

AN ORDINANCE AMENDING ARTICLE III, SECTIONS 3.4.1 & 3.4.3 AND ARTICLE XI, SECTION 11.2 WITHIN THE PIKE COUNTY ZONING ORDINANCE

WHEREAS, pursuant to 55 ILCS 5/5-12011, the County of Pike has the authority to amend its zoning ordinance; and

WHEREAS, it is the goal of Pike County to promote the use of renewable energy sources if cost effective and technically feasible; and

WHEREAS, the County of Pike, does not presently have sufficient provisions within the Pike County Zoning Ordinance to regulate wind energy systems; and

WHEREAS, it is not the intent of this ordinance to significantly increase the cost of the system or significantly decrease the efficiency of any wind energy system proposed to be located in Pike County; and

WHEREAS, it is in the best interests of the citizens of Pike County that zoning and other regulations be promulgated so as to implement restrictions on the placement and operation of wind energy systems within the County, which preserve or protect the public health or safety of all citizens residing in the County.

NOW, THEREFORE, the County of Pike does ordain as follows:

1. Section 3.4.3 (Conditional Uses), subparagraph (J) of Article III (Agricultural Districts (A)), is amended by adding the following language at the end of the paragraph “electrical power generating plants, structures, towers, substations, and building, excepting Wind Energy Systems and Wind Energy System Facilities”.
2. Section 11.2 (Definitions) of Article XI (Rules and Definitions) is amended to add the following definitions:

Good Utility Practice. The practices, methods and acts with respect to the safe operation of the WESF engaged in or approved by a significant portion of the electric utility industry and, in particular, those portions of the industry with experience in the construction, operation and maintenance of wind turbines during the relevant time period; or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods or acts generally accepted in the region.

Non-Participating Residence. All residences, which are not subject to an agreement, authorization, or lease with the Wind Energy System Facility developer.

Wind Energy Systems (WES). Equipment that converts and then stores or transfers energy from the wind into usable forms of energy.

Wind Energy System Facility (WESF). All land and equipment used by the wind energy system and its support facilities including the wind turbine, tower, access roads, control facilities, maintenance facilities, and all power collection and transmission systems.

Wind Turbine. A mechanical device, which captures kinetic energy of the wind and converts it into electricity. The primary components of a wind turbine are the blade assembly, electrical generator, and tower.

3. Create Section 10.4 of Article X to read as follows:

Permittee shall defend, indemnify and hold harmless the County and its officials, employees and agents from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses and liabilities whatsoever, including reasonable attorney's fees (such liabilities together known as "liability") arising out of Permittee's selection, construction, operation and removal of the Wind Turbines and affiliated equipment including, without limitation, liability for property or personal injury (including death), whether said liability is premised on contract or on tort (including without limitation strict liability or negligence). This general indemnification shall not be construed as limiting or qualifying the County's other indemnification rights available under the law.

4. Section 3.4.1(Permitted Uses), subparagraph (g) of Article III (Agricultural Districts (A)) is added to state as follows:

(g) Wind Energy System Facility (WESF) which meet the following requirements:

(A) SITING APPROVAL APPLICATION

(1) To comply with application procedures required by the Pike County Zoning Ordinance.

(2) To submit a site plan for the installation of WESFs showing the planned location of each WESF Tower, guy lines and anchor bases (if any), primary structure(s), property lines (including identification of adjoining properties), setback lines, public access roads and turnout locations, substation(s), electrical cabling from the WESF Tower to the substation(s), ancillary equipment, third party transmission lines, and layout of all structures within the geographical boundaries of any applicable setbacks. Such site plan shall include a legal description and plat of the WESF to be prepared by a licensed surveyor. The plat of survey to be furnished shall be a certified copy in recordable form.

(3) To submit all required studies, reports, certifications, and approvals demonstrating compliance with the provisions of this Ordinance.

(4) Wind energy systems shall comply with applicable Federal Aviation Administration (FAA) and Federal Communication Commission (FCC) regulations, including any necessary approvals for installations near airports.

