

ORDINANCE NO. 905

**ORDINANCE AMENDING ZONING ORDINANCE
701-AT-11**

WHEREAS, the Champaign County Zoning Board of Appeals held a public hearing, made a formal recommendation for approval, and forwarded to this Board Case Number 701-AT-11;

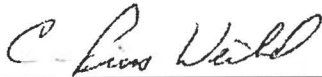
WHEREAS, the Champaign County Board believes it is for the best interests of the County and for the public good and welfare to amend the Champaign County Zoning Ordinance in a manner hereinafter provided;

NOW, THEREFORE BE IT ORDAINED, by the Champaign County Board, Champaign County, Illinois, that Resolution No. 971, *The Zoning Ordinance of the County of Champaign, Illinois* be amended in the manner attached hereto.

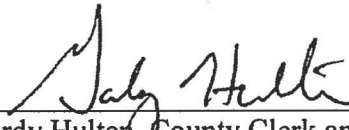
PRESENTED, PASSED, APPROVED, AND RECORDED this 21st day of June, A.D. 2012.

SIGNED:

ATTEST:



C. Pius Weibel, Chair
Champaign County Board
Champaign, Illinois



Gordy Hulten, County Clerk and *Ex Officio*
Clerk of the Champaign County Board

Part A. Revise paragraph 6.1.4 D.1. to read as follows:

- (a) WIND FARM TOWERS, turbines, and all related construction shall conform to applicable industry standards, including those of the American National Standards Institute (“ANSI”). Applicants shall submit certificates of design compliance that equipment manufacturers have obtained from Underwriters Laboratories (“UL”), Det Norske Veritas (“DNV”), Germanischer Lloyd Wind Energy (“GL”), or equivalent third party. Documentation of compliance must be submitted prior to receiving a Zoning Compliance Certificate for either the WIND FARM or for any single WIND FARM TOWER.

Part B.**1. Revise paragraph 6.1.4F.1. to read as follows:**

1. The Applicant shall enter into a Roadway Upgrade and Maintenance agreement approved by the County Engineer; or Township Highway Commissioner; or municipality where relevant. Agreements with the County Engineer shall not be forwarded to the County Board before the wind farm special use permit is forwarded. All other agreements shall be executed prior to the close of the public hearing before the BOARD. The signed and executed Roadway Upgrade and Maintenance agreements must provide for the following minimum conditions:

2. Delete paragraph 6.1.4F.1.u. and renumber succeeding paragraphs as required.**3. Add new subparagraph 6.1.4F.3. as follows:**

3. At such time as decommissioning takes place the Applicant or its successors in interest shall enter into a Roadway Use and Repair Agreement with the appropriate highway authority.

Part C. Revise paragraph 6.1.4J. to read as follows:

- J. **Standard Conditions for Endangered Species Consultation**
The Applicant shall apply for consultation with the Endangered Species Program of the Illinois Department of Natural Resources. The Application shall include a copy of the Agency Action Report or, if applicable, a copy of the Detailed Action Report submitted to the Endangered Species Program of the Illinois Department of Natural Resources and a copy of the response from the Illinois Department of Natural Resources.

Part D. Add new paragraph 6.1.4E.7. as follows:

7. Permanent Erosion and Sedimentation Control Plan
 - (a) Prior to the approval of any Zoning Use Permit, the Applicant shall provide a permanent soil erosion and sedimentation plan for all WIND FARM TOWER sites and access roads that conforms to the relevant Natural Resources Conservation Service guidelines and that is prepared by an Illinois Licensed Professional Engineer.
 - (b) As-built documentation of all permanent soil erosion and sedimentation improvements for all WIND FARM TOWER sites and access roads prepared by an Illinois Licensed Professional Engineer shall be submitted and accepted by the Zoning Administrator prior to approval of any Zoning Compliance Certificate.

Part E. Revise paragraph 6.1.4S.1.(c)(3) to read as follows:

- (3) The separation of all WIND FARM structures from adjacent NON-PARTICIPATING DWELLINGS OR PRINCIPAL BUILDINGS or uses shall be as shown or dimensioned on the approved site plan for the SPECIAL USE Permit unless the Board authorizes a lesser separation in a special condition of approval or any required and duly authorized waivers of paragraph 6.1.4C. Authorization of a separation of less than 90% of that indicated on the approved site plan for the SPECIAL USE Permit shall require an updated noise study meeting the requirements of paragraph 6.1.4 I. to be submitted with the Zoning Use Permit application. WIND FARM structures include WIND FARM TOWERS, substations, third party transmission lines, maintenance and management facilities, or other significant structures.

