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# Fountain County

## Zoning Ordinance

Fountain County Code

Adopted: 21 October, 2019  
Amended: 19 July 2021

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#### APPENDIX A – Zone Map

## ARTICLE 1 – BASIC PROVISIONS

- 1.01 TITLE:** The official title of this Ordinance is: “Zoning Ordinance of Fountain County, Indiana.”
- 1.02 AUTHORITY:** This Ordinance is adopted pursuant to the Indiana Code 36-7 et seq., and all acts supplemental and amendatory thereto.
- 1.03 COMPLIANCE:** No structure shall be located, erected, constructed, reconstructed, moved, converted, or enlarged; nor shall any structure or land be used or be designed to be used, except in full compliance with all the provisions of this Ordinance and after the lawful issuance of the permits required by the Ordinance.
- 1.04 SEVERABILITY:** If any provision of this Ordinance or the application of any provision to particular circumstances is held invalid, the remainder of the Ordinance or the application of such provision to other circumstances shall not be affected.
- 1.05 JURISDICTION AREA:** This Ordinance shall apply to all unincorporated land within Fountain County.
- 1.06 APPLICATION:** It is not intended by this Ordinance to interfere with, abrogate or amend any existing easements, covenants, or other agreements between parties, nor is it intended by this Ordinance to repeal, abrogate, annul or in any way interfere with any existing provisions of laws or ordinances, or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings or premises provided, however, that where this Ordinance imposes a greater restriction upon the use of buildings or premises than is imposed or required by such existing provisions of law or by such rules, regulations, agreements, covenants, or permits, the provisions of this Ordinance shall control; but where such private covenants, permits, agreements, rules or regulations impose a greater restriction than is imposed by this Ordinance, the greater restriction shall control.

## ARTICLE 2 – DISTRICT REGULATIONS

- 2.01 ZONE MAPS:** A “Zone Map” of Fountain County in Fountain County is hereby adopted as a part of this Ordinance. The Zone Map shall be kept on file and available for examination at the Office of the Board of Zoning Appeals.
- 2.02 ZONING DISTRICTS:** The entire unincorporated area of Fountain County is divided into the districts stated in this Ordinance as shown by the district boundaries on the Zone Maps. The districts are as follows:

- “A”     Agricultural
- “B”     Business
- “I”     Industrial
- “L”     Landfill
- “R”     Residential

The districts designated by this Section and defined in this Ordinance and the “Use Table,” Table A, shall control the zoning of all land within the jurisdiction of this Ordinance, except land defined and determined to be within the jurisdiction of Section 209, Flood Control Regulations.

- 2.03 DISTRICT BOUNDARIES:** District boundaries shown within the lines of streets, streams, and transportation rights-of-way shall be deemed to follow their centerlines. The vacation of streets shall not affect the location of such district boundaries. When the appropriate County staff cannot definitely determine the location of a district boundary by such centerlines, by the scale or dimensions stated on the Zone Map, or by the fact that it clearly coincides with a property line, the Fountain County Board of Zoning Appeals, upon appeal, shall interpret the location of the district boundary with reference to the scale of the Fountain County Zone Map and the purposes set forth in all relevant provisions of the Fountain County zoning Ordinance.
- 2.04 AGRICULTURAL (A) DISTRICT:** The district designated for agriculture, “A”, is intended for areas that cannot feasibly be served with public water and sewer facilities. This district will preserve and protect agricultural land from undesirable urban growth while permitting limited residential development on large-size lots that provide adequate space for private water and sewage facilities.
- 2.05 BUSINESS (B) DISTRICT:** The district designated for business, “B”, is limited to business and certain public uses. By establishing compact districts for such uses, more efficient traffic movement, parking facilities, fire protection, and police protection may be provided.
- 2.06 INDUSTRIAL (I) DISTRICT:** The district designated for industry, “I”, provides suitable space for existing industries and their expansion as well as for future industrial development. The locations of the districts are near railroads or highways in order to meet the transportation needs of industry.
- 2.07 LANDFILL (L) DISTRICT:** The district designated Landfill “L”, is an overlay district in which sanitary landfill shall be allowed to be located. A landfill is a “Development” requiring extra developmental standards.
- 2.08 RESIDENTIAL (R) DISTRICT:** The district designated for residential use, “R”, is limited to dwellings and public or semi-public uses which are normally associated with residential districts and those which would not detract from the residential character of the neighborhood. The purpose of this district is to create an attractive, stable, and orderly residential environment.
- 2.09 FLOOD CONTROL REGULATIONS:** Fountain County shall acknowledge the most current model floodplain ordinance from the Indiana Department of Natural Resources Division of Water.
- 2.10 USES:** The permitted uses for each district are shown on Table A. The uses that are listed for the various districts shall be according to the common meaning of the term or

according to definitions in this Ordinance. Permitted uses as defined under this Section shall be subject to all the conditions and restrictions set out in this Ordinance and all provisions thereunder. Uses allowed by special exception are allowed only with the approval of the Board of Zoning Appeal in those districts provided for in the Use Table (Table A).

