

ORDINANCE  
of the  
COUNTY BOARD OF THE COUNTY OF WINNEBAGO, ILLINOIS

SUBMITTED BY: ZONING COMMITTEE

2009 CO

**-DRAFT- \*\*\*WITH ZBA & ZC AMENDMENTS\*\*\* - DRAFT-**

AMENDMENTS TO THE ZONING ORDINANCE FOR THE PURPOSE OF REGULATING  
COMMERCIAL WIND POWER GENERATING FACILITIES

WHEREAS, Chapter 90 of the Winnebago County Code of Ordinances is known as the Zoning Ordinance of Winnebago County which regulates the use of buildings and land; and

WHEREAS, the Winnebago County Zoning Board of Appeals (ZBA) held a public hearing after a min. 15 days notice of said, and pursuant to State Law regarding this amendment; and

WHEREAS, the Winnebago County Zoning Board Appeals (ZBA) recommended by a vote of 5-0 to approve regulations for the purpose of regulating commercial Wind Power Generating Facilities with certain amendments; and

WHEREAS, the Zoning Committee (ZC) of the Winnebago County Board recommended by a vote of 6-0 to approve regulations for the purpose of regulating commercial Wind Power Generating Facilities with certain amendments; and

WHEREAS, the County Board of Winnebago County has reviewed and considered the testimony presented at the public hearing held by the ZBA and the ZBA's and ZC's recommendation, and hereby finds that the public health, safety and welfare of the citizens of Winnebago County will be better served by adopting the following amendments with regard to commercial Wind Power Generating Facilities to the Zoning Ordinance of Winnebago County; and

NOW, THEREFORE, BE IT ORDAINED that Chapter 90 of the Winnebago County Code of Ordinances, known as the Zoning Ordinance of Winnebago County, IL is hereby amended as follows:

1. RENUMBERING OF EXISTING ARTICLE 10. The Winnebago County Zoning Code (the "Code") is hereby amended to re-designate Article X of said Code as Article XI . For all other purposes, said Article shall remain unchanged. Any references in any Section of the Code to Article X which exist as of the date of this Amendment, are hereby amended to refer to Article XI of the Code.

2. ADDITION OF NEW ARTICLE 10. The Winnebago County Zoning Code is amended to add a new Article X to replace the previous Article X which was re-numbered pursuant to the preceding paragraph. Said Article X shall read as follows:

## **“ARTICLE X. COMMERCIAL WIND POWER GENERATING FACILITIES**

### **Sec. 90-350. Purpose of Article.**

The regulations set forth in this Article are intended to promote the health, safety, welfare, and morals of the residents of the County of Winnebago by establishing specific criteria for the siting, construction, maintenance, and decommissioning of commercial Wind Power Generating Facilities (“WPGF”), and facilities attendant thereto.

### **Sec. 90-351. Definitions.**

The following terms shall have the meaning ascribed to them in this paragraph for all purposes of this Chapter.

- A. “Applicant” is the person or entity filing an application for construction of a wind Power Generating Facility.
- B. “Facility Owner” means the entity or entities having an equity interest in the Wind Power Generating Facility, including their respective successors and assigns.
- C. “Operator” means the entity responsible for the day-to-day operation and maintenance of the Wind Power Generating Facility.
- D. “Hub Height” means the distance measured from the surface of the tower foundation to the height of the Wind Turbine hub, to which the blade is attached.
- E. “Turbine Height” means the distance measured from the surface of the tower foundation to the highest point of the turbine rotor plane.
- F. “Rotor Diameter” means the diameter of the circle described by the rotation of the turbine in a plane perpendicular to the nacelle axis, measured at the outermost tip of the blade.
- G. “Nameplate Capacity” means the maximum rated production capacity of a Wind Turbine, measured in watts, as specified by the manufacturer of the Wind Turbine.
- H. “Occupied Building” means a residence, school, hospital, church, public library, or other building used for public gathering that is occupied and in regular use as of the date the permit application is submitted, or which although unoccupied or not in regular use, is in a condition suitable for occupation or regular use without substantial alteration or repair. A building used primarily for storage, such as a garage, storage shed, barn, or other outbuilding shall not be deemed an Occupied Building for purposes of this Article.
- I. “Wind Turbine” means a Wind-Operated Energy Device (commercial service) as defined in this Code, or such other wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and includes the nacelle, rotor, tower, and transformer pad, and any other appurtenant structure necessary

to the production of electricity from wind energy, but such definition does not include accessory buildings, substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures, access roads, or other related facilities.

