

ARTICLE VIII. COMMERCIAL WIND ENERGY FACILITIES¹

Sec. 56-612. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant—the entity or person who submits to the county, pursuant to section 56-616 of the Livingston County Code, an application for the siting of any commercial wind energy facility or substation.

Article—sections 56-612 through and including section 56-631 of the Livingston County Code. Also known as chapter 56, article VIII, wind energy, Code of Ordinances, Livingston County, Illinois.

Capability—the ability, knowledge, experience, resources and financial viability to complete the project.

Commercial wind energy facility—a wind energy conversion facility of equal or greater than 500 kilowatts in total nameplate generating capacity. "Commercial wind energy facility" includes a wind energy conversion facility seeking an extension of a permit to construct granted by a county.

Facility Owner-- (i) a person with a direct ownership interest in a commercial wind energy facility regardless of whether the person is involved in acquiring the necessary rights, permits, and approvals or otherwise planning for the construction and operation of the facility, and (ii) at the time the facility is being developed, a person who is acting as a developer of the facility by acquiring the necessary rights, permits, and approvals or by planning for the construction and operation of the facility, regardless of whether the person will own or operate the facility.

Financial assurance—reasonable assurance from a credit worthy party or parties satisfactory to the county that any damage to public roads caused by the wind energy project will be repaired and that the project will be decommissioned/deconstructed. Examples of such include a performance bond, surety bond, trust instrument, cash, escrow, or irrevocable letter of credit.

Like-kind replacement—a commercial wind energy facility tower which meets or exceeds the standards and specifications of the tower being replaced and complies with the applicable terms and conditions of this article.

Nonfunctioning wind turbine—a wind turbine or component that is not able to generate electricity for six continuous months.

Nonparticipating property—real property that is not participating property.

Nonparticipating residence—a residence that is located on nonparticipating property and that is existing and occupied on the date that an application for a permit to develop the commercial wind energy facility is filed with the county.

Occupied community building—any one or more of the following buildings that is existing and occupied on the date that the application for a permit to develop the commercial wind energy facility is filed with the county: a school, place of worship, day care facility, public library, or community center.

Participating property—real property that is the subject of a written agreement between a facility owner and the owner of the real property that provides the facility owner an easement, option, lease, or license to use the real property for the purpose of constructing a commercial wind energy facility, a commercial wind energy facility, or

¹Editor's note(s)—This article was formerly referred to as Annex 1 of the Livingston County Zoning Ordinance.

State law reference(s)—Wind farms, 55 ILCS 5/5-12001; 55 ILCS 5/5-12009.5; 55 ILCS 5/5-12020

supporting facilities. "Participating property" also includes real property that is owned by a facility owner for the purpose of constructing a commercial wind energy facility, a commercial wind energy facility, or supporting facilities.

Participating residence—a residence that is located on participating property and that is existing and occupied on the date that an application for a permit to develop the commercial wind energy facility or the commercial wind energy facility is filed with the county.

Professional engineer—a qualified individual who is licensed as a professional civil and/or electrical engineer in any state in the United States.

Protected lands—real property that is:

- (1) Subject to a permanent conservation right consistent with the Real Property Conservation Rights Act; or
- (2) Registered or designated as a nature preserve, buffer, or land and water reserve under the Illinois Natural Areas Preservation Act.

Substation—the apparatus that connects the electrical collection system of the commercial wind energy facility and increases the voltage for connection with the utility's transmission lines.

Supporting facilities—the transmission lines, substations, access roads, meteorological towers, storage containers, and equipment associated with the generation and storage of electricity by the commercial wind energy facility or commercial wind energy facility.

Wind tower—the wind turbine tower, nacelle, and blades.

Sec. 56-613. Purpose.

The ordinance from which this article is derived is adopted for the purposes stated in section 56-2 of the Livingston County Code and in accordance with 55 ILCS 5/5-12020.

- (1) To ensure that any development and production of wind-generated electricity in the county is safe;
- (2) To facilitate economic opportunities for local residents;
- (3) To promote the supply of wind energy in support of a goal of increasing energy production from renewable energy sources.

Sec. 56-614. Applicability.