**TABLE A  
USE TABLE**

**A, AGRICULTURE DISTRICT  
PERMITTED USES**

- |                                       |                                    |
|---------------------------------------|------------------------------------|
| 1. Accessory Uses                     | 15. Machine & Welding Shops        |
| 2. Agriculture & Agriculture Building | 16. Manufactured/Mobile Homes      |
| 3. Airports                           | 17. Mineral Excavations            |
| 4. Bed & Breakfast                    | 18. Private Air Strips             |
| 5. Cemeteries                         | 19. Private Clubs & Camps          |
| 6. Churches                           | 20. Public Parks & Playgrounds     |
| 7. Business Recreational Uses         | 21. Recycling Collection Points    |
| 8. Essential Services                 | 22. Riding Stable                  |
| 9. Farm Equipment Sales & Service     | 23. Schools; Public & Parochial    |
| 10. Fertilizer, Sales & Storage       | 24. Single-Family Dwellings        |
| 11. Grain Elevators & Feed Mills      | 25. Tanks, Bulk Storage            |
| 12. Greenhouses & Nurseries           | 26. Telecommunications Facilities  |
| 13. Golf Courses                      | 27. Veterinary Hospitals           |
| 14. Home Occupations/Day Care         | 28. Commercial Solar Energy System |

**B, BUSINESS DISTRICT  
PERMITTED USES**

- |                                       |                                     |
|---------------------------------------|-------------------------------------|
| 1. Accessory Uses                     | 17. Print Shops                     |
| 2. Automobile sales, service & repair | 18. Private Clubs                   |
| 3. Churches                           | 19. Public Parks                    |
| 4. Cleaning & Laundry plants          | 20. Public & Parochial Schools      |
| 5. Business Recreation Uses           | 21. Public Transportation Terminals |
| 6. Business Schools                   | 22. Recycling Collection Points     |
| 7. Convenience Stores                 | 23. Research Laboratories           |
| 8. Day Care Centers                   | 24. Residential, upper-story        |
| 9. Drive-In Business                  | 25. Restaurants                     |
| 10. Essential Services                | 26. Retail Business                 |
| 11. Farm implement sales & service    | 27. Service Stations                |
| 12. Funeral Homes                     | 28. Supply Yards                    |
| 13. Hospitals & clinics               | 29. Theaters                        |
| 14. Hotels & Motels                   | 30. U-Store warehouses              |
| 15. Machine & Welding Shops           | 31. Veterinary Hospitals & Clinics  |
| 16. Offices                           | 32. Wholesale Businesses            |
|                                       | 33. Commercial Solar Energy System  |



**I, INDUSTRIAL DISTRICT  
PERMITTED USES**

- |   |                                     |
|---|-------------------------------------|
| 1. Airports                             | 16. Recycling Centers               |
| 2. Asphalt Mixing Plants                | 17. Recycling Collection Points     |
| 3. Automobile Sales, Service, & Repair  | 18. Research & Testing Laboratories |
| 4. Automobile & Truck Body Shop         | 19. Service Stations                |
| 5. Bulk Fuel Storage                    | 20. Stockyards & Slaughterhouses    |
| 6. Concrete Mixing Plants               | 21. Supply Yards                    |
| 7. Convenience Stores                   | 22. Tanks, Bulk Storage             |
| 8. Essential Services                   | 23. Telecommunications Facilities   |
| 9. Farm Equip. Sales, Service, & Repair | 24. Truck & Railroad Terminals      |
| 10. Fertilizer Plants                   | 25. U-Store Warehouses              |
| 11. General Manufacturing               | 26. Warehouses                      |
| 12. Grain Elevators & Feed Mills        | 27. Water & Sewage Treatment Plants |
| 13. Machine and Welding Shops           | 28. Wholesale Business              |
| 14. Mineral Excavation                  | 29. Micro Wind System or tower      |
|   | 30. Commercial Solar Energy System  |

**I, INDUSTRIAL DISTRICT  
SPECIAL EXCEPTION USES**

1. Wind Turbines
2. WECS
3. Waste Transfer Station
4. Meteorological Testing Towers more than 120 feet in height

**L, LANDFILL DISTRICT  
PERMITTED USES**

- |                                 |                      |
|---------------------------------|----------------------|
| 1. Recycling Centers            | 3. Sanitary Landfill |
| 2. Recycling Collection Points\ |                      |

**R, RESIDENTIAL DISTRICTS  
PERMITTED USES**

- |                              |                                 |
|------------------------------|---------------------------------|
| 1. Accessory Uses            | 10. Manufactured/Mobile Homes   |
| 2. Bed & Breakfast           | 11. Multi-family Dwellings      |
| 3. Churches                  | 12. Nursery Schools             |
| 4. Condominiums              | 13. Nursing Homes/Asst living   |
| 5. Essential Services        | 14. Public Parks & Playgrounds  |
| 6. Funeral Homes             | 15. Public & Parochial Schools  |
| 7. Home Occupations/Day Care | 16. Recycling Collection Points |
| 8. Garden Homes              | 17. Residential Subdivisions    |
| 9. Duplexes                  | 18. Single-Family Dwellings     |

## 19. Two-Family Dwellings

- 2.11 LOT AND YARD REQUIREMENTS:** The minimum lot area, minimum width of lot, minimum depth of front yard, minimum width of each side yard, and minimum depth of rear yard for each district shall be as shown on the following table:

District	Minimum Lot Area (Square feet)	Minimum Lot Area Per Family (Square feet)	Minimum Road Frontage (Feet)	*Minimum Set Back Front Yard (Feet)	Minimum Width Side Yard (Feet)	Minimum Depth Rear Yard (Feet)
A	43,560	100% of tract	100	60	20	20
B	3,000	3,000	30	60	10	10
R	7,000***	2,500	40	60	5	5
I	20,000	N/A	100	60	20	20
L	400 acres	N/A	1,000	**660	**660	**660

This section shall not apply to Commercial Solar Energy Systems.