(B) STANDARDS

(1) Construction Standards

WESF shall be constructed in compliance with Good Utility Practice for WESF. A professional engineer shall certify, as part of the building permit application, that the foundation and tower design of the WES are within acceptable professional standards. In the event after inspection by a professional engineer in Good Utility Practice, the County concludes that any of the WESF were not constructed in compliance with Good Utility Practice or constitutes a danger to persons or property, then upon notice being provided, Permittee shall have 90 days to bring the non-compliant WESF(s) into compliance with such standards or if 90 days is insufficient time to cure the non-compliance, Permittee shall present a plan to the County describing the reason for the delay and the time frame for the cure to be put in place. Failure to bring such non-compliant WESF(s) into compliance or failure to provide a plan for compliance within 90 days shall constitute grounds for the County to request removal of said WESF(s) at Permittee's expense. The following minimum safety standards shall apply to the construction of the WESF:

(a) All wiring between the Wind Turbines shall be underground.

(b) The outside of the WESF shall not be climbable.

(c) All access doors to the Turbines and electrical equipment shall be locked.

(2) Performance Standards

Any Wind Energy System or Wind Energy System Facility shall be operated and maintained consistent with Good Utility Practice for comparable facilities.

(3) State and Federal Standards

Construction of WESF(s) shall meet or exceed current standards and regulations, if any, of any other agency of the state or federal government with the authority to regulate wind powered generators. If such standards and regulations are changed and retroactive application is required for the change, then Permittee shall bring the WESF(s) into compliance with such applicable revised standards and regulations within 6 months of the effective date of such standards and regulations, unless a different compliance schedule is permitted by the controlling state or federal agency or approved by the County. A determination of No Hazard for each Wind Turbine must be obtained from the FAA as a condition precedent for the installation of each turbine.

(C) TECHNICAL REQUIREMENTS

(1) Height

No wind energy system shall exceed 500 feet in total height above grade (all references to height are measured at the highest point of the blade tip).

(2) Setback

(a) Wind Turbine Towers shall be setback a distance of 1.1 times their height from the nearest property line, unless appropriate waivers or easements are secured from adjacent property owners, or other acceptable mitigation is approved by the County Board.

(b) Wind Turbine Towers shall be setback a distance of no less than three times their total height from the nearest residence, school, hospital, or church unless waived in writing by the affected property owner or owners. In no event shall the setback be less than 1.1 times the total height of the wind energy system.

(c) Wind Turbine Towers shall be setback a distance of no less than their total height from the nearest above-ground public electric power line or telephone line, unless waived in writing by the affected property owner and utility company.

(3) Noise

The noise design limit for each wind energy system shall not exceed 50 dBA as measured as the average dBA at the location of the nearest non-participating residence from the relevant wind energy system. The dBA level, however, may be exceeded during short-term events such as utility outages and or severe wind storms.

(4) Color

Except as may be required by the FAA, the coloration of the exterior components and each wind turbine tower shall be off white, light gray or other neutral color, including the blades. The finish shall be flat or matte. Permittee throughout the Term of this Permit shall maintain the required coloration and finish.

(5) Signage

Permittee shall provide reasonable signage at the WESF, identifying the premises as being part of the WESF and providing appropriate safety notices and warnings against trespassing. The no trespassing signs shall be posted around the entire premises at an appropriate distance for posting but no less than 2 conspicuous places for every 40 acres within the Facility.

No advertising material or signage other than warning, equipment information, or indicia of ownership shall be allowed on the Wind Turbines. This prohibition shall include the attachment

of any flag, decorative sign, streamers, pennants, ribbons, spinners or waiving, fluttering or revolving devices, but not including weather devices.

(6) Public Roads

Permittee shall, prior to the initiation of construction and use of haul roads, consult with the County Engineer, the Township Road Commissioner, the Illinois State Police, and the Pike County Sheriffs' Office for load paths and restrictions on their respective roads or bridges. At Permittee's expense, Permittee shall provide the County Engineer with a videotape documenting the condition of all haul roads in the County prior to beginning and after completing construction of the WESF. At Permittee's expense, the Permittee shall contract with qualified contractors to repair any damage to the haul roads due to transportation of equipment and WESF components.

In the event a hazardous road condition exists that is not promptly corrected by Permittee, the County Engineer, or Township Road Commissioner may order emergency road repairs be performed by qualified contractors, and Permittee shall promptly reimburse the County for reasonable emergency road repair costs. Permittee shall assure funding of the Road Repair Obligations by a letter of credit or guaranty from a contractor of Applicant. Weather permitting, the final Road Repair Obligations shall be completed to the reasonable satisfaction of the County Engineer and Township Road Commissioner within six (6) months after completion of construction of the WESF, or as soon thereafter as weather conditions permit.

