Newton County Ordinance No. 09-06-01
REGULATION OF WIND ENERGY CONVERSION SYSTEMS

An Ordinance Amending the "Zoning Code of Newton County" Ordinance 94-1

Whereas, Newton County has been identified as an Indiana County with the appropriate topographic, geographic, and climatic conditions to support large-scale wind energy conversion systems; and

Whereas, technological advances and market conditions have caused significant private investments in large-scale wind energy conversion systems in recent years in the Midwestern United States and other Indiana counties; and

Whereas, the County finds that the unregulated or under regulated wind energy conversion systems within the County could create significant visual, land use and other impacts; and

Whereas, the County finds that the placement of wind energy conversion systems should be regulated in order to protect the public health, safety and welfare, and to protect property values; and

Whereas, the County's comprehensive planning process and associated regulations are designed to ensure that property is developed in a planned manner to preserve property values and to protect the welfare of the residents of the County; and

Whereas, the County desires to provide guidance to wind energy conversion systems providers; and

Whereas, the County finds that adoption of special exception requirements with specific development standards, with an administrative review of wind energy conversion systems special exception applications, will result in a reasonable process for obtaining land use special exceptions for wind energy conversion systems within the County; and

Whereas, the County has undertaken a deliberative public process to establish policy, standards and procedures related to the placement of wind energy conversion systems.

Now, therefore, be it ordained by the Board of County Commissioners of Newton County, Indiana:

The following changes and additions are hereby made to the Zoning ordinance for Newton County, 94-1, as amended:

SECTION 1 – DEFINITIONS

The following definitions are added to Section 2.00 of the Newton County Zoning Ordinance titled DEFINITION OF TERMS.

Applicant – means the entity or person who submits to the county an application for the placement or installation of any Wind Energy Conversion System or substation or thereafter operates or owns a Wind Energy Conversion System.

Application – means the forms and documents submitted to the County by an applicant seeking approval from the Board of Commissioners and/or the Plan Commission and/or the Board of Zoning Appeals and/or the Building Commissioner, which must include forms authorized by, and/or documents required by, the

Board of Commissioners and/or the Plan Commission and/or the Board of Zoning Appeals and/or the building Commissioner.

Building-Mounted Wind Energy Conversion System – means a building- Mounted Wind Energy Conversion System with a manufacturer's rating of ten (10) kilowatts or less, and projects no more than fifteen (15) feet above the highest point of the roof.

Financial Assurance – means reasonable assurance from a credit-worthy party, examples of which include a surety bond, trust instrument, cash escrow, or irrevocable letter of credit or combinations thereof.

Large Wind Energy Conversion System – means a Wind Energy Conversion System with a manufacturer's rating of more than fifty (50) kilowatts per wind tower, or a total height of more than one-hundred forty (140) feet, or a swept area of more than forty (40) feet.

Operator – means the entity responsible for the day-to-day operation and maintenance of a Wind Energy Conversion System, including any third party subcontractors.

Owner – means the entity or entities with an equity interest in the Wind Energy Conversion System(s), including their respective successors and assigns. Owner does not mean:

i. The property owner from whom the land is leased for locating the Wind Energy Conversion System(s) [Unless the property owner has an equity interest in the Wind Energy Conversion System(s)]; or
ii. Any entity or person holding a security interest in the Wind Energy Conversion System(s) solely to secure an extension of credit, or an entity or person foreclosing on such security interest providing that after foreclosure, such entity or person seeks to sell the Wind Energy Conversion System(s) within one year of such event.

Professional Engineer – means a qualified individual who is licensed as a professional engineer by the State of Indiana.

Primary Structure – means, for each property, the structure that one (1) or more persons occupy the majority of time on that property for either business or personal reasons. Primary Structure includes structures such as residences, commercial buildings, hospitals, and day care facilities. Primary Structure excludes structures such as hunting sheds, storage sheds, pool houses, unattached garages, and barns.

Small Wind Energy Conversion System – means a Wind Energy Conversion System with a manufacturer's rating of less than or equal to fifty (50) kilowatts per wind tower, and a total height of one-hundred forty (140) feet or less, and a swept area of forty (40) feet or less.

