, statute, or provision of law, the provisions that is more restrictive or that imposes higher standards shall govern.

G. APPLICATION REQUIREMENTS

Prior to construction of a WECS, the applicant shall obtain approval for the following: (1.) an application for a Special Exception to provide for WECS use from the Madison County Planning Commission (MCPC) to permit a WECS in the following zoning districts: Agriculture (AG), General Industrial (GI), and Heavy Industrial (HI). WECS are not permitted in any other zoning districts. (2.) Request a variance from the Madison County Board of Zoning Appeals (BZA) for any variances anticipated for the WECS project as described below and in Section 10 of this Ordinance, and; (3.) An Improvement Location Permit from the Madison County Planning Commission/Permit Office, as described below and the Madison County Land Use & Development Code, Article 13, page 201.

1. The Application for WECS Special Exception

- a. The application shall be filed with the MCPC and include the following items:
 1. A WECS Project summary, including, to the extent available: (1.) a general description of the project, including its approximate name plate generating capacity; the potential equipment manufacturer(s), type(s) of WECS(s), number of WECS(s), and name plate generating capacity of each WECS; the maximum height of the WECS Tower(s) and maximum diameter of the WECS(s) rotor(s); the general location of the project; and (2.) a description of the Applicant, Owner, and Operator, including their respective business structures.
 2. The name(s), address(es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s) with WECS on their properties, if known.
 3. 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.
 4. A site plan at an appropriate scale showing (standard sheet of 36 inches by 24 inches and individual tower site not greater than 1 inch equals 20 feet): the proposed location of the wind energy facility (including planned locations of each WECS Tower, guy lines and anchor bases (if any); WECS access roads; Substations; electrical cabling; and ancillary equipment). In addition, the site plan shall show: Primary Structures within one quarter of one mile of any WECS; property lines, including identification of adjoining properties; setback lines; public roads; location of all above-ground utility lines within a distance of two (2) 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.

5. Location of all existing underground utility lines associated with the WECS.
 - b. In determining whether to approve the application for WECS Special Exception, the MCPC shall determine whether the application satisfies each of criteria set forth in this Ordinance for special exception, and make written findings thereof.
 - c. The Special Exception granted by the MCPC for a WECS Project shall be valid for a period of one (1) year, after which approval shall terminate and be of no further force or effect if construction in earnest of the approved WECS has not commenced. The Applicant shall be granted a one (1) extension up to two (2) years from the date of the MCPC approval if the Applicant presents its request for an extension to the MCPC and provides a report to the MCPC which shows the progress made on the WECS Project. Thereafter, an additional extension shall be at the MCPC's discretion.
 - d. The fee for the application for special exception shall be payable at the time of submission of the application. The fee shall be \$20,000.00, of which 50% shall be applied toward fees for Improvement Location Permits. In the event that the Improvement Location Permit fees are less than \$10,000.00, the County shall retain the unused Improvement Location Permit fees. The application fee shall be used to defray the costs associated with the application for a special exception, including professional fees and expenses. In the event that the Improvement Location Permit fees are more than \$10,000.00, the applicant shall be required to pay to the County the cost of each of those permits. Failure to do so will nullify the Special Exception grant.
2. **The Application for a Variance**
 - a. Contemporaneously with the Application for special exception, the applicant shall submit an application for variance from developmental standards sought as part of the WECS project. A single application for variance may be submitted for all variances sought.
 - b. The fee for any variance is as in the fee schedule.
 3. **Aggregated Project Applications**

Aggregated projects may jointly submit a single application and be reviewed under joint proceedings, including notices, hearing, and reviews and as appropriate, approvals.

4. **The Application for Improvement Location Permit**

- a. The Applicant shall apply to the Building Commissioner for an Improvement Location Permit, as described in the Madison County Land Use & Development Code, Section 13, page 201. In addition to the information required on the Improvement Location Permit Application, the Applicant shall provide the following information to the Building Commissioner prior to the issuance of an Improvement Location Permit:
 1. Location of all above-ground utility lines within a radius equal to two (2) times the height of the proposed WECS
 2. Location of all underground utility lines associated with the WECS site.
 3. Dimensional representation of the structural components of the tower construction including the base and footings.
 4. Schematic of electrical systems associated with the WECS including all existing and proposed electrical connections.
 5. Manufacturer's specifications and installation and operation instructions or specific WECS design information.
 6. Certification by a registered professional engineer that the tower designs is sufficient to withstand wind load requirements for structure as defined by International Code Council.
 7. All turbines shall be new equipment commercially available. Used, experimental or proto-type equipment still in testing shall be approved by the MCPC as per the normal special exception process.
 8. Necessary recorded access easements and necessary recorded utility easements, copies of which shall be submitted to the MCPC.
 9. 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 MCPC.
 10. 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.
 11. A revegetation plan for restoring areas temporarily disturbed during construction.

12. A fire protection plan for construction and operation of the facility.
 13. Any other item reasonably requested by the MCPC.
 14. A drainage plan for construction and operation must be developed and approved by the Madison County Drainage Board.
 15. An erosion control plan must be developed in consultation with the Madison County Soil and Water Conservation District.
- b. Each WECS Tower shall require an Improvement Location Permit. The fee for each Improvement Location Permit shall be \$1,800.00 per MW, which shall be used to defray the costs of professional services, as well as other expenses associated with the issuance of Improvement Location Permits.

H. SETBACK REQUIREMENTS

1. No WECS or meteorological tower shall be constructed in any setback, dedicated public easement or dedicated public right-of-way without prior written authorization from the county and owner of any utility easement if applicable.
2. Installation of any WECS or meteorological tower may not be nearer than 1.1 times the height of the WECS tower height to any property lines, dedicated roadway, railroad right-of-way or overhead electrical transmission or distribution lines. Distance shall be measured from the center of the foundation at the base of the tower. New structures built adjacent to wind power facilities shall maintain these same minimum setback requirements. Participating landowners within the area comprising the WECS may waive property line setbacks with written approval from all landowners sharing such property line.
3. Except as provided herein the setback distance for any WECS shall be, at a minimum, 1,000 feet or more from any existing or occupied residence or 1,500 feet or more from any platted major subdivision, as defined in the subdivision control ordinance. A turbine with a capacity of 1.25 MW or less may be placed as near as 600 feet from an occupied residence with the prior written approval of the owner. The setback distance will be followed except in specific instances allowed by the BZA.
4. The setback distance for the WECS will be, at a minimum, 1,500 feet from any platted community under the zoning jurisdiction of a separate municipality. Distance shall be measured from the center of the foundation at the base of the WECS to the closest Corporate Limit boundary line.

I. SAFETY DESIGN AND INSTALLATION STANDARDS

1. **Equipment Type**

a. Turbines

All turbines shall be constructed of new, commercially available equipment.

b. Meteorological towers

Meteorological towers may be guyed.

2. **Design Safety Certification**

All WECS shall conform to applicable industry standards, as well as all local, state and federal regulations. An applicant shall submit certificate(s) of design compliance that wind turbine manufacturers have obtained from Underwriters Laboratories, Det Norske Veritas, Germanishcher Lloyed Wind Energie, or an equivalent third party.

3. **Controls and Brakes**

a. Braking System

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

b. Operation Mode

All Mechanical brakes shall be operated in a fail-safe mode.

4. **Electrical Components**

a. Standards

All electrical components of all WECS shall conform to applicable local, state and national codes, and any relevant national and international standards.

b. Collection cables

All electrical collection cables between each WECS shall be located underground unless they are located on public or utility rights-of-way or with prior County approval.

c. Transmission Lines