J. “Ancillary Facilities” means accessory structures and buildings, including, but not limited to substations, electrical infrastructure, transmission lines, access roads, and other appurtenant structures, access roads, and other related facilities required for the production and distribution of electricity derived from wind energy.

K. “Wind Power Generating Facility” or “WPGF” means an electric generating facility, whose main purpose is to supply electricity, consisting of one or more Wind Turbines and Ancillary Facilities.

L. “Participating Landowner” means any person with a vested fee interest in real property upon which a Wind Turbine or Ancillary Facility is located and who is either deriving, or entitled to derive, rental payments from the Facility Owner for the use of the real property upon which such Wind Turbine or Ancillary Facility is located.

M. “Non-Participating Landowner” means any landowner who is not a Participating Landowner.

N. “Project Area” means the entirety of the property for which a Permit for the construction of a Wind Power Generating Facility is sought.

### **Sec. 90-352. Applicability.**

This Chapter shall provide the exclusive method for determining the eligibility of any Wind Operated Energy Device (commercial service) or Wind Power Generating Facility established for the purpose of producing electricity for sale to third parties.

### **Sec. 90-353. Permitted Use.**

A Wind Power Generating Facility shall be considered a permitted use in the AG Agricultural Priority District pursuant to Section 90-113(a) or in the AG-1 Agricultural District pursuant to Section 90-114(a) if it meets all of the criteria set forth in this Article X.

### **Sec. 90-354. Permits and Zoning Clearance Required.**

A. No Wind Turbine or WPGF subject to the requirements of this Article shall be constructed within the County unless zoning clearance, building permits, and approval pursuant to the requirements of this Article X have first been obtained by the Facility Owner or Operator authorizing the construction of such facility.

B. The County shall establish a fee to be charged for the issuance of zoning clearance and all applicable permits pursuant hereto and for the amendment of a previously issued

permit or zoning clearance. Any applicable fee shall be payable in full at the time of filing the request for the permit or amendment thereto.

C. Any material modification of the WPGF after the issuance of zoning clearance shall require a modification of said clearance, subject to review for compliance with the provisions of this Chapter, and accompanied by the requisite fee. Non material modifications shall not require a clearance modification. The determination as to whether a modification is material for purposes of this Section shall be made by the County Planning and Zoning Officer, in said officer's sole but reasonably exercised discretion.

D. The Permit Application shall contain, at a minimum, the following information:

(i) A narrative statement describing the proposed project, including:

- (a) An overview of the project;
- (b) The name of the Applicant, and state (or country) of incorporation or organization (as applicable);
- (c) The location of the project in general terms;
- (d) The approximate nameplate generating capacity of the project;
- (e) The number of Wind Turbines to be included within the project;
- (f) The type (manufacturer), hub height, blade diameter, and nameplate capacity of the Wind Turbines to be included in the project; and
- (g) A general description of Ancillary Facilities.

(ii) Evidence of agreement with the owners of all property within the Project Area indicating that the Facility Owner or Operator has the authority to apply for a Permit pursuant to this Chapter and has site control over all such areas for the relevant period of operation, including access easements, utility easements and site leases.

(iii) Specific identification of all properties on which the WPGF will be located. For purposes of this Section, identification shall be deemed satisfactory if it lists, for all parcels within the Project Area:

- (a) Name(s) of owner(s) of record;
- (b) Address of the Property
- (c) Address of Property Owner (if different from property address); and
- (d) Property tax identification number(s).

Legal descriptions shall be required only if less than an entire tax parcel is being utilized by the Project.

(iv) Specific identification of all properties adjacent to the WPGF Project Area. For purposes of this Section, identification shall be deemed satisfactory if it lists, for all parcels within the Project Area:

- (a) Name(s) of owner(s) of record; and either

- (b) Property tax identification number(s); or
- (c) Legal description(s).