This article governs the siting of commercial wind energy facilities as defined in 55 ILCS 5/5-12020. To the extent a Battery Energy Storage System (BESS) will be integrated or connected in any way to a commercial wind energy facility, the Applicant must comply with the BESS requirements of Article VIII-B, Commercial Solar Energy Facilities and BESS Ordinance.

Sec. 56-615. Prohibition.

No commercial wind energy facility or substation governed by section 56-614 of the Livingston County Code, shall be constructed, erected, installed, or located within the county, unless prior siting approval has been obtained for each individual wind tower, and necessary facility equipment substation pursuant to this article.

Sec. 56-616. Siting Approval Application.

- (a) To obtain siting approval, the applicant must first submit a siting approval application to the county.
- (b) The siting approval application shall contain or be accompanied by the following information:
 - (1) A commercial wind energy facility project summary, including, to the extent available:

- a. A general description of the project, including its approximate name plate generating capacity; the potential equipment manufacturers, types of wind tower, number of wind towers, and name plate generating capacity of each wind tower; the maximum height of the wind towers and maximum diameter of the wind tower rotor;
 - b. The location of the project; and
 - c. A description of the applicant, facility owner and, including their respective business structures;
- (2) The names, addresses, and phone numbers of the applicants, facility owner, and all property owners; and as to whether the petitioner or applicant is acting for himself or herself or as an agent, alter ego, or representative of a principal and the name and address of the principal; whether the petitioner or applicant is a corporation and of all stockholders or shareholders owning any interest in excess of 20 percent of all of the outstanding stock or shares of the corporation; whether the petitioner or applicant, or his or her principal, is a business or entity doing business under an assumed name, and if so, the name and residence of all actual owners of the business or entity; whether petitioner or applicant, or his or her principal, is a partnership, joint venture, syndicate, or an unincorporated voluntary association, and if so, the names and addresses of all partners or members of the partnership, joint venture, syndicate, or unincorporated voluntary association;
- (3) A site plan for the installation of wind energy facility showing the planned location of each wind tower, guy lines and anchor bases, primary structures, property lines (including identification of adjoining properties), setback lines, public and private access roads and turnout locations, substations, electrical cabling from the wind tower(s) to the substations, ancillary equipment, any above or below ground transmission lines related to the project, operations and maintenance building(s), layout of all structures within the geographical boundaries of any applicable setback, and the location of any construction staging areas including concrete batch plants.
- (4) All required studies, reports, certification, and approvals demonstrating compliance with the provisions of this article;
- (5) Any other information normally required by the county as part of this chapter; and
- (6) Sufficient documentation as determined by the ZBA that the applicant, owner, company and parent company/ companies, have the capability to complete the commercial wind energy facility project as proposed.
- (7) If the applicant intends to offer a "good neighbor plan", a "property value guarantee plan" or any other financial incentive plan in connection with a proposed project, a copy of such plan shall be included with the siting approval application at the time the application is submitted.
- (c) If the application is determined by county staff, or the zoning board of appeals, or the county board not to be complete to in all pertinent aspects of this section 56-616 of the Livingston County Code, the application shall be rejected, and a new application will need to be filed.
- (d) The applicant shall promptly notify the county of any changes to the information provided in subsection (b) of this section 56-616 of the Livingston County Code that occur while the siting approval application is pending. The applicant shall not be allowed to materially change the siting approval application after the hearing process has started. Whether a change is a material change or not shall be determined by the zoning board of appeals.

Sec. 56-617. Application Copies.

The applicant shall file ten complete copies of the commercial wind energy facilities special use application upon submittal of the commercial wind energy facilities special use application fee. A minimum of one copy shall be submitted in electronic format and a minimum of one copy shall be submitted in paper format.

Sec. 56-618. Design And Installation.