\* Front setbacks are measured from the right-of-way of the street or road on which the lot has frontage.

\*\* From the top of the slope

\*\*\* If the lot or site is served by sanitary sewer. If the lot or site is not served by sanitary sewer, then the minimum lot area is 43,560 square feet (1 acre).

## 2.12 LANDFILL DISTRICT DEVELOPMENT STANDARDS:

1. The entire property shall be buffered from the surrounding properties.
  - A. An earthen mound shall be a minimum of ten (10') feet in height;
  - B. Two (2) staggered rows of evergreens shall be planted on top of the mound;
  - C. The evergreens shall be a minimum of five (5') feet initially.
2. The landfill property shall not be located closer to any single-family dwelling not owned by the landfill entity than 1,320' (1/4 Mile).

## ARTICLE 3 – PLAN COMMISSION

- 3.01 ADVISORY PLAN COMMISSION:** The Fountain County Board of Commissioners previously adopted Ordinance 2008-01 in order to establish the Fountain County

Advisory Plan Commission. The Plan Commission has the authority to conduct public hearings and make recommendations to the Fountain County Board of Commissioners regarding the adoption and amendment of the Comprehensive Plan, applications for amendments to the zoning maps (rezones), applications for adoption or amendment of a Landfill district ordinance, amendments to the Subdivision Control Ordinance, and the adoption and amendment of this Zoning Ordinance. The Plan Commission also has the authority to grant waivers from the requirements of the Subdivision Control Ordinance if such waivers are specifically authorized in the Subdivision Control Ordinance. The Plan Commission also has the authority to conduct public hearings and make determinations and decisions regarding plats, replats, amendments, and vacations of plats and other matters as provided for in the Fountain County Subdivision Control Ordinance. The adoption of this Ordinance supplements the ordinances previously adopted by the Board of County Commissioners relating to the Plan Commission.

**3.02 DUTIES AND POWERS:** The Plan Commission will have all of the authority, powers, duties and responsibilities provided by this Ordinance and Indiana Law, including but not limited to, Indiana Code §36-7-4-200 series, 36-7-4-300 series, 36-7-4-400 series, and 36-7-4-600 series.

**3.03 COMPOSITION:** The Plan Commission consists of nine (9) members, appointed as follows:

- A. One member appointed by the Board of County Commissioners from its membership;
- B. One member appointed by the County Council from its membership;
- C. The County Surveyor or the Surveyor's designee;
- D. The County Extension Educator;
- E. Five citizen members appointed by the Board of County Commissioners. Of these citizen members, not more than three may be from the same political party. Each of these five citizen members must be either a resident of the unincorporated area of the County or a resident of the County who is also the owner of real property located in whole or in part in the unincorporated area of the County. However, at least three of these citizen members must reside in the unincorporated area of the County.

**3.04 CITIZEN MEMBER ELIGIBILITY:** Each citizen member of the Plan Commission will be appointed because of the member's knowledge and experience in community affairs, the member's awareness of the social, economic, agricultural, and industrial problems of the area, and the member's interest in the development and integration of the area. A citizen member may not hold an elective office, as defined by Indiana Code §3-5-2-17, or any other appointed office in municipal, county, or state government, except for membership on the Board of Zoning Appeals as required by Indiana Code §36-7-4-902

- 3.05 TERMS:** The member appointed by the Board of County Commissioners from its membership has a term of office that is coextensive with the member's term of office on the Board unless the Board appoints another of its members to serve at the Board's first regular meeting of the year. All citizens members have four-year terms. These terms expire on the first Monday of January of the fourth year after the member's appointment.
- 3.06 REMOVAL:** The appointing authority may remove a member of the Plan Commission for cause. If the appointing authority wishes to remove a member, the authority must mail notice to the member at the member's residential address. This notice must state the reasons for the removal. A member who is removed may, within 30 days after receiving the notice of removal, appeal the removal to the circuit court or superior court of Fountain County.
- 3.07 VACANCIES:** If a vacancy occurs among the Plan Commission members who are appointed, then the appointing authority will appoint a new member to serve the unexpired term of the vacating member. The appointing authority must appoint this new member within 90 days after the vacancy occurs. If a vacancy occurs in the Office of the County Surveyor while the Surveyor is serving on the Plan Commission, the County Engineer will participate with the Plan Commission during the time the Office of Surveyor is vacant. During this time, the County Engineer has all the powers and duties of a regular member.
- 3.08 ABSENCES:** A member who misses three consecutive regular meetings of the Plan Commission may be treated by the appointing authority, in its discretion, as if the member has resigned.
- 3.09 RULES OF PROCEDURE:** The Plan Commission has the authority to adopt rules of procedure for the proper administration of the Zoning Ordinance, Subdivision Control Ordinance and its other statutory duties and responsibilities.
- 3.10 QUORUM:** A quorum of the Plan Commission consists of a majority of the entire membership of the Commission who are qualified to vote.
- 3.11 ACTION BY THE COMMISSION:** Action by the Plan Commission is not official unless it is authorized at a regular or special meeting by a majority of the entire membership of the Commission.
- 3.12 OFFICERS:** At its first regular meeting of each year, the Plan Commission will elect from its membership a president and vice president. The vice president may act as president during the absence or disability of the president. The Plan Commission may appoint and affix the duties of a secretary. The secretary is not required to be a member of the Commission.
- 3.13 FEES:** The Plan Commission may establish a schedule of reasonable fees to defray the administrative costs associated with processing and hearing administrative appeals and petitions for rezoning, special exceptions, special uses, contingent uses, and variances, the cost of issuing permits, and the cost of other official action.