Substation – means the apparatus that connects the electrical collection system of the Wind Energy Conversion System(s) and increases the voltage for connection with the utility's transmission lines.

Swept Area – means the diameter of the circle of all blades or rotors associated with a Wind Energy Conversion System.

Switching Station – means an apparatus/structure in the system of the Wind Energy Conversion System(s) similar to a substation, but not necessarily increasing voltage into the grid.

Wind Energy Conversion System – 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, tower, electrical components, tower foundation, transformer, and electrical cabling from the tower to the substation(s) , switching stations, meteorological towers, communications facilities, and other required facilities and equipment as related to the Wind Energy Conversion System project.

Wind Energy Conversion System Project – means the collection of Wind Energy Conversion System(s) and substations as specified in the approval application.

Wind Energy Conversion System Total Height – means the distance from the rotor blade at its highest point to the top surface of the Wind Energy Conversion System foundation.

Wind Energy Conversion System Tower – means the support structure to which the nacelle and rotor are attached, free standing or guyed structure that supports a wind turbine generator.

Wind Farm – means two (2) or more large Wind Energy Conversion Systems on a single property or aggregated properties.

SECTION 2 – Special Exception Wind Energy Conversion Systems

SECTION 5.00 of the Zoning Ordinance, titled Special Exceptions, is amended by adding the following to subsection (2), being a list of special exceptions with Agricultural Districts.

Large Wind Energy Conversion Systems, subject to the requirements of Section 5.6.

SECTION 3 –Wind Energy Conversion Systems

A new **SECTION 5.6**, titled, **Wind Energy Conversion Systems**, is added to the Zoning Ordinance to read as follows:

A. This Section governs the placement or installation of Wind Energy Conversion Systems and substations that generate electricity to be sold to wholesale or retail markets. (Exception: Owners of property who propose to place or install a Wind Energy Conversion System with an aggregate generating capacity of three (3) megawatts (MW) or less on their own property shall obtain a variance from the Board of Zoning Appeals).

B. Wind Energy Conversion Systems may be placed or installed and operated in all Newton County Townships.

C. The Board of Zoning Appeals may grant a special exception for a Large Wind Energy Conversion System(s) in Agricultural Districts subject to the provisions of this section.

D. The Board of Zoning Appeals may grant a variance of use for a Small Wind Energy Conversion System(s) in any zoning district.

E. All applications for Wind Energy Conversion Systems must demonstrate the operation will be conducted in accordance with all applicable standards and/or requirements of the utility regulatory agencies of the State of Indiana and the United States of America, as may exist. Compliance with

such standards and/or regulations shall not constitute compliance with the special exception requirements herein.

F. A proposed Wind Energy Conversion System application for special exception shall be filled with the Board of Zoning Appeals to include the following:
    1. A general description of the project, including its approximate name plate generating capacity; the potential equipment manufacturer(s), type(s), number and name plate generating capacity of each Wind Energy Conversion System; the maximum height of the tower(s) and a maximum diameter of the rotor(s); the general location of the project; and a description of the applicant, owner, and operator, including their respective business structures.
    2. The name(s), address(es), phone number(s) of the applicants, owner and operator, and all property owner(s) proposed for Wind Energy Conversion Systems on their properties.
    3. A topographic map of the project site and the surrounding area which shall encompass an area at least one quarter (1/4) mile radius from the proposed project site with contours on not more than five (5) foot intervals.
    4. A site plan at an appropriate scale showing [standard sheet of thirty-six (36) inches by twenty-four (24) inches and individual tower site not greater than once (1) inch equals twenty (20) feet] the proposed location of the wind energy facility (including planned locations of each tower, guy lines and anchor bases, if any; access roads, substations, electrical cabling, and ancillary equipment). In addition, the site plan shall show: primary structures, within one-quarter (1/4) of one mile of any Wind Energy Conversion Systems; 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 Wind Energy Conversion Systems' tower height; and recognized historic or heritage sites as noted by the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources.
    5. Location of all existing underground utility lines associated with the Wind Energy Conversion System site.