- (a) *Design safety certification.*

- (1) Commercial wind energy facilities 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 Energic (GL), or an equivalent third party.
 - (2) Following the granting of siting approval under this chapter, a professional engineer shall certify, as part of the building permit application, that the foundation and tower design of the commercial wind energy facility and each individual wind tower is within accepted professional standards, given local soil and climate conditions.
- (b) *Controls and brakes.* All wind towers shall be equipped with a redundant braking system. This includes both aerodynamic overspeed 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 overspeed protection.
 - (c) *Electrical components.* All electrical components of the commercial wind energy facility shall conform to applicable local, state, and national codes, and relevant national and international standards (e.g., ANSI and international electrical commission). Utility lines connecting the towers, substations, etc., shall be placed underground where practical.
 - (d) *Color.* Towers and blades shall be painted a nonreflective, unobtrusive color that mitigates the visual impact of the structure. No advertisement shall be visible on the blades or tower.
 - (e) *Compliance with the Federal Aviation Administration.* The Applicant for the commercial wind energy facility shall comply with all applicable Federal Aviation Administration (FAA) requirements.
 - (f) *Warnings.*
 - (1) A reasonable visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.
 - (2) Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of 15 feet from the ground.
 - (3) Upon completion of the construction of an approved commercial wind energy facility project, a reasonable visible sign, to warn people to not approach a turbine while operating must be placed at the entrance of each access road.
 - (4) Upon completion of the construction of an approved commercial wind energy facility project, a sign that provides emergency contact information shall be posted on or near the operations and maintenance building
 - (5) The signs in subparagraphs (f)(3) and (4) above shall be made with letters and numbers at least three inches in height and shall include the 911 address and an emergency phone number of the facility owner which shall be answered 24 hours a day by a live operator. A nonemergency phone number for the facility owner shall also be displayed. These phone numbers shall remain active with all calls being voice recorded for verification purposes and with comments and complaints logged and reported to the Livingston County zoning administrator on a monthly basis. The recorded calls shall be maintained for at least 12 months.
 - (g) *Climb prevention.* All wind towers and towers utilized for the facility must be externally unclimbable by design or protected by anti-climbing devices such as:
 - (1) Fences with locking portals at least six feet high; or
 - (2) Anti-climbing devices 12 feet vertically from the base of any tower.
 - (h) *Setbacks.* The requirements in this section may be waived subject to the written consent of the owner of each affected nonparticipating property. Setback distances shall be measured from the center of the base of the wind tower.

- (1) Commercial wind energy facility towers shall be set back at least 2.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure from any occupied community buildings.
 - (2) Commercial wind energy facility towers shall be set back 1.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure from participating residences.
 - (3) Commercial wind energy facility towers shall be set back 2.1 times the maximum blade tip height of the wind tower to the nearest point on the outside wall of the structure from nonparticipating residences.
 - (4) There are no commercial wind energy facility tower setback requirements regarding the boundary lines of participating property.
 - (5) Commercial wind energy facility towers shall be set back 1.1 times the maximum blade tip height of the wind tower to the nearest point on the property line of the nonparticipating property.
 - (6) Commercial wind energy facility towers shall be set back 1.1 times the maximum blade tip height of the wind tower to the center point of a public road right-of-way.
 - (7) Commercial wind energy facility towers shall be set back 1.1 times the maximum blade tip height of the wind tower to the nearest edge of the property line, easement, or right of way containing an overhead communication line.
 - (8) There are no commercial wind energy facility tower setback requirements regarding overhead utility service lines to individual houses or outbuildings.
 - (9) Commercial wind energy facility towers shall be set back 2.1 times the maximum blade tip height of the wind tower to the nearest point on the property line of a fish and wildlife area or protected land.
- (i) *Compliance with additional regulations and severability clause.* Nothing in this article is intended to preempt other applicable state and federal laws and regulations, including, but not limited to, the National Electrical Safety Code, Illinois Commerce Commission, and the Federal Energy Regulatory Commission. Whenever possible, each provision of this Article shall be interpreted so that it is valid under applicable law. If any provision of this article is determined to be illegal or unenforceable, that provision will be reformed only to the extent necessary to make the provision legal and enforceable with all remaining provisions continuing in full force and effect.
- (j) *Use of public roads.*
- (1) An applicant or facility owner proposing to use any county, township or village road, for the purpose of transporting and installation of a commercial wind energy facility, or substation parts and/or equipment for construction, operation, or maintenance of the commercial wind energy facility or substations, shall:
 - a. Identify all such public roads; and
 - b. Obtain applicable weight and size permits from relevant government agencies prior to construction.
 - (2) To the extent an applicant or facility owner must obtain a weight or size permit from the county, or village, township, state, the applicant or facility owner shall:
 - a. Conduct a preconstruction baseline survey to determine existing road conditions for assessing potential future damage;
 - b. Provide financial assurance, in a reasonable amount agreed to by the relevant parties, for the purpose of repairing any damage to public roads caused by constructing, operating or maintaining the commercial wind energy facility prior to the issuance of building permits. The terms of the financial assurance shall contain a provision that the Financial Assurance may not be canceled or allowed to expire until at least 60 days written notice has been given to the applicable party(ies), i.e, county, or a village, or a township or the state. If replacement financial assurance is not