## ARTICLE 4 – BOARD OF ZONING APPEALS

**4.01 COMPOSITION:** There is created and established the Advisory Board of Zoning Appeals to be known as the Fountain County Board of Zoning Appeals, which shall have the duties and powers as established by Indiana Code 36-7-4-900 et seq. The Fountain County Board of Zoning Appeals shall consist of five members, appointed as follows:

- (1) Three citizen members appointed by the County Commissioners, of whom one must be a member of the plan commission and two must not be members of the plan commission;
- (2) One citizen member appointed by the County Council, who must not be a member of the plan commission.
- (3) One member appointed by the plan commission from the plan commission's membership, who must be a county agricultural agent or a citizen member of the plan commission other than the member appointed under subdivision (1).

**4.02 ELIGIBILITY:** None of the members of the Board of Zoning Appeals may hold elective office or any other appointed office, except as permitted by Indiana Code §367-4-902, in a municipal, county or state government. A member of the Board of Zoning Appeals must be either a resident of the unincorporated area of the County or be a resident of the County and also an owner of real property located in whole or in part in the unincorporated area of the County. However, at least a majority of the total number of citizen members must be residents of the unincorporated area of the County.

**4.03 TERMS:** The initial members of the Board of Zoning Appeals will have the following terms:

- A. The member appointed by the Plan Commission under 4.01(3) will have a term of one year;
- B. The citizen members appointed by the Board of County Commissioners under 4.01(1) will have terms of 2 years, 3 years and 4 years, as designated by the Board of County Commissioners at the time of the initial appointments; and
- C. The citizen member appointed by the County Council under 4.01(2) will have a term of four years.

Each term expires on the first Monday of January of the first, second, third or fourth year, respectively, after the year of the member's appointment. When the initial term of office expires, each new member will have a term of four years.

**4.04 VACANCIES:** If a vacancy occurs among the members of the Board of Zoning Appeals, the appointing authority will appoint a member for the unexpired term of the vacating member.

- 4.05 ABSENCES:** A member of the Board of Zoning Appeals who misses three consecutive regular meetings of the Board may be treated by the appointing authority, in its discretion, as if the member has resigned.
- 4.06 QUORUM:** A quorum consists of a majority of the entire membership of the Board of Zoning Appeals.
- 4.07 ACTION:** Action of the Board of Zoning Appeals is not official unless it is authorized by a majority of the entire membership of the Board of zoning Appeals.
- 4.08 OFFICERS:** At the first regular meeting of each year, the Board of Zoning Appeals will elect a chair and vice chair from its membership. The vice chair may act as chair during the absence or disability of the chair. The Board may also appoint a secretary and such employees as are necessary for the discharge of its duties.
- 4.09 GENERAL:** The Fountain County Board of Zoning Appeals shall hold meetings, keep minutes and, pursuant to notice, shall conduct hearings, compel the attendance of witnesses, take testimony, and render decisions in writing, all as required by law. When permitting any appeal, variance, or change of a non-conforming use, the Fountain County Board of Zoning Appeals may impose such conditions and requirements, as it deems necessary for the protection of adjacent property and the public interest. The Board of Zoning Appeals further shall have the following specific powers and duties in connection with the implementation of this Ordinance.
- A. To grant, grant with modifications, or deny any application for a special exception.
  - B. To hear and decide an appeal from any order, requirement, decision or determination made by the designated staff, hearing officer, or staff in the administration or enforcement of this Ordinance.
  - C. To hear and decide an appeal from any order, requirement, decision or determination made by any administrative board, other than the Plan Commission, in the administration or enforcement of this Ordinance.
  - D. To exercise all powers conferred on it by law, local ordinance or rule in the manner so prescribed, including to invoke any legal, equitable, or special remedy available by law or this Ordinance for the enforcement of the provisions of this Ordinance or actions taken thereunder. This Section shall not be construed as a limitation on the Board's powers.
  - E. To adopt rules and procedures for the administration of the Board's duties provided such rules do not conflict with this Ordinance.
- 4.10 VARIANCE OF USE:** The Board of Zoning Appeals has the authority to approve or deny applications for variances of use from the requirements of the Zoning Ordinance. In approving a variance of use, the Board may impose reasonable conditions and approve

voluntary commitments. A variance of use may be approved by the Board if the Board finds as follows:

- A. The approval will not be injurious to the public health, safety, morals and general welfare of the community;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
- C. The need for the variance arises from some condition peculiar to the property involved;
- D. The strict application of the terms of the Zoning Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
- E. The approval does not interfere substantially with the Comprehensive Plan.