G. In determining whether to approve the application for special exception, the BZA shall determine whether the application satisfies each of the six (6) criteria set forth herein, and make written findings thereof.
    1. <u>In accordance with the intent of this ordinance:</u> The proposed Wind Energy Conversion System is in accordance with the intent of this ordinance.
    2. <u>Will not reasonably interfere with the orderly land use and development plans:</u> The proposed Wind Energy Conversion System will not unreasonably interfere with the orderly land use and development plans of Newton County and/or affected municipalities.
    3. <u>Benefits to the public will exceed any burdens:</u> The proposed Wind Energy Conversion System will benefit the public beyond any burdens.
    4. <u>Not detrimental to the public health and safety:</u> The proposed Wind Energy Conversion System will not be detrimental to the public health and safety.
    5. <u>Not adverse to the environment, neighborhood, or community:</u> The proposed Wind Energy Conversion System will not be hazardous or harmful to the environment or the community.

6. Complies with all required provisions of the zoning ordinance: The proposed Wind Energy Conversion System complies with all required provisions of the zoning ordinance, unless variances have been properly applied for and granted by the Newton County Board of Zoning Appeals.

H. The special exception granted by the Board of Zoning Appeals for a Wind Energy Conversion System shall be valid for a period of one (1) year, after which the special exception shall terminate and be of no further force or effect if construction in earnest of the approved Wind Energy Conversion System has not commenced. The applicant shall be granted a one (1) year extension to two (2) years from the date of the BZA's approval if the applicant presents its request to the BZA and provides a report which shows the progress made on the Wind Energy Conversion System project. Thereafter, an additional extension shall be at the Board's discretion.

I. The initial fee for the application for a special exception shall be payable at the time of submission of the application in the amount of $20,000.00. Additional fees may be charged to offset costs associated with the review, analysis and reporting by County agencies and/or applicable professional consultancies retained by the County to analyze, evaluate and otherwise assess the application. Total fees for the application for a special exception shall not exceed $100,000.00. Said additional application fees shall be payable within thirty (30) days following the identification of the additional fee amount by the County, which identification shall provide the amounts spent with reasonable detail. Failure to pay the additional amount shall constitute grounds for the Board of Zoning Appeals to consider revocation of the special exception if prior approved.

J. The application for variance.
1. Contemporaneously with the application for a special exception, the applicant shall submit an application for development standards variance for any variances sought as part of the Wind Energy Conversion System project. A single application for variance may be submitted for all variances sought.
2. In determining whether to approve the application for development standards variance, the Board shall determine whether the application satisfies each of the three (3) criteria set forth in the 900 Series of IC 36-7-4, and make written findings thereof.
3. In determining whether to approve the application for use variance, the Board shall determine whether the application satisfies each of the five (5) criteria set forth in the 900 Series of IC 36-7-4 and make written findings thereof.
4. The fee for any variances of development standards is included in the application fee.
5. The fee for a variance of use for a Small Wind Energy Conversion System shall be payable at the time of submission of the application in the amount of $150.00.

K. The application for Improvement Location Permit.
1. The applicant shall apply to the Building Commissioner for an Improvement Location Permit. In addition to the information required on the Improvement Location Permit application, the applicant shall provide the following to the Building Commissioner prior to the issuance of an Improvement Location Permit:
    a. The fee for an Improvement Location Permit for a Large Wind Energy Conversion System shall be payable at the time of submission of the application in the amount of $1,700.00 per megawatt (MW) capacity, which will be prorated for fractional MW capacity.