Part F.

1. In Section 3 revise the definition of “non-adaptable structure” to read as follows:

NON-ADAPTABLE STRUCTURE: Any STRUCTURE or physical alteration to the land which requires a SPECIAL USE Permit, and which is likely to become economically unfeasible to remove or put to an alternate USE allowable in the

DISTRICT (by right or by SPECIAL USE). This term shall include, but not be limited to, a WIND TURBINE TOWER and a WIND FARM TOWER.

2. **Make the following revisions to paragraph 6.1.1A.:**
 - a. **Revise paragraph 6.1.1A. to strike references to “reclamation agreement” and replace with “site reclamation plan” and replace references to 6.1.1C. with references to 6.1.1A. and;**
 - b. **Revise paragraphs 6.1.1A.1. through 5 to read as follows:**
 - A. **Site Reclamation Plan for NON-ADAPTABLE STRUCTURES**
 1. In the course of BOARD review of a SPECIAL USE request, the BOARD may find that a proposed STRUCTURE is a NON-ADAPTABLE STRUCTURE. Any WIND FARM shall be a NON-ADAPTABLE STRUCTURE. The Applicant for the SPECIAL USE request for a NON-ADAPTABLE STRUCTURE shall submit a site reclamation plan to the BOARD for the subject site.
 2. The site reclamation plan shall be binding upon all successors of title to the land. Prior to the issuance of a SPECIAL USE Permit for such NON-ADAPTABLE STRUCTURES, the landowner or applicant shall also record a covenant incorporating the provisions of the site reclamation plan on the deed subject to the LOT, requiring that the reclamation work be performed and that a letter of credit be provided for financial assurance.
 3. Separate cost estimates for Section 6.1.1A.4.a., 6.1.1A.4.b., and 6.1.1A.4.c. shall be provided by an Illinois Licensed Professional Engineer.
 - a. Cost estimates provided shall be subject to approval of the BOARD.
 - b. Except as provided in Section 6.1.4P., the salvage value of the components of the NON-ADAPTABLE STRUCTURE shall not be credited to the cost estimates.
 4. The site reclamation plan shall provide for:
 - a. removal of above-ground portion of any STRUCTURE on the subject site; site grading; and, interim soil erosion control;

- b. below-ground restoration, including final grading and surface treatment;
- c. any environmental remediation required by State or Federal law;
- d. provision and maintenance of a letter of credit, as set forth in Section 6.1.1A.5.

5. No Zoning Use Permit for such SPECIAL USE will be issued until the applicant provides the COUNTY with an irrevocable letter of credit to be drawn upon a federally insured financial institution within 200 miles of Urbana or reasonable anticipated travel costs shall be added to the amount of the letter of credit. The irrevocable letter of credit shall be in the amount of one hundred fifty percent (150%) of an independent engineer's cost estimate to complete the work described in Section 6.1.1A4.a., Section 6.1.1A.4.b., and Section 6.1.1A.4.c., except a different amount may be required as a standard condition in Section 6.1.4P. This letter of credit, or a successor letter of credit pursuant to Section 6.1.1A.6. or 6.1.1A.12. shall remain in effect and shall be made available to the COUNTY for an indefinite term or for a different term that may be required as a standard condition in paragraph 6.1.4P.

2c. Add new subparagraph 6.1.1A.7.e. to read as follows:

- e. A court of law, an arbitrator, mediator, or any state or Federal agency charged with enforcing State or Federal law has made a finding that either said NON-ADAPTABLE STRUCTURE or the structures supporting said NON-ADAPTABLE STRUCTURE and/or any related site grading and soil erosion controls or lack of same, constitutes a public nuisance or otherwise violates State or Federal law, or any State or Federal agency charged with enforcing State or Federal law has made a final determination either imposing an administrative sanction on any person associated with the NON-ADAPTABLE STRUCTURE relating to its use or denying the NON-ADAPTABLE STRUCTURE a permit necessary for its lawful operation.