In deciding whether to grant a variance, the Board of Zoning Appeals may exercise its discretion.

**4.11 VARIANCE FROM DEVELOPMENT STANDARDS:** The Board of Zoning Appeals has the authority to approve or deny applications for variances from the development standard of the Zoning Ordinance. In approving a variance from development standards, the Board may impose reasonable conditions and voluntary commitments. A variance from the development standards may be approved by the Board if the Board finds as follows:

- A. The approval will not be injurious to the public health, safety, morals and general welfare of the community;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
- C. The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

In deciding whether to grant a variance, the Board of Zoning Appeals may exercise its discretion.

**4.12 SPECIAL EXCEPTIONS:** The Board of Zoning Appeals has the authority to approve or deny applications for special exceptions. Special exceptions are those uses that, because of their unique characteristics and potentially adverse impact upon the immediate area, as well as the unincorporated area of the County as a whole, require a greater degree of scrutiny and review of site characteristics and impacts to determine their suitability in a given location. Therefore, the determination of a special exception is contingent upon the request meeting a set of development standards. The Board may approve a special exception with supplemental conditions or deny the request. Only the owner of real property may file an application for a special exception. The Board may approve a special exception only if it finds:

- A. The requested special exception is listed as a special exception for the specific zoning district in which the property is located;
- B. The granting of the special exception will not be detrimental to or endanger the public's health, safety, or general welfare;
- C. The granting of the special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity or substantially diminish or impair property values within the specific zoning district;
- D. The site will be adequately served by essential public facilities and services, such as roads and highways, police and fire protection, drainage structures, refuse disposal, water and sanitary sewer, and schools or that the persons or agencies responsible for the establishment of the proposed special exception are able to adequately provide for such services;
- E. The granting of the special exception will not create excessive additional requirements at public expense for public and services, nor be detrimental to the economic welfare of the community or result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance;
- F. At least one year has elapsed since any denial by the Board of Zoning Appeals of any prior application for a special exception that would have authorized substantially the same for all or part of the site, unless the board determines that conditions in the area have substantially changed.
- G. For the purpose of supplementing the consideration of the application, the Board will also take into consideration the extent to which the following facts, favorable to the applicant, have been established by the evidence:
  - (1) In what respects the proposed special exception meets the requirement and standard of this Ordinance and its relationship and compatibility to adjacent properties;
  - (2) The method by which the proposed special exception makes adequate provision for public services, provides adequate control over vehicular traffic and furthers the amenities of light, air, recreation and visual enjoyment; and
  - (3) Whether the proposed special exception is in accordance with the general objectives and findings of the Comprehensive Plan.

The listing of a special exception within a zoning district does not constitute a presumption that such special exception will be approved. Rather, each application for a special exception will be evaluated on an individual basis, in relation to its compliance with the conditions and standard of the Zoning Ordinance and the standards for each district in which the special exception would be located if approved. A special exception permit only authorizes the particular use at a particular location for which the special exception is approved. A special exception permit will



automatically expire if the special exception is discontinued or abandoned for a period of twelve months. The approval of a special exception does not authorize development, construction, reconstruction, alteration or moving of any building or structure. Rather, the grant merely authorizes the preparation, filing and processing of applications for such permits or approvals as may be required by the rules, regulations and ordinances of the County. In deciding a special exception, the Board of Zoning Appeals must grant the special exception if the applicant satisfies the seven (7) criteria contained in this section. When granting a special exception, however, the Board of Zoning Appeals may impose conditions which are appropriate under the circumstances of the case.

- 4.13 NON-CONFORMING USES:** Any legal non-conforming use created by the adoption of this Zoning Ordinance may not be enlarged or expanded without the approval of the Fountain County Board of Zoning Appeals.
- 4.14 NOTICE:** Whenever a public hearing is required, the Board of Zoning Appeals will fix a reasonable time for the hearing and publish notice in accordance with Indiana Code §5-3-1-2 and Indiana Code §5-3-1-4. In addition, the Board will provide notice to interested parties by mailing a notice of the public hearing to such parties at least 14 days prior to the public hearing. The applicant will pay for the cost of providing notice, including the cost of publishing notice and mailing notice to interested persons. The Board will, by rule, determine who are interested parties, how notice is to be provided to them and who is required to provide the notice.
- 4.15 PROHIBITED CONTACT:** No person may communicate with any member of the Board of Appeals before the hearing with the intent to influence the member's action on a matter pending before the Board.

## **ARTICLE 5 – ADMINISTRATION AND ENFORCEMENT**

- 5.01 ADMINISTRATION RESPONSIBILITY:** The Fountain County Advisory Planning Commission and designated staff shall establish the procedure and responsibilities for the administration and enforcement of this Ordinance.
- 5.02 PERMITS:** No permit shall be issued unless the proposed structure or use of structure or land is in complete conformity with the provisions of the Fountain County Zoning Ordinance, Subdivision Control Ordinance and other rules, regulations and ordinances of the County.
- A. Except as provided in this Ordinance, an improvement location permit shall be obtained before any structure in the Business, Residential, Landfill, and Industrial zoning districts may be constructed.
  - B. If a septic permit is required, then said permit, issued by the Fountain County Department of Health, should be presented to the appropriate staff prior to an issuance of an Improvement Location Permit.