b. Location of all above-ground utility lines within a radius equal to two (2) times the height of the proposed Wind Energy Conversion System(s).
c. Location of all underground utility lines associated with the Wind Energy Conversion System site.
d. Dimensional representation of the structural components of the tower construction including the base and footings.
e. Schematic of electrical systems associated with the Wind Energy Conversion system including all existing and proposed electrical connections.
f. Manufacturer's specifications and installation and operation instructions or specific Wind Energy Conversion System design information.
g. Certification by a registered professional engineer that the tower design is sufficient to withstand wind load requirements for structure as defined by the International Code Council.
h. All turbines shall be new equipment commercially available. Used, experimental, or prototype equipment still in testing shall be approved by the Board as per the normal special exception process.
i. Necessary recorded access easements and necessary recorded utility easements, copies of which shall be submitted to the Building Commissioner.
j. 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.
k. 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.
l. A revegetation plan for restoring areas temporarily disturbed during construction.
m. A fire protection plan for construction and operation of the facility.
n. The owner's and/or operator's emergency response representative's name, telephone number(s), business address and residence address shall be provided to the Building Commissioner. Said business address and residence address shall be located within thirty (30) miles of the proposed Wind Farm.
o. Any other item reasonably requested by the board.

2. A drainage plan for construction and operation must be developed and approved by the Newton County Drainage board.
3. An erosion control plan must be developed in consultation with the Newton County Soil and Water Conservation District.
4. Each Wind Energy Conversion System tower shall require an Improvement Location Permit. The fee for each Improvement Location Permit shall be $1,700.00 per megawatt (MW) capacity, which will be prorated for fractional MW capacity.

L. Design and Installation

1. Design Safety Certification.
   a. Wind Energy Conversion Systems shall conform to applicable industry standards. Applicant shall submit certificate(s) of design compliance that wind turbine manufacturers have obtained from Underwriters laboratories, Det Norske Veritas, Germanishcher Lloyd wind Energie, or an equivalent third party.
   b. Following the granting of location approval under this Zoning Code, a professional engineer shall certify, as part of the Improvement Location Permit application that is the foundation and tower design is within accepted professional standards, given local soil and climate conditions.

c. Any Wind Energy Conversion System declared to be unsafe by the Newton County Building Commissioner by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures set forth in the County ordinances governing the removal of nuisances.

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

3. Electrical Components
   a. All electrical components of the Wind Energy Conversion System shall conform to applicable local, state, and national codes, and relevant national and international standards.
   b. Electrical Collection Cables.
   All Wind Energy Conversion System electrical collection cables between each Wind Energy Conversion System shall be located underground unless they are located on public or utility rights-of-way or with prior approval of the Building Commissioner. All collection lines that are buried should be at depth consistent with or greater than local utility and telecommunication underground lines standards or as negotiated with the land owner or the land owner's designate until the same reach the property line or a substation adjacent to the property line. Said electrical collection cables between each Wind Energy Conversion System and/or on-site substations may be located above ground where burial presents a technical or practical difficulty, such as a deep ravine or significant waterway. Once the technical or practical difficulty is traversed, burial shall be required per the standards noted above.

4. Color.
   a. Towers and blades shall be painted white or gray or another non-reflective, unobtrusive color.
   b. The applicant for the Wind Energy Conversion System shall comply with all applicable FAA requirements.
5. Warnings.
   a. A reasonably 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 the guy wires and along the guy wires up to a height of not less than fifteen (15) feet from the ground.
6. Climb Prevention. All Wind Energy Conversion System tower designs must include features to deter climbing or be protected by anti-climbing devices, such as:
   a. Fences with locking portals at least six (6) feet high;
   b. Anti-climbing devices fifteen (15) feet vertically from the base of the Wind Energy Conversion System tower; and
   c. Locked Wind Energy Conversion System tower doors.
7. Blade Clearance.

The minimum distance between the ground and any protruding blade(s) utilized on a Wind Energy Conversion System shall be fifteen (15) feet, as measured at the lowest point of the arc of the blades. The minimum distance shall be increased as necessary to provide for vehicle clearance in locations where over-sized vehicles might travel.

8. Noise and Vibration.
   At no point within two-hundred (200) feet of a primary residence may the sound pressure levels from a wind turbine exceed the following sound levels. Sound levels shall be measured with an octave band analyzer or sound level meter and associated filter manufactured in compliance with standards prescribed by the American National Standards Institute (ANSI). This standard shall supersede any noise standard(s) set forth in the existing Newton County ordinances as it applies to Wind Energy Conversion Systems.