provided within seven days thereof, then the county, village, township or state have the absolute right to draw upon the financial assurance until such financial assurance is replaced.

- c. Provide the county zoning administrator with signed copy of any agreements pertaining to the use of public roads prior to the issuance of building permits.
- (k) *Height.* The permitted maximum height of a commercial wind energy facility wind tower shall be 500 feet, unless a determination of the No Hazard to Air Navigation has been received by the applicant for the specific wind turbine location proposed by applicant, in which case the height allowed by the Determination of No Hazard to Air Navigation shall control.
 - (1) A commercial wind energy facility and transmissions poles shall be constructed with a tubular tower or monopole structure, not a lattice tower.
- (l) *Lighting.* A lighting plan for each commercial wind energy facility and substation shall be approved by the zoning board of appeals. All substation lighting shall be downcast and compliant with the International Dark-Skies Association standards. Such plan must describe all lighting that will be used, including any lighting that may be required by the FAA. Such a plan shall include but is not limited to the planned number and location of lights, light color and where any lights will be flashing. Strobe lights are discouraged and if they are required by the FAA they must be shielded from the ground. The lighting should be planned and developed in such a way to minimize the visual impact of the structures. A consideration of synchronized lighting shall also be part of any lighting plan. This commercial wind energy facility substation lighting plan shall include plans as to how glare for these lights are being controlled. The Applicant/ Facility Owner must apply to the FAA for an Aircraft Detection Lighting System and, if approved, must install said system as approved.
- (m) *Compliance.* All wind farm developments are to be in compliance with an Agriculture Impact Mitigation Agreement (AIMA), as approved by the State of Illinois.
- (n) *Project changes.* If the applicant facility owner proposes to make a change in the project after the county's approval of the special use permit, including moving a turbine siting more than 100 feet, then the company, through the use of a qualified professional, shall appropriately demonstrate compliance with the noise requirements at a hearing to amend the special use.
- (o) *Inspections.* Each commercial wind energy facility shall be required to have the facility inspected by an independent certified inspector approved by the Livingston County Zoning Administrator at the completion of the construction of the Project. This inspection is to verify compliance with the zoning regulations including all applicable codes and requirements for commercial wind energy facilities. Thereafter, the facility shall be inspected annually for three years following construction to verify continued compliance with the zoning regulations. Thereafter, inspections shall be performed at least every three years (triennially). Additional inspections necessitated by complaints or otherwise shall not replace annual or triennial inspection requirements. All inspections shall be at the cost of the owner of the commercial wind energy facility. Upon completion of the inspections a report of the inspections shall be provided to the County without charge to the County.

Sec. 56-619. Operation.

- (a) *Maintenance.*
 - (1) The facility owner of the commercial wind energy facility must submit, on an annual basis, a summary of the operation and maintenance reports to the county. In addition to the annual summary mentioned in this subsection, the facility owner must furnish such operation and maintenance reports as the county reasonably requests.
 - (2) Any physical modification to the commercial wind energy facility that alters the mechanical load, mechanical load path, or major electrical components shall require recertification under section 56-618(a)(1) of the Livingston County Code. Like-kind replacements of individual commercial wind energy facility towers shall not require recertification but shall require the written approval of the county zoning administrator. Prior to making any physical modification (other than a like-kind replacement), the facility

owner shall confer with a relevant third-party certifying entity identified in section 56-618(a)(1) of the Livingston County Code, to determine whether the physical modification requires re-certification, and by a professional engineer as determined by the county zoning administrator. The cost of the third-party certifying entity and professional engineer shall be paid by the facility owner.