(v) A site plan, prepared by a professional engineer or land surveyor licensed in the State of Illinois with at least ten years of experience doing comparable work, showing at a minimum, the location and layout of each of the following:

- (a) Wind Turbines;
- (b) Ancillary Facilities;
- (c) Property lines within the Project Area;
- (d) Applicable setback lines;
- (e) Lines delineating distances of 1.1 times the Turbine Height and 1,200 feet as measured from the nearest point on the outside edge of a Wind Turbine tower.
- (f) Access roads and turnouts;
- (g) Substation(s), if any;
- (h) Transmission lines, whether above-ground or buried;
- (i) All Occupied Buildings that are either (I) within the Project Area or (II) outside of the Project Area, but within 1,200 feet of any Wind Turbine;
- (j) A topographic map of all property within the Project Area, and for a distance of no less than 1,200 feet of land surrounding the Project Area;
- (k) Boundaries of subject leased area for siting of wind turbine and/or ancillary facilities, if applicable; and
- (l) Operation and Maintenance Building(s), if applicable.

(vi) A decommissioning plan prepared by a professional engineer licensed in the State of Illinois, setting forth the proposed method of decommissioning and establishing an estimate of the total cost of decommissioning in compliance with the requirements of Section 90-359.

(vii) Design specifications for any proposed Wind Turbines, including:

(a) Certificates of design compliance written in English obtained by the manufacturer from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations;

(b) Proof of redundant braking systems in compliance with Sec. 90-355.C.(iii); and

(c) Stamped engineered drawings of all proposed structures.

(viii) A sound level study conducted by a certified noise engineer which confirms/certifies that the site plan will comply with Illinois Pollution Control Board regulations.

- (ix) A baseline Electromagnetic Interference Study, or a plan for conducting same, for purposes of determining levels of interference with electromagnetic signals, if any, attributable to the construction of the WPGF. Said study shall be conducted and certified by a professional electrical engineer, licensed in the State of Illinois.
- (x) An identification of all state and local public roads within the Project Area and all other transportation routes located within the Winnebago County that will be used to get to the project area.
- (xi) Copies of signed waivers for any property owner who has waived any setback requirement pursuant to Section 90-356. J.
- (xii) Proof of an approved Interconnection Agreement the Regional Transmission Organization (“RTO”) in charge of such applications. In the alternative, Applicant may submit proof of filing a Request for Interconnection, along with the expected date of a final agreement. Provided, building permits shall not be issued until proof of an approved RTO is provided to the County.
- (xiii) Wildlife/Avian Study(ies) pursuant to Sec. 90-355. G.
- (xiv) A Natural Resource Inventory Report (NRI) of the project area to be completed by the Winnebago County Soil and Water Conservation District and proof pursuant to Section 90-355. G. NRI Report. that any concerns listed within the NRI Report have been addressed / mitigated to their satisfaction.
- (xv) Evidence that the WPGF’s project (project area) has been submitted to the Illinois Department of Natural Resources (IDNR) for their review and consultation under their Ecological Compliance Assessment Tool (EcoCAT) Process (a.k.a. Agency Action Report).
- (xvi) Evidence that the WPGF’s project (project area) has been submitted to the US Department of Interior, Division of Fish and Wildlife Service, for their review and consultation.
- (xvii) Documents pursuant to Sec. 90-356. Setbacks. H. Bird and Bat Migration Paths.
- (xviii) A letter or similar from the County Engineer or his assignee that indicates Sec. 90-355. I. Use of Public Roads has been adhered to and/or complied with.

Notwithstanding the foregoing, the County Planning and Zoning Officer or Building Officer may request such additional information relevant to the application as the administrator may deem necessary.

Applicant shall further comply with all applicable, Federal, State and local permitting requirements which may be imposed by administrative bodies other than the County which have jurisdiction over the WPGF. Such requirements may include, but are not limited to, the Migratory Bird Treaty Act, the Endangered Species Act, the Bald and Golden Eagle Act, the Fish and Wildlife Coordination Act, and all rules and regulations established by the Federal Aviation Administration and Environmental Protection Agency. The appropriate governing agency or unit of government is responsible for the enforcement of such regulations. However, the County may at any time request information confirming compliance with any such requirements.

E. Upon receipt of the completed application, the County Planning and Zoning Officer shall apprise the Zoning Committee of the County Board within 7 days of the receipt of the completed application. The County Planning and Zoning Officer will determine whether the application complies with the standards set forth herein, and, if so, shall issue the required zoning clearance(s). In the event that the application is deemed insufficient, the County Planning and Zoning Officer shall specify the nature of the deficiency, and Applicant shall be allowed to provide any additional information required within one (1) year of the date of the initial application in order to complete the application.