- C. If a Building Permit is required by County ordinance, a building permit must be obtained from the appropriate County Staff. Nothing in this Ordinance negates the requirements of the County Building Code, rules, regulations and ordinances.
- D. No improvement location permit shall be required for:
  - 1. Routine maintenance, repair, or remodeling of existing structures not involving any change of use or additional lot coverage.
  - 2. Essential Services;
  - 3. Lot and yard improvements such as children's playhouses, drives, fences, concrete patios, decks, play equipment, retaining walls, sidewalks, and landscaping, unless such lot or yard improvements are on, over or within ten (10) feet of a septic system or utility easement. If these improvements are on, over or within ten (10) feet of a septic system or utility easement, then an improvement location permit is required.
  - 4. Anything constructed within the Agricultural District.
  - 5. A Commercial Solar Energy System.
- E. All applications for permits shall be accompanied by a plot plan that shows the following items clearly and completely;
  - 1. The location, dimensions, and nature of the property; and;
  - 2. The location and dimensions of any existing or proposed structures; (no structure shall be located on an easement, existing sanitary sewer, septic system, water utility facility or water well); and
  - 3. All adjoining thoroughfares and any existing or proposed access to these thoroughfares; and
  - 4. The existing and proposed use of all structures and land; and
  - 5. Such other information as may be necessary to determine conformance with this Ordinance.

Applications for CSES Permits are subject to the requirements of Article 9. This Section 5.02 E shall not apply to a CSES or applications for CSES Permits.

- F. If applications for permits shall be made by the recorded owner (or the recorded owners' contractor) of the lot on which the improvement is to be located. Contract purchasers, equitable owners, lessees, or other holders of less than a fee simple interest shall not make applications.

- 5.03 FEES:** All fees and assessments allowable by State Statute or this Ordinance for permits shall be promulgated by the Fountain County Advisory Plan Commission. The Fountain County Advisory Plan Commission may modify the fees and assessments at any time.
- 5.04 VIOLATIONS AND PENALTIES:** Any structure or use that violates this Ordinance shall be deemed to be a common nuisance and the owner of the structure or land shall be liable for maintaining a common nuisance. Any person or legal entity that is found by a Court of competent jurisdiction to have violated any provision of this Ordinance may be fined not more than Two Thousand Five Hundred Dollars (\$2,500.00) per offense, plus costs, and attorney fees where the action is not brought pursuant to I.C. 36-7-4-1013, and have judgment entered accordingly. Each day that a violation exists is a separate violation. The Plan Commission, Board of Zoning Appeals, or appropriate staff may request the County Attorney to prosecute any violations, and the enforcing authority may also request injunctive relief in order to prevent a violation of this Ordinance.

## **ARTICLE 6 – WIND TURBINES & WIND ENERGY CONVERSION SYSTEMS**

- 6.01 PURPOSE AND SCOPE:** This article establishes general guidelines for the siting and use of wind turbine generators, meteorological (MET) testing towers and related devices and structures. This article is intended to:

- A. Protect residential areas from any potentially adverse visual or noise impacts of wind turbine generators or related devices and structures.
- B. Provide for a land use that will provide an energy source with low associated environmental impacts and protect the health, safety, and welfare of Fountain County residents.
- C. Provide for the removal of abandoned or noncompliant wind turbine generator towers, meteorological (MET) towers, or related devices and structures.
- D. Allow restricted use of wind turbine generator towers and meteorological towers of limited height.

### **6.02 APPLICABILITY**

- A. Micro Wind System towers and meteorological testing towers less than 120 feet in height shall be permitted as listed under Table A and are subject to the standards of section 6.03. These towers are not, however, subject to Section 6.04 & 6.06. Portions of sections 6.03 & 6.05 may be waived for micro wind systems when deemed appropriate by the Board of Zoning Appeals.
- B. All Wind Farms, Large Wind Turbines, and WECS, and all related devices and structures are only allowed if a special exception is granted by the Board of Zoning Appeals, as provided for in Article 4, are subject to all of the standards and requirements of this Article and only allowed in Industrial Districts. Meteorological testing towers (MET) towers 120' feet in height to 325 feet, and all related devices and structures for the above shall only be allowed as a special

exception in Industrial Districts with approval in by the Board of Zoning Appeals in accordance with this Article and the provisions in Article 4 for special exceptions.

### **6.03 GENERAL REQUIREMENTS**

- A. **Minimum Site Area.** The minimum site area for a wind turbine generator or a meteorological testing towers (MET) tower erected prior to a wind turbine generator shall be as necessary to meet required setbacks and any other standards of this ordinance.
- B. **Setbacks.**
  - 1. Micro towers and any associated features shall be set back from any adjoining property lot line, road right-of-way, railroad right-of-way or overhead electrical transmission or distribution lines a minimum distance equal to the total height of the structure.
  - 2. Each proposed large wind turbine generator or meteorological testing tower shall meet the following applicable setback requirements:
    - a. Each wind turbine generator or meteorological testing towers (MET) and any associated features shall be set back from any adjoining property lot line, road right-of-way, railroad right-of-way or overhead electrical transmission or distribution lines a minimum distance of 2,640 feet or 5 times the height of the tower from the base to the tip of the blade in vertical position, whichever is greater. The Board of Zoning Appeals may, during consideration of a special exception application, increase the setback up to 3,200 feet if it finds that such increased set back is necessary to protect the interests of adjacent residential property.
    - b. Wind Farms and WECS' occupying multiple parcels may have internal property line setbacks waived by execution of a written document signed by all land owners sharing such a property line. All such documents shall be recorded in the office of the Fountain County Recorder within 45 days of the signing of each wind lease agreement and said document shall be cross referenced to the current recorded deed. The wind developer may not submit a memorandum of lease containing multiple lease contracts to the Fountain County Recorder. Signed wind lease contracts not submitted to the Fountain County Recorder's office within 45 days of signing are null and void in Fountain County.
    - c. The setback distance for the WECS shall be one mile from any town or city or school. Distance shall be measured from the center