Octave Bands in Hertz (Hz) per ANSI	Maximum Permitted Sound Level (in Decibels [dB]) measured 200 feet from edge of any primary residence
63	75
125	70
250	65
500	59
1000	53
2000	48
4000	44
8000	41

A formal noise study or noise analysis shall not be required with the application for a special exception. Notwithstanding the forgoing sentence, the Building commissioner staff may require a noise analysis following the receipt of noise-related complaints. In the event the Building Commissioner staff requests a formal noise study or noise analysis, the owner or operator shall produce said study or analysis in accordance with the standards noted above within sixty (60) days.

9. Utility Interconnection.
   The Wind Energy Conversion System, if connected 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 Wind Energy Conversion Systems.

10. 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.

11. Lighting.
    Except with respect to lighting required by the FAA, all lighting shall be shielded so that no glare extends substantially beyond the boundaries of the wind farm facilities.

12. Compliance with Additional Regulations.
    Nothing in this Section is intended to preempt other applicable state and federal laws and regulations.

M. Setbacks.

1. No Wind Energy Conversion System, or any of its components, shall be constructed in any county setback, dedicated County public easements, or dedicated County public right-of-way without prior written authorization from the County.
2. Setback distances. Distance shall be measured from the center of the foundation at the base of the tower.
    a. Temporary and permanent meteorological towers and wind turbine towers associated with a Wind Energy Conversion System(s).
        i. A setback distance of at least three hundred fifty (350) feet or once and one-tenth (1.1) times the height of the tower with the blade tip at its highest point, whichever is greatest, from any property line, dedicated roadway, railroad right-of-way or overhead electrical transmission or distribution lines. New structures built adjacent to towers shall maintain these same minimum setback requirements. Participating landowners within the areas comprising the Wind Energy Conversion System may waive property line setbacks for towers with written approval from all landowners sharing such property line.
        ii. The setback distance for towers with turbines with a rated capacity of one megawatt (1.0 MW) or less shall be at least one thousand (1,000) feet from any existing residence, occupied structure, place of public gathering (e.g. schools, churches, etc.) or platted subdivision boundary under the zoning jurisdiction of Newton County. An "occupied structure" means any structure which is occupied at least eight (8) hours per day for more than one-half (1/2) week on average. However, such towers may be placed as near as six hundred (600) feet from an occupied structure or residence with the prior written approval of the owner.
        iii. The setback distance for meteorological towers, and wind turbine towers with a rated capacity greater than one megawatt (1.0 MW), shall be at least one thousand (1,000) feet from any existing residence, occupied structure, place of public gathering or platted subdivision boundary under the zoning jurisdiction of Newton County, and one thousand five hundred (1,500) feet from any platted community under the zoning jurisdiction of a municipality. Participating land owners within the boundary of the Wind Energy Conversion System may waive the residence setbacks to not less than three hundred fifty (350) feet or one and one-tenth (1.1) times the height of the tower with the blade tip at its highest point, whoever is greatest, from nay existing residence.
    b. Temporary and permanent meteorological towers and wind turbine towers associated with a Small Wind Energy Conversion System
        i. The setback distance shall be not less than the total height of the tower with the blade tip at its highest point from any property line, dedicated roadway, railroad right-of-way or overhead electrical transmission or distribution lines. Participating landowners within the area comprising the Wind Energy Conversion System may waive property line setbacks for towers with written approval from all landowners sharing such property line.
        ii. The setback distance shall be not less than the total height of the tower with the blade tip at its highest point form any structure intended for residential occupancy. New structures for residential occupancy shall maintain these same minimum setback requirements.

c. Collector substations and switching stations: the setback distance for the fence which shall surround the collector substations and witching stations shall be at least one hundred (100) feet from the center of the adjacent public and/or access road, but shall be no closer than the edge of the road right-of-way.
d. Operation and maintenance building: the setback distance shall be one hundred (100) feet from the center of any adjacent road(s) and twenty-five (25) feet from all property lines measured from the foundation wall of the building.
e. Pad-mount transformers may be located within a utility easement, leased areas, or right-of-way, but are not required to be within those areas.
f. Poles for above-ground electrical collection or transmission cables: the maximum distance of a pole base associated with above-ground electrical collection or transmission cables, if located within the public right-of-way, shall be five (5) feet from the right-of-way line, or as approved by the County or its designee.
g. Setback standards from a property line shall not be required if the applicable property line is located within the overall wind farm boundary such that parcels of real estate located on either side of the property line are both located within the same wind farm.