2d. Revise subparagraph 6.1.1A.6. as follows:

6. One hundred eighty (180) days prior to the expiration date of an irrevocable letter of credit submitted pursuant to this Section, the Zoning Administrator shall notify the landowner or applicant in writing and request information about the landowner or applicant's intent to renew the letter of credit, or remove the NON-ADAPTABLE STRUCTURE. The landowner or applicant shall have thirty (30) days to respond in writing to this request. If the landowner or applicant's intention is to remove the NON-ADAPTABLE STRUCTURE, the landowner or applicant will have a total of ninety (90) days from the date of response to remove it in accordance with Section 6.1.1A.4.a. At the end of ninety (90) days, the Zoning Administrator shall have a period of sixty (60) days to either:
 - a. confirm that the bank has renewed the letter of credit; or
 - b. inspect the subject property for compliance with Section 6.1.1A.4.a.;
 - c. draw on the letter of credit and commence the bid process to have a contractor remove the NON-ADAPTABLE STRUCTURE pursuant to Section 6.1.1A.4.a.

2e. Revise paragraph 6.1.1A.11.b. to read as follows:

- b. pay all administrative and ancillary costs associated with drawing upon the financial assurance and performing the reclamation work, which shall include, but not be limited to, attorney's fees; construction management and other professional service fees; and the costs of preparing request for proposal and bidding documents required to comply with state law or Champaign County purchasing policies; and

2f. Revise paragraph 6.1.1A.12. to read as follows:

12. Upon transfer of any property subject to a letter of credit pursuant to this Section, the new owner or applicant of record shall submit a new irrevocable letter of credit of same or greater value to the Zoning Administrator, prior to legal transfer of title, and shall

submit a new site reclamation plan, pursuant to Section 6.1.1A.4.a., and, for WIND FARMS, Section 6.1.4P. Once the new owner or applicant of record has done so, the letter of credit posted by the previous owner or applicant shall be released, and the previous owner shall be released from any further obligations under the site reclamation plan.

2g. Add new subparagraphs 6.1.1A.13. & 14. to read as follows:

13. The Applicant shall provide evidence of any new, additional, or substitute financial assurance to the Zoning Administrator throughout the operating lifetime of the NON-ADAPTABLE STRUCTURE.
14. Should the site reclamation plan, or any part of it, be deemed invalid by a court of competent jurisdiction, the associated SPECIAL USE permit shall be deemed void.

3. Revise 6.1.4P. as follows:

a. **Revise paragraph 6.1.4P. to strike references to “reclamation agreement” and replace with “site reclamation plan”.**

b. **Delete paragraphs 6.1.4P.3.(d), (e), and (f) and add new paragraphs 6.1.4P.3.(d) through (m) as follows:**

- (d) A stipulation that at such time as decommissioning takes place the applicant or it’s successors in interest are required to enter into a Roadway Use and Repair Agreement with the relevant highway authority.
- (e) A stipulation that the Applicant shall provide evidence of any new, additional, or substitute financing or security agreement to the Zoning Administrator throughout the operating lifetime of the project.
- (f) A stipulation that the Applicant shall be obliged to perform the work in the site reclamation plan before abandoning the WIND FARM or prior to ceasing production of electricity from the WIND FARM, after it has begun, other than in the ordinary course of business. This obligation shall be independent of the obligation to pay financial assurance, and shall not be limited by the amount of

financial assurance. The obligation to perform the reclamation work shall constitute a covenant running with the land

- (g) The site reclamation plan shall provide for payment of any associated costs that Champaign County may incur in the event that decommissioning is actually required. Associated costs include all administrative and ancillary costs associated with drawing upon the financial assurance and performing the reclamation work and shall include but not be limited to attorney's fees; construction management and other professional service fees; and the costs of preparing request for proposals and bidding documents required to comply with state law or Champaign County purchasing policies.
- (h) The depth of removal of foundation concrete below ground shall be a minimum of 54 inches. The depth of removal of foundation concrete shall be certified in writing by an Illinois Licensed Professional Engineer and the certification shall be submitted to the Zoning Administrator.
- (i) The hole resulting from the removal of foundation concrete during decommissioning shall be backfilled as follows:
 - i.* The excavation resulting from the removal of foundation concrete shall only be backfilled with subsoil and topsoil in similar depths and similar types as existed at the time of the original WIND FARM construction except that a lesser quality topsoil or a combination of a lesser quality topsoil and a subsoil that is similar to the native subsoil may be used at depths corresponding to the native subsoil but not less than 12 inches below grade.
 - ii.* The native soils excavated at the time of the original WIND FARM construction may be used to backfill the concrete foundation excavations at the time of decommissioning provided that the soils are adequately stored throughout the operating lifetime of the WIND FARM. The methods for storing the excavated native soils during the operating lifetime of the WIND FARM shall be included in the site reclamation plan.