F. Construction shall be commenced on the WPGF within one (1) year after the date the Permit is issued. Provided, however, that in the event of a *force majeure* event, such as strike, act of war or terrorism, natural disaster, pending litigation, or other event which results in the commencement of the project being inadvisable or impossible, the period for construction shall be tolled from the commencement of such event until the conclusion of said event.

G. Thirty days prior to the commencement of any construction for which a building permit was issued first class mail notice by the Applicant or Owner shall be provided to the owners of all of the properties identified in 90-354 (D)(iv).

#### **Sec. 90-355. Design and Installation.**

A. Design Safety Certification - The design of the WPGF shall conform to applicable industry standards, including those of the American National Standards Institute, as such standards exist as of the date construction is commenced. The Facility Owner or Operator shall submit certificates written in English of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations.

B. Uniform Construction Code - The WPGF shall comply with applicable building and construction codes.

C. Turbine Requirements – All Wind Turbines shall comply with the requirements set forth in this paragraph.

(i) All Wind Turbines shall be newly manufactured as of the date of installation.

- (ii) No experimental or prototype Wind Turbines shall be allowed, unless a special use is applied for and granted pursuant to Section 90-39.
- (iii) All Wind Turbine towers shall be tubular in shape, and be self-supporting.
- (iv) Controls and Brakes - All WPGFs 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.

D. Electrical Components - All electrical components of the WPGF shall conform to applicable local, state and national codes, and applicable international standards.

E. Engineer's Certificate - An engineer's certificate shall be completed by a Structural Engineer, licensed in the State of Illinois, certifying that the tower and foundation of the Wind Turbines are compatible with, and are appropriate for, the particular model of Wind Turbine used, and that the specific soils at the site can support the Wind Turbine.

#### F. Aesthetics

- (i) Wind Turbines shall be a non-obtrusive and non-reflective color such as white, Off white, Gray, or black. The Facility Owner or Operator shall maintain the paint on Wind Turbines at all times in good repair.
- (ii) Wind Turbines shall not display advertising, except for reasonable identification of the turbine manufacturer, Facility Owner and Operator. All signs shall be in accordance with County ordinances pertaining to signs.
- (iii) Within the Project Area, Wind Turbines shall be of a generally consistent size, design, and color, and shall be of similar height and rotor diameter and shall rotate in the same direction.
- (iv) Wind Turbines shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable regulatory authorities.
- (v) On-site transmission and power lines between Wind Turbines shall, to the maximum extent practicable, be placed underground, shall reach the property line, and shall be located and/or constructed in such a way as to minimize disruption to the property's primary purpose as well as to facilitate the interconnection of other Commercial Wind Power Generating Facilities.
- (vi) Non-essential appurtenances shall not be affixed to any Wind Turbine, including, but not limited to, cellular or radio antennae.
- (vii) A clearly visible warning sign advising persons of the presence of high voltage levels must be placed at the base of all pad-mounted transformers and substations.

## G. Wildlife/Avian Survey and Mitigation Plan

Applicant shall commission and submit to the County Planning and Zoning Officer at time of permit application a wildlife assessment (impact study), conducted by a qualified wildlife expert having no less than ten (10) years of experience conducting wildlife assessments (impact studies) and mitigation plans, indicating possible risks to local wildlife, habitat, and migratory birds. Applicant's wildlife expert shall also develop a mitigation plan, if applicable, based upon such assessment that addresses / mitigates such risks on wildlife, migratory birds and affiliated habitat and per the Illinois Department Natural Resources' (IDNR), the US Department of Interior, Division of Fish and Wildlife Service's (USFWS), and the County's wildlife expert's comments / recommendations as detailed in the paragraphs below. A copy of said mitigation plan shall be submitted to the County Planning and Zoning Officer at time of permit application. The submitted mitigation plan (including any recommendation(s) listed therein) shall be subject to the same enforcement powers of the regulations listed herein under this article, unless recommendation(s) is waived in part or full by the County Board.