- (3) Any replacement of equipment that is not a like-kind replacement shall require that an amendment to the special use.

(b) *Interference.*

- (1) The applicant shall provide the applicable microwave transmission providers, providers of weather radar utilized for the safety of the general public, the National Weather Service, and local emergency service providers (911 operators) copies of the project summary and site plan, as set forth in section 56-616(b)(1) and (3) of the Livingston County Code. This project summary shall include a study pertaining to the relationship of the proposed project and microwave transmission providers and local emergency service providers.
- (2) To the extent that the providers in subsection (b)(1) of this section demonstrate a likelihood of interference with its communications resulting from the commercial wind energy facility, the Applicant shall take measures to mitigate such anticipated interference, if possible. If, after construction of the commercial wind energy facility, the facility owner receives a written complaint related to the above-mentioned interference, the facility owner shall take steps to respond to and to rectify the complaint.
- (3) Prior to construction of the commercial wind energy facility, the facility owner shall conduct a study related to interference with local broadcast residential television and wireless internet services, if it is demonstrated a likelihood of interference may result for the commercial wind energy facility, the applicant shall take measures to mitigate such anticipated interference. If, after construction of the commercial wind energy facility, the facility owner receives a reasonable written complaint related to interference with local broadcast residential television and wireless internet services the facility owner shall take steps to rectify the complaint, such as providing alternate service to each individual resident or property owner affected.
- (4) If a commercial wind energy facility causes microwave, television, radio, satellite, internet, radar system or navigation interference (including but not limited to the doppler radar system) it shall be considered a default under Sec. 56-625.

(c) *Coordination with local fire department.*

- (1) The applicant or facility owner shall submit to the local fire department a copy of the site plan. In addition to the site plan, a plan pertaining to the planning, response, recovery and mitigation of any natural or manmade hazard that may affect the commercial wind energy facility development.
- (2) Upon request by the local fire department, the facility owner shall cooperate with the local fire department to develop the fire department's emergency response plan.
- (3) Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.

(d) *Materials handling, storage and disposal.*

- (1) All solid wastes related to the construction, operation and maintenance of the commercial wind energy facility shall be removed from the site promptly and disposed of in accordance with all federal, state and local laws.
- (2) A list of hazardous fluids that may be used on site shall be provided. All hazardous materials related to the construction, operation and maintenance of the commercial wind energy facility shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.

(e) *Mitigation of shadow flicker.*

- (1) The applicant shall conduct an analysis on the potential shadow flicker onto adjacent properties as part of the siting application approval process. The analysis shall identify the locations of the shadow flicker and the expected durations of the flicker over the course of a year.
- (2) Shadow flicker shall not affect an occupied community building or non-participating residence in excess of 30 hours per year under planned operating conditions. Planned operating conditions is defined as those conditions that would exist if the sun were to shine every day of the year with no cloud cover.
- (3) Measures to alleviate the effects of shadow flicker shall be outlined by the applicant. These measures shall at a minimum include window treatments, but otherwise the remedies provision shall control.

Sec. 56-620. Noise Levels.

Noise levels from each commercial wind energy facility shall comply at all times with applicable Illinois Pollution Control Board (IPCB) regulations and requirements of this section. The applicant, through the use of a qualified professional, as part of the siting approval application process, shall appropriately demonstrate compliance with the noise requirements of this siting section and provide contour maps and at intervals of not greater than five feet. Sound pressure levels shall be measured using the measurement procedures set forth in the IPCB regulations, except that sound pressure levels for purposes of establishing a violation of this section may be measured at any point on the property not more than 150 feet from any portion of the edge of the residences or community buildings. No portion of the property shall exceed the noise levels set by the IPCB. To the extent any property has multiple uses or classifications, all the land utilized for a particular use must not exceed the IPCB noise regulations for the classification of use. The owner of the receiving land may waive compliance with local measuring points requirements pertaining to the IPCB regulations for the owner's property.