(7) Reporting and Complaint Resolution

Permittee shall report to the County as follows:

(a) Extraordinary Events. Within 24 hours of any extraordinary event, Permittee shall notify the County (Pike County Sheriff's Office (217) 285-4471. "Extraordinary events" shall include tower collapse, catastrophic turbine failure, unauthorized entry to the tower base, thrown blade or hub, any injury to a facility worker or other person that requires emergency medical treatment, or other event that in Permittee's opinion reasonably impacts the public health and safety of the County.

(b) Complaints. The Permittee of the Wind Energy System Facility shall, at the Permittee's expense and in coordination with the County develop a system for logging and investigating all complaints related to the operational standards set forth in this Ordinance. If the County determines that it is reasonably necessary, it may undertake an investigation of the alleged operational violation by a qualified individual mutually acceptable to the County and the owner of the Wind Energy System Facility. The reasonable cost and fees incurred by the County in retaining said qualified individual shall be reimbursed by the owner of the Wind Energy System Facility. After the investigation, if the County Board reasonably concludes that operational violations are shown to be caused by the Wind Energy System Facility, the Permittee shall use reasonable efforts to mitigate such problems on a case by case basis.

(D) OPERATION

(1) Electromagnetic Interference

Permittee shall not operate the Facility so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission regulations or other law.

(2) Modification

Any physical modification that meets requirements found under Article VIII, Section 8.3(Permit Regulations of the Zoning Ordinance) must be re-permitted. Any modification that alters the mechanical load, mechanical load path, or major electrical components shall require it to be re-permitted under the terms and conditions of this Ordinance. Like-kind replacements shall not

require re-permitting. Prior to making any physical modification (other than like-kind replacement), the owner or operator shall confer with the Zoning Administrator to determine whether the physical modification requires re-permitted.

(E) INSURANCE AND INDEMNIFICATION

All Permittees shall maintain the following insurance coverages commencing upon construction of the facility:

(1) Permittee shall, at its expense, maintain a broad form comprehensive coverage policy of public liability insurance insuring Applicant and Participating Landowners against loss or liability caused by Applicant's occupation and use of the Property under the Lease, in an amount not less than Five Million Dollars (\$5,000,000) of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible. The County shall be named as an additional insured on the policy.

(2) Worker's compensation coverage in an amount required by Illinois law. Applicant shall require subcontractors and others not protected under its insurance to obtain and maintain worker's compensation and employers' liability insurance.

(3) Certificates of insurance evidencing compliance with these requirements shall be provided upon request of the County. The insurer will provide notice to the County in the event there is a lapse in coverage exceeding thirty (30) days. All policies other than worker's compensation shall be written on an occurrence and not on a claim made basis.

(4) Permittee shall comply with Section 10.4 of Article X of the Pike County Zoning Ordinance as to Indemnification.

(F) WIND TURBINE GENERATOR REMOVAL

(1) Cessation of Operation.

Should removal of all or part of the WESF otherwise be required under this Ordinance, Permittee shall effectuate the removal of the whole or part of the WESF affected. Further, if Permittee ceases commercial operation of the Facility for a continuous period of one year, Permittee shall take all measures necessary to accomplish such removal. Unless otherwise agreed to with landowners in a written agreement in recordable form, said removal shall be to a depth of 48 inches beneath the soil surface and Permittee shall restore the Premises to substantially the same physical condition, which existed immediately before the construction of the Facility. Any agreement for removal of a foundation to a lesser depth or for no removal of the foundation shall be recorded with the Pike County Clerk and shall show the locations of such foundations. The locations of such foundations shall be clearly identified on the site plan and plat of survey required by Section (g)(A)(2) of this ordinance.

(2) Financial Assurance

Permittee shall assure funding of the removal by a letter of credit, cash, or equivalent held in trust in favor of the County, in a form to be approved by the State's Attorney and to be determined by the County Board using the following procedure.