More specifically, the Applicant shall submit the subject project area of the WPGF, including the wildlife assessment / impact study and mitigation plan (if applicable), if deemed necessary by the agencies listed herein this sentence, to the Illinois Department of Natural Resources (IDNR) for their review and consultation under their Ecological Compliance Assessment Tool (EcoCAT) Process (a.k.a. Agency Action Report) and to the US Department of Interior, Division of Fish and Wildlife Service (USFWS), for their review and consultation. Any concerns noted by the IDNR and the USFWS shall be addressed / mitigated by the Applicant's qualified wildlife expert within the Applicant's mitigation plan. The Applicant shall provide proof from the IDNR and the USFWS to the County Planning and Zoning Officer that IDNR's / USFWS's concerns have been addressed / mitigated or that the IDNR / USFWS has no concerns that need to be addressed / mitigated, thereby fulfilling this requirement. In the event the Applicant and the IDNR / USFWS cannot agree on how to resolve the IDNR's / USFWS's concerns and/or the Applicant cannot obtain and submit the above said proof from the IDNR and the USFWS to the County Planning and Zoning Officer, then said concern(s) and/or the submittal of said proof can be waived in part or full by the County Board. However, the County Board cannot waive any concerns put forth based on State statutes or Federal laws.

The County may further hire and select a qualified wildlife expert having no less than ten (10) years experience conducting wildlife assessments (impact studies) and mitigation plans to review the wildlife assessment (impact study) and mitigation plan submitted by the Applicant which addresses / mitigates the IDNR's and USFWS's concerns per the above paragraph, unless their concerns have been waived in part or full per the above paragraph. All costs associated with the wildlife expert hired and selected by the County shall be paid for by the Applicant.

Should it be found by the County's wildlife expert that the assessment (impact study) is deficient, such deficiency shall be addressed by the Applicant's wildlife expert to the satisfaction of the County's wildlife expert. Moreover, should the County's wildlife expert find that the mitigation plan (or the lack of a mitigation plan) by Applicant's wildlife expert not to be acceptable, then the Applicant shall mitigate the wildlife concern(s) in accordance to the recommendations of County's wildlife expert. Mitigation plan (including recommendation(s)) shall be subject to the same enforcement powers of the regulations listed herein under this article, unless recommendation(s) is waived in part or full by the County Board.

#### NRI Report

The Applicant shall further address / mitigate any concerns, if listed, within the NRI Report to the satisfaction of the Winnebago County Soil and Water District (WCSWCD). Any concerns listed within the NRI Report that cannot be adequately addressed by the above noted wildlife expert shall then be addressed by another qualified expert (i.e. a professional engineer licensed in the State of Illinois, etc.). The Applicant shall provide proof from the WCSWCD to the County Planning and Zoning Officer that their concern(s) has been addressed / mitigated or that the WCSWCD has no concerns listed within the NRI Report that need to be addressed / mitigated, thereby fulfilling this requirement. In the event the Applicant and the WCSWCD cannot agree on how to resolve the WCSWCD's concern(s) and/or the Applicant cannot obtain and submit the above said proof from the WCSWCD to the County Planning and Zoning Officer, then said concern(s) and/or the submittal of said proof can be waived in part or full by the County Board.

#### H. Climb Prevention/Locks

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

#### I. Use of Public Roads

- (i) Prior to the issuance of a zoning clearance and building permit for any component of a WPGF, the Facility Owner or Operator shall provide to the County Engineer:
  - (a) A transportation plan prepared and certified by a professional engineer licensed in the State of Illinois for a minimum of ten years performing comparable work, identifying all state and local public roads to be used within the County to transport equipment and parts for construction, detailing expected load weights and frequency, and any improvements deemed necessary for roadbeds, surfaces, or other facilities which are expected to require modification or improvement prior to construction,

and the proposed repair and/or reconstruction work expected to be necessary after construction is completed (the “Transportation Plan”);

- (b) An engineering study certified by a professional engineer licensed in the State of Illinois for a minimum of ten years performing comparable work, documenting road conditions for any roads included in the Transportation Plan prior to construction. While the Transportation Plan may indicate any road or highways that are under the State of Illinois and the Illinois State Toll Highway Authority jurisdiction, permits for the use of those roads/highways need not be submitted to the County Engineer. Whether the requirements of the engineering study and submission of road/highway permits are satisfied shall be determined solely by the Winnebago County Engineer; and
- (c) A traffic safety plan, including, but not limited to, provisions for access to county highways and roads located in the County of Winnebago including roads, used for construction traffic, warning signs, flaggers, and acceptable access times (the “Safety Plan”).