The commercial wind energy facility project will maintain compliance with the applicable IPCB regulations throughout the entire operational period of the commercial wind energy facility project. Upon complaint, the County shall hire a noise acoustician to conduct testing for four ten-day periods at the ten most at risk residential property lines and the ten most at risk primary structures as modeled in the application to ensure ongoing compliance with the IPCB noise regulations. The four tests shall be done in each of the four seasons of the year. The cost to conduct such testing shall be borne by the Facility Owner. If the Facility Owner does not pay within thirty days of being provided an invoice for these costs, then the issue shall be resolved pursuant to the remedies section. If at any time throughout the life of the commercial wind energy facility project, the noise levels are found to not be in compliance with this section, the applicant or facility owner will immediately shut off all violating turbines to ensure that the noise levels are within acceptable levels until a solution to the noise level violations is found and approved by the county after a hearing at the ZBA.

Noise levels at non-participating properties shall be tested upon request of the Zoning Administrator. The tested results shall be provided to the Zoning Administrator.

Sec. 56-621. Natural Resources.

The commercial wind energy facility owner shall provide at the public hearing on the special use permit application:

- (1) The results and recommendations from consultation with the Illinois Department of Natural Resources that are obtained through the Ecological Compliance Assessment Tool (EcoCAT) or a comparable successor tool; and
- (2) The results of the United States Fish and Wildlife Service's Information for Planning and Consulting environmental review or a comparable successor tool that is consistent with (i) the "U.S. Fish and Wildlife Service's Land-Based Wind Energy Guidelines."

The commercial wind energy facility shall adhere to the recommendations provided by the Illinois Department of Natural Resources in an EcoCAT natural resource review report under 17 Ill. Admin. Code Part 1075.

- (1) A commercial wind energy facility owner must: Demonstrate avoidance of protected lands as identified by the Illinois Department of Natural Resources and the Illinois Natural Preserve Commission; or

- (2) Consider the recommendations of the Illinois Department of Natural Resources for setbacks from protected lands, including areas identified by the Illinois Nature Preserve Commission.

The facility owner shall provide evidence of consultation with the Illinois State Historic Preservation Office to assess potential impacts on State-registered historic sites under the Illinois State Agency Historic Resources Preservation Act.

The facility owner must obtain updated reviews required in this Section upon request of the Zoning Administrator or upon complaint.

Sec. 56-622. Public participation and pre-application.

Nothing in this article is meant to augment or diminish existing opportunities for public participation. At least 90 days prior to the submission of any commercial wind energy facility application, the applicant shall make a reasonable effort to inform members of the public of the proposed project. Mailings and notices of public community meetings or open houses shall be sent out to landowners and residences within the footprint and to landowners and residences within one mile and a half miles of the proposed outside boundary of the project.

These mailings should make reference to where additional information can be obtained regarding the proposed project. Advertisements in local newspapers and at least one community meeting are also required.

Sec. 56-623. Liability insurance.

The facility owner of the commercial wind energy facility shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$10,000,000.00 per occurrence and \$40,000,000.00 in the aggregate, with an annual certificate of insurance being provided to the county regional planning commission office, with the county being added as an additional insured, with the designation of primary and noncontributory.

The applicant or facility owner shall promptly increase such liability insurance if such amount is increased in this Ordinance and the applicant or facility owner is notified in writing of same by the county. The applicant shall provide evidence of such increased insurance to the zoning administrator.

Insurance coverage shall be maintained without interruption from the date of permitting through the decommissioning of all wind turbines. Certificates of insurance acceptable to the county and in compliance with this section shall be filed with the county prior to the commencement of any work on the commercial wind energy facility and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required under this section shall contain a provision that coverages afforded under the policies shall not be cancelled or allowed to expire until at least 60 days written notice has been given to the county.

Applicant and Facility Owner shall also, to the fullest extent permitted by law, indemnify, and hold the county, its employees, board members and agents harmless for any action due to or arising out of the construction, maintenance, decommissioning, deconstruction and/or operation of the commercial wind energy facility, including the payment of any attorney's fees and costs arising out of any action due to or arising out of the construction, maintenance and/or operation of the commercial wind energy facility.