N. Use of Roads/Services

An applicant, owner, operator, or their assigns proposing to use any County road(s), for the purpose of transporting Wind Energy Conversion Systems or substation parts and/or equipment for construction, operation, maintenance, or decommissioning of the Wind Energy Conversion System(s) or substation(s), shall prior to the construction or decommissioning:

1. Submit a written plan and agreement for use of roads and repair of drainage facilities, subject to the approval of the Newton County Board of Commissioners, and identifying all such public roads and services.
2. 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 Newton County Highway Supervisor. The Supervisor shall conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage.
    b. Any road damage caused by the construction of the Wind Energy Conversion System project equipment, the installation of same, or the removal of same, must be repaired to the satisfaction of the Newton County Highway Supervisor. The Supervisor may choose to require either remediation or road repair upon completion of the project or is authorized to collect fees for oversized load permits. Further, a corporate surety bond in an amount to be fixed by a Professional Engineer may be required by the Supervisor to 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 Wind Energy Conversion System access road may not impede the flow of water.
    d. Reasonable dust control measures will be required by the County during construction of the Wind Energy Conversion System.
3. Sewer and Water.

    Any facility shall comply with existing septic and well regulation as required by the Newton county Health Department and the State of Indiana Department of Public Health.

4. Drainage Repair.
   All damages to waterways, drainage ditches, field tiles, or any other drainage-related infrastructure caused by the construction or maintenance of the Wind Energy Conversion System must be completely repaired to near original condition, so not to impede the natural flow of water. All repairs must be complete within a reasonable amount of time, and completed to the satisfaction and approval of the Newton County Surveyor.

O. Operation.
   1. Maintenance/Inspection
      a. The owner or operator of the Wind Energy Conversion System must submit, on an annual basis, a summary or the operation and maintenance reports to the County. In addition to the above annual summary, the owner or operator must furnish such operation and maintenance reports as the county reasonably requests.
      b. Any physical modification to the Wind Energy Conversion System that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification to be administratively approved by the Building Commissioner. Said Building Commissioner approval, or denial, may be appealed to Board of Zoning Appeals. Like-kind replacements shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement), the owner or operator shall confer with the Building Commissioner to determine whether the physical modification requires recertification.
      c. The Building Commissioner staff, along with licensed third party professionals retained by the County for the specific purpose of conducting inspections of the Wind Energy Conversion System shall have the right, at any reasonable time and with sufficient prior notice, to accompany the owner or operator, or his/her agent, on the premises where a Wind Energy Conversion System has been constructed, to inspect all parts of said Wind Energy Conversion System installation and to require that repairs or alterations be made. The owner or operator of a Wind Energy Conversion System may retain a licensed third party professional engineer familiar with Wind Energy Conversion Systems to prepare and submit to the Building Commissioner staff a written report, which addresses the repairs or alterations requested, and which suggests alternate methods for addressing the concerns or provides evidence that said repairs or alterations are unnecessary, within thirty (30) days after receiving notice from the Building Commissioner staff that repairs or alterations are requested, or within a longer period of it me mutually acceptable to both parties. The Building Commissioner staff and the owner or operator, or a third party professional engineer retained by them, as to the repairs or alterations which are required, the decision of the Building Commissioner shall be final, but may be appealed to the Board of Zoning Appeals.
      d. Inspections, at a fee reasonably representative of actual costs incurred by the County as determined form time to time by the Commission and paid by the applicant, may be made by the Building Commissioner, or by a qualified inspector for equipment of this type selected by the Building Commissioner, no more than once annually to certify the safety and maintenance of the Wind Energy Conversion System(s) and accessory structures.
   2. Interference.
      If, after construction of the Wind Energy Conversion System, the owner or operator receives a written complaint related to interference with local broadcast residential television,

telecommunication, communication or microwave transmissions, the owner or operator shall take reasonable steps to minimize the complaint.