(ii) After receipt of the Transportation Plan, but prior to issuance of a zoning clearance and building permit for any component of a WPGF, the Facility Owner and Operator shall enter into an agreement with County of Winnebago through the County Engineer and provide documentation evidencing approval by any other public entity having jurisdiction over a road or highway that is identified in the Transportation Plan or Safety Plan (excepting permits for the use of any road or highways that are under the State of Illinois and the Illinois State Toll Highway Authority) for the purposes of ensuring a safe and orderly construction phase. Said agreement shall include the following material provisions:

- (a) An approved final Transportation Plan;
- (b) An approved final Safety Plan;
- (c) A requirement of financial assurance to the County in the form of an irrevocable letter of credit guaranteeing payment for road improvements and repairs in compliance with local standards, having an expiration date no less than one (1) year after conclusion of construction which the County of Winnebago may draw upon without requiring a representative of the County of Winnebago traveling more than ninety (90) miles outside of Winnebago County. The face value of the letter of credit shall be equal to the cost of either improving or restoring all roads specified in the final Transportation Plan to their original condition in the fashion designated in said final Transportation Plan (as determined by using the average cost of materials and labor in the County as of a date sixty (60) days prior to the date of issue of the financial assurance), plus an additional twenty-five percent (25.00%) of said total cost;

(d) Permits from all agencies having jurisdiction over roads or highways identified in the Transportation Plan or Safety Plan except any road or highways that are under the State of Illinois and the Illinois State Toll Highway Authority jurisdiction that are identified in the Transportation Plan or the Safety Plan; and

(e) Such other and further terms which the County Engineer may require in his or her sole, but reasonably exercised, discretion.

J. Emergency Services. The Facility Owner or Operator shall, prior to commencement of construction:

(i) Provide a copy of the permit application, including site plan to local emergency services, including paid or volunteer Fire Department(s);

(ii) Cooperate with request from emergency service providers and first responders to develop and coordinate implementation of an emergency response plan for the WPGF; and

(iii) Register the WPGF with the local 911 operator.

K. Fire Prevention. Facility Owner and Operator shall, at all times during construction and operation of the WPGF:

(i) Adhere to all applicable electrical codes and standards;

(ii) Remove and maintain all fuel sources, including, but not limited to, vegetation and flammable materials, from the immediate vicinity of electrical equipment; and

(iii) Install twistable cables on all Wind Turbines.

L. Waste Management. Facility Owner and Operator shall, at all times during construction and operation of the WPGF:

(i) Solid Waste – All solid waste generated in conjunction with the construction or operation of the WPGF shall be removed from the Project Area in a timely fashion and disposed of off-site in an appropriate manner.

(ii) Hazardous Waste – Any hazardous waste generated in conjunction with the construction or operation of the WPGF shall be removed from the Project Area and disposed of consistent with applicable Federal, State, and local requirements for such materials.

M. Septic and Well. Any buildings constructed within the WPGF which use water or discharge waste shall comply with existing well and septic requirements as required by the Winnebago County Health Department and the State of Illinois Department of Public Health.

## Sec. 90-356. Setbacks

### A. Occupied Buildings.

(i) Wind Turbines shall be set back from all Occupied Buildings and barns, garages, machine sheds, and livestock buildings located on a Participating Landowner's property a distance of not less than 1.1 times the Turbine Height. The setback distance shall be measured from the nearest point on the outside edge of a tower to the nearest point on the foundation of the Occupied Building.

(ii) At the time of construction, Wind Turbines shall be set back from all Occupied Buildings located on a Non-participating Landowner's property a distance of not less than 1,200 feet, as measured from the nearest point on the outside edge of a tower to the nearest point on the foundation of the Occupied Building. This provision does not apply with regard to the location of Wind Turbines for which application for zoning clearance is made prior to the issuance of a permit for construction of an occupied building on a Non-participating Landowner's property.

B. Property lines. All Wind Turbines shall be set back from the nearest property line a distance of not less than the normal setback requirements for that zoning classification or 1.1 times the Turbine Height, whichever is greater. The setback distance shall be measured from the property line to the nearest point on the outside edge of a tower.

Operation and Maintenance Building(s) and Substations shall be located in accordance with zoning District setback requirements. Lot / site for Operation and Maintenance Building shall consist of enough area to comply with off-street parking and loading requirements and with existing County septic and well requirements. Operation and Maintenance Building shall be limited to a height of 45 feet or 3 ½ stories. All other accessory buildings affiliated with the WPGF shall comply with existing accessory buildings regulations in the Zoning Ordinance, Chapter 90.

C. Public Roads. All Wind Turbines shall be set back from the nearest public road a distance of not less than 1.1 times the Turbine Height, as measured from the right-of-way line of the nearest public road to the nearest point on the outside edge of a tower.