of the foundation at the base of the WECS to the closest Corporate Limit boundary line or school property, respectively.

- C. **Minimum Rotor Wind Vane or Blade Clearance.** The lowest point of the arc created by rotating wind vanes or blades on a wind turbine generator shall be no less than 50 feet or 1/3 of the tower height whichever is greater.
- D. **Maximum Noise Levels.** Any proposed wind turbine generator shall produce sound levels that are no more than 32 decibels as measured on the dB(A) scale at the property lines of the site in question. For all towers other than micro wind systems the following shall be provided:
  - 1. A noise study by a licensed acoustician chosen by the Fountain County Board of Zoning Appeals and paid for by the wind developer shall be submitted with any application for a wind turbine generator tower. Said study shall be prepared by a qualified professional acoustician with no less than three years of experience conducting WECS and community noise sound studies and shall include the following, at a minimum:
    - a. A description and map of the project's noise producing features, including the range of noise levels expected, and the basis of the expectation;
    - b. A survey and report prepared by a qualified acoustician with no less than three years of experience conducting WECS community noise sound studies and wind development that analyzes the preexisting ambient noise (including seasonal variation) and the potentially affected residences, schools, public buildings or other noise sensitive land uses located within 2 miles of the proposed project site. Study shall include decibels for both A and C weighted scales.
    - c. A description and map of the cumulative noise impacts and any problem areas identified.
    - d. A description of the project's proposed noise control features and specific measures proposed to mitigate noise impacts for sensitive land uses.
- E. **Maximum Vibrations.** Any proposed wind turbine generator shall not produce vibrations humanly perceptible beyond the property on which it is located or cause vibration that could be detected in nearby structures or damage underground wells.
- F. **Electrical Components.**
  - 1. All electrical components of the WECS shall conform to applicable local, state, and national codes, and relevant national and international standards.

2. Electrical Collection Cables - All WECS electrical collection cables between each WECS shall be located underground. All transmission lines that are buried should be at a depth of 10 feet until the same reach the property line or a substation adjacent to the property line.
- G. **Interference with Reception.** Any wind turbine generators shall be constructed and operated so that they do not interfere with public safety communications, emergency medical communications, emergency management communications, television, microwave, GPS for agricultural use, military defense radar, navigational or radio reception to neighboring areas.
- H. **State or Federal Requirements.** Any proposed wind turbine generator or meteorological testing tower shall meet or exceed any additional local, state, or federal standards and regulations.
- I. **Aesthetics and Lighting.** Any proposed wind turbine generator or meteorological testing tower shall meet the following requirements:
1. Each wind turbine generator or meteorological testing tower shall, be subject to any applicable standards of the FAA. When said towers are not subject to FAA regulation said tower shall be marked or identified in order to easily be identified for low-level aviation operations as noted below;
    - a. Towers shall be painted utilizing a pattern used to mark structures based on size and shape, which is eight equal alternating horizontal bands from the base to the tip of the tower of alternating stripes of aviation orange and white.
    - b. Each tower shall have lighting that shall be shielded as much as possible so that no glare extends beyond the boundaries of the facility. In the instance that "strobe" lighting is required it should be configured so that it is alternating lighting; white light during daylight, red light at night.
      - (i) Each wind turbine generator, including all accessory structures, shall, to the extent possible, use materials, and colors that will blend them into the natural setting and surrounding buildings.
      - (ii) Each wind turbine generator tower shall be artificially lighted, as required by the FAA in which instance all lighting shall be shielded as much as possible so that no glare extends substantially beyond the boundaries of the facility. In the instance that "strobe" lighting is required it should be configured so that it is alternating lighting; white light during daylight, red light at night.

- (iii) Each wind turbine generator tower and meteorological tower may be a monopole, monotube or lattice style construction and shall be self-supporting. Towers shall not include guy wires.

J. **Signs.** A sign no more than 4 square feet in area displaying an address and telephone number for emergency calls and informational inquiries shall be posted at the wind turbine generator or meteorological testing tower erected prior to a wind turbine generator. No wind turbine generator tower or MET tower or site shall include an advertising sign.

K. **Not Essential Services.** Wind turbine generators and meteorological testing towers shall be regulated and permitted pursuant to this Article of the Zoning Ordinance and shall not be regulated or permitted as essential services, public utilities, or private utilities.