- iii.* If the excavated native soils are not stored for use for backfilling the concrete foundation excavations, a qualified soil scientist or Illinois Licensed Professional Engineer shall certify that the actual soils used to backfill the concrete foundation excavations are of equal or greater quality than the native soils or that, in the case of subsoil, the backfill soil meets the requirements of this paragraph. The certification shall be submitted to the Zoning Administrator.
- iv.* An Illinois Licensed Professional Engineer shall certify in writing that the concrete foundation excavations have been backfilled with soil to such a depth and with a minimum of compaction that is consistent with the restoration of productive agricultural use such that the depth of soil is expected to be no less than 54 inches within one year after backfilling.
- (j) A stipulation that should the site reclamation plan be deemed invalid by a court of competent jurisdiction the WIND FARM SPECIAL USE Permit shall be deemed void.
- (k) A stipulation that the Applicant's obligation to complete the site reclamation plan and to pay all associated costs shall be independent of the Applicant's obligation to provide financial assurance.
- (l) A stipulation that the liability of the Applicant's failure to complete the site reclamation plan or any breach of the site reclamation plan requirement shall not be capped by the amount of the financial assurance.
- (m) If the Applicant desires to remove equipment or property credited to the estimated salvage value without the concurrent replacement of the property with property of equal or greater salvage value or if the Applicant installs equipment or property increasing the cost of decommissioning after the WIND FARM begins to produce electricity, at any point, the Applicant shall first obtain the consent of the Zoning Administrator. If the Applicant's lien holders remove equipment or property credited to the salvage value the Applicant shall promptly notify the Zoning Administrator. In either

of these events the total financial assurance shall be adjusted to reflect any change in total salvage value and total decommissioning costs resulting from any such removal or installation.

3c. Revise paragraph 6.1.4P.4.(a) and insert new paragraph 6.1.4P.4.(b) and renumber existing paragraphs as required as follows:

3d. Insert new paragraph 6.1.4P.4.(b) as follows:

4. To comply with paragraph 6.1.1A.5., the Applicant shall provide financial assurance in the form of an irrevocable letter of credit and an escrow account as follows:
 - (a) At the time of Special Use Permit approval the amount of financial assurance to be provided for the site reclamation plan shall be 210% of the decommissioning cost as determined in the independent engineer's cost estimate to complete the decommissioning work described in Sections 6.1.1A.4.a. and 6.1.1A.4.b. and 6.1.1A.4.c.
 - (b) Net salvage value may be deducted from decommissioning costs as follows:
 - (1) One of the following standards shall be met:
 - i.* The Applicant shall maintain the WIND FARM TOWERS free and clear of liens and encumbrances, including financing liens and shall provide proof of the same prior to issuance of the SPECIAL USE Permit; or
 - ii.* The Applicant shall deduct from the salvage value credit the amount of any lien or encumbrance on each WIND FARM TOWER; or
 - iii.* Any and all financing and/or financial security agreements entered into by the Applicant shall expressly provide that the agreements are subject to the covenant required by Section 6.1.1A.2 that the reclamation work be done.

- (2) The Applicant shall provide proof of compliance with paragraph 6.1.4P.4.(b)(1) prior to issuance of any Zoning Use Permit and upon every renewal of the financial assurance and at any other time upon the request of the Zoning Administrator.
- (3) The Applicant shall provide in the site reclamation plan for legal transfer of the STRUCTURE to the demolisher to pay the costs of reclamation work, should the reclamation work be performed.
- (4) The net estimated salvage value that is deducted from the estimated decommissioning costs shall be the salvage value that results after all related costs for demolition and any required preparation for transportation for reuse or recycling or for simple disposal and other similar costs including but not limited to the decommissioning of the tower, the hub assembly, the bed plate, the nacelle, the turbine, the blades, the tower cabling and internal wiring, the transformers, the foundation, and access roads.
- (5) Estimated salvage value shall be based on the average salvage price of the past five years as published in a reputable source for salvage values and shall reflect sound engineering judgment as to anticipated changes in salvage prices prior to the next update of estimated net salvage value.
- (6) The deduction from the estimated decommissioning costs for net estimated salvage value shall be capped at 70% of the total net estimated salvage value even though the total actual salvage value shall be available in the event that decommissioning is actually required.
- (7) The credit for net estimated salvage value attributable to any WIND FARM TOWER may not exceed the estimated cost of removal of the above-ground portion of that WIND FARM TOWER on the subject site.