(Res. of 1-12-2006, § XI; Ord. No. 2017-04-14, § 1(exh. A), 4-13-2017; Ord. No. 2018-02-10, 2-5-2018)

Sec. 56-624. Decommissioning Plan/Deconstruction Plan.

Prior to receiving siting approval under this article, the applicant or facility owner must formulate a decommissioning plan to ensure that the commercial wind energy facility project is properly decommissioned. This plan must be compliant with the Department of Agriculture's standard wind farm Agricultural Impact Mitigation Agreement, template 81818. If siting approval is obtained, the applicant or owner must enter into a Decommissioning Agreement and provide financial assurances to the county prior to receiving any building permits.

The County will reevaluate the estimated costs of Deconstruction after the tenth anniversary and every ten years thereafter, which evaluation shall be done by and independent third-party Professional Engineer chosen by

the County and paid for the by the Facility Owner. These reevaluations shall be utilized to determine the updated level of Financial Assurance required from the Facility Owner. If the Facility Owner does not update the Financial Assurance within thirty days of notification from the County, the remedies section shall be utilized to resolve the issue.

Sec. 56-624.1. Drain Tiles

- (a) Whether occurring during or post-construction, any permanent drain tiles damaged by the commercial wind energy facility must be made within fourteen days of identification or notification of the damage, weather and soil conditions permitting.
- (b) Prior to the issuance of building permits, the commercial wind energy facility must make all reasonable efforts to locate the existing drain tiles in the area of construction.
- (c) After construction, the commercial wind energy facility shall provide a GIS program to the County showing the location of all above and underground improvements.

Sec. 56-625. Remedies.

- (a) The applicant's or facility owner's failure to materially comply with any of the provisions of this article shall constitute a default under this article.
- (b) Prior to implementation of the existing county procedures for the resolution of such defaults, the appropriate county body shall first provide written notice to the facility owner, setting forth the alleged defaults. Such written notice shall provide the facility owner a reasonable time period, not to exceed 60 days, for good faith negotiations to resolve the alleged defaults.
- (c) If the county determines, in its sole discretion, that the parties cannot resolve the alleged defaults within the 60-day good faith negotiation period, the county shall have the right to take the actions allowed in section 56-940 of the Livingston County Code, or take any other action permitted by law or in equity.
- (d) To the extent any language in this Section 56-625 conflicts with the specific remedies set forth in other sections of this Ordinance, the more specific language and remedy shall apply.

Sec. 56-626. Fees.

- a. Special Use Permit Application Fees
 - i. Prior to processing any Special Use Permit Application for a commercial wind energy facility, the applicant must submit a certified check to Livingston County for the Special Use Permit Application Fee equal to \$5,000 per megawatt (mW) of proposed nameplate capacity, up to a maximum fee of \$250,000. These funds shall be placed in an FDIC insured money-market account and will be used to cover the county's cost incurred in processing the Special Use Permit Application.
 - ii. Should the actual costs to the County exceed the submitted Special Use Permit Application Fee, the Applicant shall be responsible for those additional costs and shall remit additional funds to the County within 15 days of receipt of a request from the County. No hearings on a Special Use Permit Application shall be conducted nor final decisions rendered on a Special Use Permit Application if there are Special Use Permit Application Fees outstanding to the County.
 - iii. Any unused amounts of the Special Use of Permit Application Fee shall be refunded to the Applicant within six months of the County Board rendering a final decision on the matter, unless any pending litigation, disputes or negotiations involving the County exist regarding the commercial wind energy facility, in which case any amounts owed to the

Applicant shall be refunded within six months of the conclusion of the litigation, disputes or negotiations. An Applicant may request any unused Special Use Permit Application Fee be applied toward the Building Permit Fees for the Project.

b. Building Permit Fees

- i. Prior to the issuance of building permits the Building Permit Applicant must deposit a Building Permit Fee equating to \$10,000.00 per megawatt (mW) of nameplate capacity. If the project is less than 1 mW in nameplate capacity, the building permit fee is \$10.00 per kilowatt (kW).

c. All Costs Paid by Applicant or Facility Owner

- i. In addition to all fees noted above, the Applicant or Facility Owner shall pay all costs incurred by the County, including but not limited to, those costs associated with all offices, boards and commissions of the County, or third parties performing work on behalf of the County. This includes, but is not limited to, the direct or indirect costs associated with the permitting, operations, inspections, decommissioning, litigation, disputes, and/ or negotiations involving the County.