Permittee shall submit an estimate of the removal obligations by a professional engineer, approval of which shall not be unreasonably withheld. This sum may be adjusted by the County Board on an annual basis in accord with the Consumer Price Index as published by the United States Department of Labor of Bureau of Labor Statistics, in which circumstances Licensee shall be required to submit new surety in the adjusted amount. Further, in the event that Permittee has failed, refused or neglected to comply with the removal requirements herein within twelve (12) months of the County's written notice, the County or its agents shall be licensed to enter onto the

premises for purposes of razing or removing the subject structures. A claim shall be made against the letter of credit, cash or equivalent held in trust for all costs associated with the County's efforts in this regard. In the event that such letter of credit, cash or equivalent held in trust are insufficient to pay such costs, the remaining balance of such costs shall be placed upon the real estate tax bill of the site as special charge. The removal obligations shall be completed within twelve (12) months after decommissioning of the Facility; cessation of the commercial operation regarding the Facility, or the expiration of this permit, whichever first occurs. The County shall have access to the site, pursuant to reasonable notice, to effect or complete removal.

All provisions of this Ordinance shall be binding upon the Owner or Operator and any of their successors, assigns, or heirs.

(G) REMEDIES

- (1) The Applicant's, Owner's, or Operator's failure to materially comply with any of the above provisions shall constitute a default under this Ordinance.
- (2) Prior to the 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 60 days, for good faith negotiations to resolve the alleged default(s).
- (3) 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.

EFFECTIVE DATE

These amendments to the County Zoning Ordinance shall take immediately take effect upon passage as provided by law.

These amendments to the County Zoning Ordinance was passed and adopted by the County Board this 24th day of May 2004.

Chairman-Scott Syrcle

ATTEST:

County Clerk-Donnie Apps, Jr.

**Pike County Zoning Administration
Permit Fees**

FOR BUILDINGS AND STRUCTURES FOR AGRICULTURAL USE ONLY - NO FEE SHALL BE CHARGED.
THIS DOES NOT INCLUDE RESIDENCES OR PENALTIES.

SINGLE FAMILY RESIDENTIAL

SINGLE FAMILY DWELLING	PERMIT FEE
Less than 1500 square feet	\$ 50.00
From 1501 to 2000 square feet	\$ 100.00
From 2001 to 2500 square feet	\$ 150.00
Greater than 2500 square feet	\$ 200.00
ADDITIONS TO SINGLE FAMILY DWELLING	
Less than 1500 square feet	\$ 50.00
From 1501 to 2000 square feet	\$ 100.00
From 2001 to 2500 square feet	\$ 150.00
Greater than 2500 square feet	\$ 200.00
DETACHED BUILDING (Per Square Foot)	\$ 0.05
STRUCTURES (other than buildings) accessory to SF Dwelling	\$ 50.00
BUSINESS OR ADVERTISING SIGNS	\$ 50.00

PERMIT FEES FOR ALL OTHER EXCLUDING THE ABOVE

Minimum Fee	\$ 50.00
Up to \$500,000.00	\$ 2.50 per \$1000
\$500,001.00 - \$5,000,000.00	\$ 1,250.00 (\$0.50 per addt'l \$1000)
\$5,000,000.00 and Up	\$ 3,450.00 (\$0.10 per addt'l \$1000)

PERMIT FEES FOR THE FOLLOWING

Appeals: There is no filing fee for an appeal of an administrative decision	
Variations from the Zoning Ordinance	\$ 350.00
Zoning Map Amendments	\$ 500.00
Text Amendments	\$ 350.00
Residential Planned Unit Developments	\$ 750.00
Non-Conforming Use	\$ 350.00
Conditional Use	\$ 350.00

Non-Commercial Parks and Outdoor Recreations Areas: The fee for such areas which are owned by a public entity, a philanthropic organization, or a non-profit corporation shall be \$150.00 regardless of project size.

Other Costs: In addition to the above fees, the applicant(s) shall pay the cost of publishing any notice requiring publication in a newspaper and any additional cost associated with the application.

**FEE FOR BEGINNING CONSTRUCTION WITHOUT A BUILDING PERMIT IS TWO (2) TIMES THE REGULAR FEE.
PENALTY FOR AGRICULTURAL BUILDINGS IS \$100.00**

PLEASE MAKE CHECKS PAYABLE TO PIKE COUNTY ZONING