D. Incorporated Communities. All Wind Turbines at time of erection shall be setback a minimum of 1.5 miles from the corporate limits/boundary of a Village or Municipality, unless proof is provided from the affected Village or Municipality allowing turbines within the 1.5 mile setback.

E. Unincorporated Communities. All Wind Turbines at time of erection shall be setback a minimum of 0.5 miles from an unincorporated community's (i.e. Shirland, Harrison, Seward, and Argyle) future growth area as depicted on the 2030 Future Land Use Plan Map, Winnebago County, IL.

F. Recorded Subdivision Plats. All Wind Turbines at time of erection shall be setback a minimum of 0.5 miles from a recorded subdivision plat.

G. Natural Resource Areas. All Wind Turbines at time of erection shall be setback a minimum of 0.5 miles from the property line of any Natural Area, Significant Wildlife Habitat Area, Illinois Natural Area Inventory Site (INAI), Illinois Nature Preserve (INPC), Natural Land Institute Site (NLI), Wetland Reserve Program Site (WRP), Park, State Park, and/or Forest Preserve as depicted on the Natural Resource Inventory Map, Winnebago County, IL.

H. Bird and Bat Migration Paths. All Wind Turbines at time of erection shall be located out of known *major* bird and bat migration pathways/corridors. An affidavit stating adherence to this requirement shall be provided by a qualified wildlife expert having no less than 10 years experience. Evidence, which may include a letter from the Illinois Department of Natural Resources or the US Department of Interior, Division of Fish and Wildlife Service, supporting said affidavit shall also be provided upon WPGF submittal.

I. 2030 Land Resource Management Plan. All Wind Turbines at time of erection shall be located only in an area designated *solely* as an Agriculture Area on the 2030 Future Land Use Plan Map, Winnebago County, IL.

J. Waiver of Setbacks

(i) Landowners may waive the setback requirements in Section 90-356A.(ii) (Occupied Buildings on Non-participating Landowner's property) by signing a waiver that sets forth the applicable setback provision(s) and the proposed changes thereto.

(ii) Any such waiver shall be recorded in the Recorder of Deeds Office for the County where the property is located. The waiver shall describe the properties benefited and burdened, and advise all subsequent purchasers of the burdened property that the waiver of setback shall run with the land.

(iii) Notwithstanding anything to the contrary contained in this Section, in no event shall any setback to an Occupied Building be less than a distance equal to 1.1 times the Turbine Height of any affected Wind Turbine.

**Sec. 90-357. Nuisance Abatement**

A. Signal Interference. The Facility Owner or Operator shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television or similar signals, and shall mitigate any disruption or degradation (as measured from the baseline study required by 90-354.D.(ix)) of signals caused by the WPGF in a manner reasonably calculated to remedy such signal degradation, including, but not limited to, providing alternative methods of delivery of signals to affected households at Facility Owner or Operator's expense. The foregoing provision shall not in any way be interpreted to excuse

compliance with any regulations, codes, or laws specifically governing electronic transmissions.

B. Sound Levels. The Facility Owner or Operator shall comply with all applicable codes and ordinances regulating sound generation, including, but not limited to the requirements of the Illinois Pollution Control Board. In the event that any sound levels from a Wind Turbine are found by the Illinois Pollution Control Board to be in excess of permissible levels at the Residence of any Non-Participating Landowner, the Facility Owner or Operator shall take such measures as are necessary to bring sound levels down to a level acceptable to the Illinois Pollution Control Board.

### **Sec. 90-358. Liability Insurance**

Facility Owner or Operator shall maintain a current general liability policy covering bodily injury and property damage with limits of at least two million dollars (US \$2,000,000.00) combined single limits. During any period when the Facility Owner or Operator is involved in the use of roads or highways under the jurisdiction of Winnebago County the Facility Owner or Operator shall maintain a current general liability policy covering bodily injury and property damage with limits of at least two million dollars (US \$2,000,000.00) combined single limits which names the County of Winnebago as an insured. Certificates written in English showing proof of valid insurance in compliance with this Chapter shall be made available to the County upon request.

### **Sec. 90-359. Decommissioning**

A. The Facility Owner and Operator shall, at their sole expense, complete decommissioning of the WPGF, or individual Wind Turbines, within twelve (12) months after the end of the useful life of the Facility or individual Wind Turbines. The WPGF will be deemed to be at the end of its useful life if it is abandoned for a period of time in excess of six (6) months.