Sec. 56-627. Registration and Permit Requirements for Solicitation of Land Agreements.

Any person intending to solicit a landowner in person for the lease, purchase or use of property for a portion of Commercial Wind Energy Facility shall fill out an application with the Livingston County Sheriff's Office prior to contacting any property owner or owner's representative in person regarding said lease, purchase or use of said property. The processing fee for the application shall be \$100.00 per year for each person intending to solicit for said agreements.

Prior to receiving a permit to solicit in person, an individual must submit to a criminal background check.

Prior to receiving a permit allowing in person solicitation of landowners, the applicant must pay a \$1,000.00 fee for the permit. Said permit will be valid for 1 calendar year. Permits are not transferrable to any other person or entity on whose behalf the permittee may be soliciting.

Sec. 56-628. Hearing Facilitator.

The county may unilaterally engage the services of a hearing facilitator not affiliated with any pro wind or anti wind group to preside over any required hearings resulting from the siting approval application. The hearing facilitator shall be an independent contractor who shall conduct a hearing in accordance with all applicable rules of the board and county but has no adjudicatory responsibility other than ruling on requests for continuances, procedural matters, admissibility of evidence and the propriety of any arguments. Upon conclusion of the evidence and final arguments, the board will prepare and submit "findings of fact" and a final recommendation to the county board including special use conditions if applicable.

The hearing facilitator shall be an attorney, licensed to practice in the State of Illinois, jointly selected by the state's attorney (or his designee) and the county zoning administrator and appointed by the chairman of the county board with the consent of the county board. The applicant shall reimburse the county for the fees and costs charged by the facilitator.

Sec. 56-629. Factors for Consideration.

The County Board may approve a Commercial Wind Energy Facility Special Use Permit application, if it finds the evidence complies with state and federal law and regulations, and with the standards of this zoning code including the factors listed below. The factors below are applied as a balancing test, not individual requirements to be met.

- a. The establishment, maintenance or operation of the Commercial Wind Energy Facility will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare;
- b. The Commercial Wind Energy Facility will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the

- purposes already permitted, nor substantially diminish and impair property values of surrounding properties;
- c. The establishment of the Commercial Wind Energy Facility will not impede the normal and orderly development and improvement of the surrounding properties;
 - d. Adequate public utilities, access roads, drainage and/or necessary facilities have been or will be provided;
 - e. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;
 - f. The proposed Commercial Wind Energy Facility is not contrary to the objectives of the current comprehensive plan of the County (if any); and
 - g. The Commercial Wind Energy Facility shall, in all other respects, conform to the applicable regulations of this Ordinance and the zoning district in which it is located except as such regulations may, in each instance, be modified pursuant to the recommendations of and approved by the County Board.

Sec. 56-630 Annual Report.

The Facility Owner must submit, on an annual basis on the anniversary date of the Special Use Permit application, an operation and maintenance report to the County. The report shall contain the following information: (i) a general description of any physical repairs, replacements or modification(s) to the facility and/or its infrastructure; (ii) complaints pertaining to setbacks, noise, appearance, safety, lighting and use of any public roads received by the Applicant concerning the facility and the resolution of such complaints; (iii) calls for emergency services; (iv) status of liability insurance; and (v) a general summary of service calls to the Commercial Wind Energy Facility. Failure to provide the annual report shall be considered a material violation of this Ordinance and subject to all appropriate remedies.

Sec. 56-631. Expiration of Special Use.

Any granting of a special use permit to a commercial wind energy facility shall expire after three years from the date of the County Board approval unless a building permit is granted with those three years.

Sec. 56-632. Severability.

If any section, paragraph, clause, phrase or part of this Ordinance is for any reason held invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of these regulations.

END OF ORDINANCE