3. Coordination with Local Fire Department.
    a. The applicant, owner, or operator shall submit to the local fire department a copy of the site plan.
    b. 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.
    c. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.
4. Materials Handling, Storage, and Disposal.
    a. All solid wastes related to the construction, operation, and maintenance of the Wind Energy Conversion System(s) shall be removed from the site promptly and disposed of in accordance with all federal, state, and local laws.
    b. All hazardous materials or waste related to the construction, operation, and maintenance of the Wind Energy Conversion System shall be handled, stored, transported, and disposed of in accordance with all applicable local, state, and federal laws.

P. Liability Insurance.
The owner or operator of the Wind Energy Conversion System(s) shall maintain a current general liability policy covering bodily injury and property damage and name the property owner(s) as an additional insured with limits of at least two million dollars ($2,000,000) per occurrence and five million dollars ($5,000,000) in the aggregate with a deductible of no more than one hundred thousand dollars ($100,000) or operator can provide evidence of ability to self-insure.

Q. Decommissioning Plan.
Prior to receiving final location approval under this section, the County and the applicant, owner and/or operator must formulate a Decommissioning Plan to ensure that the Wind Energy Conversion System(s) project is properly decommissioned. The Decommissioning Plan shall include:

1. Assurance that the facilities are decommissioned upon the end of the project life or facility abandonment. Applicant's obligations with respect to decommissioning shall include removal of all physical materials pertaining to the project improvements, except for access roads at the request of the landowner, to a depth of _____ inches (_____") beneath the soil surface, and restoration of the area occupied by the project improvements to as near as practicable to the same condition that existed immediately before construction of such improvements. Prior to issuance of an Improvement Location Permit, the applicant shall provide a contractor cost estimate for demolition and removal of the Wind Energy Conversion System facility. Following acceptance and approval of the estimate by the Building Commissioner, the applicant shall be required to provide financial assurance in an amount at least equal to said demolition and removal contractor cost estimate, through the use of a bond, letter of credit, or other security acceptable to the County, for the cost of decommissioning each tower to be constructed under that Improvement Location Permit. Said security shall be released when such tower is completely decommissioned as determined by the Building Commissioner. In the event of abandonment by the owner or operator, the applicant will provide an affidavit to the Building Commissioner representing that all easements for wind turbines shall contain terms that provide financial assurance, including access to the salvage value of the

equipment, for the property owners to ensure that facilities are properly decommissioned within twelve (12) months of expiration or earlier termination of the project.

2. The applicant's, owner's, or operator's failure to materially comply with any of the above provisions shall constitute a default under this section.
3. Prior to implementation of the existing County procedures for the resolution of such default(s), the appropriate County body shall first provide written notice to the owner and operator, setting forth the alleged default(s). Such written notice shall provide the owner and operator a reasonable time period, not to exceed sixty (60) days, for good faith negotiations to resolve the alleged default(s).
4. If the County determines in its discretion that the parties cannot resolve the alleged default(s) within the good faith negotiation period, the existing County ordinance provisions addressing the resolution of such default(s) shall govern.

R. Requirements of this ordinance may be waived by the Board upon application and after a public hearing.

S. This ordinance shall not apply to Wind Energy Conversion System(s) owned by Newton County. Newton County-owned Wind Energy Conversion Systems shall be permitted in any zoning district.

SECTION 4 – Severability

If any section, subsection, or clause of this Ordinance shall be deemed unconstitutional or otherwise invalid, the validity with the remaining section, subsection, and clauses shall not be affected thereby.

SECTION 5 – Effective Date

This ordinance shall take effect upon passage.

Approved and adopted this 1st day of June, 2009.

BOARD OF COMMISSIONERS OF NEWTON COUNTY, INDIANA

ROXANNA HANFORD
RUSSELL COLLINS, JR.
JAMES PISTELLO