B. Decommissioning shall include removal of Wind Turbines, buildings, roads, foundations to a depth of forty-eight inches (48”), and any other facility or structure constructed by Facility Owner or Operator for the purpose of maintaining or operating the WPGF. Any disturbed earth shall be graded at Facility Owner or Operator’s expense, and vegetation shall be restored consistent with surrounding vegetation, with the exception of cash crops such as corn, soybeans, or hay/alfalfa. This Section shall not apply to any office or storage facilities constructed by Facility Owner or Operator which can serve a useful purpose other than servicing a WPGF. At the written request of a landowner, any improvements other than Wind Turbines may be allowed to remain on the property of such landowner without removal, subject to the approval of the County Board.

C. A licensed Professional Engineer shall be retained to estimate the total cost of decommissioning (“Decommissioning Costs”). Said estimates shall include an estimate of the cost of repairs or improvements to the roads to be used and shall be submitted to the County by the Facility Owner or Operator after the first (1<sup>st</sup>) full year of operation

and every (5th) year thereafter. The County shall review and approve or disapprove the cost estimate presented.

D. The Facility Owner or Operator shall post and maintain an irrevocable letter of credit in favor of the County, in an amount equal to Decommissioning Costs and as updated from time to time as approved by the County. The irrevocable letter of credit required by this Section shall be from a financial institution of the Facility Owner's choosing, subject to approval of the County, which approval shall not be unreasonably withheld. The irrevocable letter of credit in favor of the County shall allow the County of Winnebago to seek to receive funds from such security without requiring a representative of the County of Winnebago traveling more than ninety (90) miles outside of Winnebago County.

E. Prior to the Facility Owner or Operator commencing decommissioning:

(i) 90-354 requirements concerning the permitting by applicable Federal, State and local entities requirement, and the identification of all transportation routes in Winnebago County must be satisfied as to the decommissioning; and

(ii) 90-355 requirements must be satisfied as to the decommissioning.

F. If the Facility Owner or Operator fails to complete decommissioning within the period allowed by Section 90-359.A., the owner of the property on which said Wind Turbine or Ancillary Facilities are located shall have six (6) months after expiration of the period allowed in Section 90-359.A. to complete decommissioning of any facilities related to the WPGF which remains on the landowner's property in compliance with the requirements of this Article, at said landowner's expense.

G. If neither the Facility Owner or Operator nor the landowner complete decommissioning within the periods prescribed by Section 90-359.A. or 90-359. F, the County may take such measures as it deems necessary to complete decommissioning, and shall be entitled to draw on the irrevocable letter of credit required by Section 90-359.D. to pay the costs associated therewith.

H. The County shall release the obligation to maintain Decommissioning Funds when the Facility Owner or Operator has demonstrated and the County concurs that Decommissioning has been satisfactorily completed.”

\* \* \* \* END OF ARTICLE X \* \* \* \*

3. AMENDMENT OF SECTION 90-113. Section 90-113(a)(8) of the Winnebago County Zoning Code is hereby amended to add a subparagraph (c), which shall read as follows:

“c. Wind Power Generating Facilities, provided that said facilities comply with the requirements of Article X of this Zoning Code.”

4. AMENDMENT OF SECTION 90-114. Section 90-114(a)(6) of the Winnebago County Zoning Code is hereby amended to add a subparagraph (c), which shall read as follows:

“c. Wind Power Generating Facilities, provided that said facilities comply with the requirements of Article X of this Code.”

NOW, THEREFORE, BE IT FURTHER ORDAINED, that this ordinance shall be in full force and effect from and after its passage as provided by law and pursuant to the Illinois Compiled Statutes.

NOW, THEREFORE, BE IT FURTHER ORDAINED, that the Winnebago County Clerk shall provide certified copies of this ordinance amendment upon the adoption to the Winnebago County Planning and Zoning Officer.

Respectfully submitted,  
ZONING COMMITTEE

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Chairman John F. Sweeny

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TO APPROVE

TO NOT APPROVE

The above and foregoing Ordinance was adopted by the County Board of the County of Winnebago, Illinois, on the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Scott Christiansen, Chairman of the County Board  
of the County of Winnebago, Illinois

ATTEST:

\_\_\_\_\_  
Margie Mullins, Clerk of the County of Board  
of the County of Winnebago, Illinois