- (c) The GOVERNING BODY has the right to require multiple letters of credit based on the regulations governing federal insurance for deposits.

3e. Renumber existing paragraph 6.1.4P.4.(b) to become new paragraph 6.1.4P.4.(e) and revise the first part of the existing paragraph as follows:

- (e) The applicant or WIND FARM owner shall gradually pay down the value of the irrevocable letter of credit by placing cash deposits in an escrow account in equal annual installments over the first 13 years of the WIND FARM operation as follows:

3f. Renumber existing paragraph 6.1.4P.4.(b)(5) to become new paragraph 6.1.4P.4.(d) and revise as follows:

- (d) The Applicant shall adjust the amount of the financial assurance to ensure that it reflects current and accurate information as follows:
 - (1) At least once every three years for the first 12 years of the financial assurance and at least once every year thereafter the Applicant shall use an independent Illinois Licensed Professional Engineer to provide updated estimates of decommissioning costs and salvage value, by including any changes due to inflation and/or change in salvage price. The Applicant shall, upon receipt, provide a copy of the adjusted Professional Engineer's report to the Zoning Administrator.
 - (2) At all times the total combined value of the irrevocable letter of credit and the escrow account shall equal or exceed the amount of the independent engineer's cost estimate as increased by known and documented rates of inflation since the WIND FARM was approved; and an amount for any future years left in the anticipated 25 year life span of the WIND FARM at an assumed minimum rate of inflation of 3% per year.

3g. Add new paragraph 6.1.4P.4.(f) as follows:

- (f) Should the salvage value of components be adjusted downward or the decommissioning costs adjusted upward pursuant to paragraph 6.1.4P.4.(d), the amount to be placed in the escrow account

pursuant to this paragraph 6.1.4P.4. shall be increased to reflect the adjustment, as if the adjusted estimate were the initial estimate.

3h. Revise paragraph 6.1.4P.5.(a) to read as follows:

- (a) In the event that any WIND FARM TOWER or component thereof ceases to be functional for more than six consecutive months after it starts producing electricity and the Owner is not diligently repairing such WIND FARM TOWER or component.

3i. Add the following to paragraph 6.1.4P.5.:

- (c) There is a delay in the construction of any WIND FARM TOWER of more than 6 months after construction on that WIND FARM TOWER begins.
- (d) Any WIND FARM TURBINE appears in a state of disrepair or imminent collapse and/or creates an imminent threat to the health or safety of the public or any person.
- (e) Any WIND FARM TURBINE is otherwise derelict for a period of 6 months.
- (f) The WIND FARM is in violation of the terms of the WIND FARM SPECIAL USE permit for a period exceeding ninety (90) days.
- (g) The Applicant has failed to maintain financial assurance in the form and amount required by the special use permit or compromised the COUNTY's interest in the site reclamation plan.
- (h) The COUNTY discovers any material misstatement of fact or misleading omission of fact made by the Applicant in the course of the special use permit zoning case.
- (i) The Applicant has either failed to receive a copy of the certification of design compliance required by paragraph 6.1.4D.1.(a) or failed to submit it to the County within 12 consecutive months of receiving a Zoning Use Permit regardless of the efforts of the Applicant to obtain such certification.

3j. Add new paragraph 6.1.4P.6. as follows:

6. The Zoning Administrator may, but is not required to, deem the WIND FARM abandoned, or the standards set forth in Section 6.1.4P.5 met, with respect to some, but not all, of the WIND FARM TURBINES in the WIND FARM. In that event, the Zoning Administrator may draw upon the financial assurance to perform the reclamation work as to those WIND FARM TURBINES only. Upon completion of that reclamation work, the salvage value and reclamation costs shall be recalculated as to the remaining WIND FARM TURBINES in the WIND FARM.

3k. Renumber existing paragraph 6.1.4P.6. and revise as follows:

7. The Site Reclamation Plan shall be included as a condition of approval by the BOARD and the signed and executed irrevocable letter of credit and evidence of the escrow account must be submitted to the Zoning Administrator prior to any Zoning Use Permit approval.