L. **Removal of Abandoned or Unsafe Wind Turbine Generators or Meteorological Testing Towers.**

1. Any wind turbine generator or meteorological testing tower that is not operated for a continuous period of 6 months shall be considered abandoned.
2. Any tower found to be unsafe or not in compliance with the special exception conditions related to noise or shadow flicker placed upon it by the Board of Zoning Appeals (BZA) or this Ordinance, shall be found to be in violation of the special exception approval.
3. The owner of any wind turbine generator tower or meteorological testing tower that is abandoned or in violation of the special exception approval shall remove the same within twelve (12) months of receipt of notice of such abandonment or violation.
4. In addition to removing the wind turbine generator, or meteorological testing tower, the owner shall restore the site to its condition prior to location of the wind turbine generator or meteorological testing tower (excluding replanting of original vegetation and trees), subject to reasonable wear and tear and shall stabilize soils through use of ground cover. All concrete and rebar must be removed from the soil.
5. Failure to remove an abandoned wind turbine generator or meteorological testing tower within the twelve (12) month period provided in this subsection shall be grounds for the County or its designated representative to pursue the violation as prescribed under this Ordinance.
6. A decommissioning plan approved by the Fountain County Plan Commission and County Commissioners providing for the method and payment of the anticipated cost of removing a WECS at the end of its

serviceable life or upon it's becoming a discontinued or abandoned use to ensure that the WECS is properly decommissioned.

- a. Content. A decommissioning plan, for all systems except micro wind systems shall include, at a minimum, the following:
  - (i) Assurance - Written assurance that the WECS will be properly decommissioned upon the expiration of its serviceable life or in the event of its discontinuance or abandonment.
  - (ii) Cost estimates for all WECS except Micro WECS, an estimate of the costs of decommissioning and removing the WECS upon the expiration of its useful life, or in the event of its discontinuance or abandonment. The cost estimates shall be made by a professional engineer, contractor, or other person with expertise or experience in decommissioning and removal of WECS, and shall be updated every five (5) years for approval by the Fountain County Advisory Plan Commission.
  - (iii) Financial assurance the cost of removal and site restoration is the full responsibility of the applicant and/or owner/operator. In order to provide the greatest possible financial assurance that there will be sufficient funds to remove the wind energy system and to restore the site, the following steps shall be followed:
    - 1) For each wind energy system, the applicant/owner/operator shall determine an amount of money equal to the estimated removal and restoration cost.
    - 2) The Board of Zoning Appeals shall require independent verification of the adequacy of this amount.
    - 3) This money shall be secured in the form of an irrevocable letter of credit, payable upon demand by Fountain County, in a form acceptable to the Plan Commission, for the full cost of the estimated removal and restoration, in an amount determined by the Fountain County Advisory Plan Commission and approved by the Fountain County Commissioners. No deductions for salvage value or other credits are allowed



from the estimated cost of removal and restoration.

- (iv) Abandonment Verification under penalties for perjury, that all easements and/or leases for the WECS contain terms that provide financial assurances to the property owners to ensure that the WECS are properly decommissioned within one (1) year of the expiration of its serviceable life or in the event of its discontinuance or abandonment.
- M. **Climb Prevention.** All Tower designs must include features to deter climbing or be protected by anti-climbing devices, when applicable, such as:
  - 1. Fences with locking portals at least six feet high; or
  - 2. Anti-climbing devices 15 feet vertically from the base of the tower.
  - 3. Locked tower doors.
- N. **Waste Management.** All solid waste whether generated from supplies, equipment, parts, packaging, or operation or maintenance of the facility, including old parts and equipment, shall be removed from the site in a timely manner consistent with industry standards. All HAZARDOUS WASTE generated by the operation and maintenance of the facility, including but not limited to lubricating materials, shall be handled in a manner consistent with all local, state and federal rules and regulations.
- O. **Utility Interconnection.** The WECS, if interconnected to a utility system, shall meet the requirements for interconnection and operate as set forth in the electrical utility's then-current service regulations applicable to WECS.
- P. **Warnings.** A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and Substations.
- Q. **Drainage Repair.** All damages to waterways, drainage ditches, field tiles, or any other infrastructures caused by the construction or maintenance of the WECS, must be completely repaired to near original condition, and so as not to impede the natural flow of water. All repairs must be completed within a reasonable amount of time agreed upon by the Fountain County Surveyor.
- R. **Use of Roads.** An Applicant, Owner, or Operator proposing to use any county road(s), for the purpose of transporting WECS or Substation parts and/or equipment for construction, operation, or maintenance of the WECS(s) or Substation(s), shall prior to construction: Identify all such public roads and services;
  - 1. Roads

- a. Any proposed routes that will be used for construction and maintenance purposes shall be identified. If the route includes a public road, it must be approved by the Fountain County Highway Superintendent and Fountain County Board of Commissioners. The Superintendent shall conduct a pre-construction baseline survey to determine existing road conditions for assessing potential future damage.
  - b. Any road damage caused by the construction of the WECS project equipment, the installation of same, or the removal of same, must be repaired to the satisfaction of the Fountain County Highway Superintendent. The Superintendent may choose to require either remediation of road repair upon completion of the project or are authorized to collect fees for oversized load permits. Further, a corporate surety bond in an amount to be fixed by a Professional Engineer may be required by the Superintendent to ensure the county that future repairs are completed to the satisfaction of the unit of local government. The cost of bonding is to be paid by the applicant.
  - c. Newly constructed WECS access roads may not impede the flow of water.
  - d. All repairs must be completed in the time period agreed upon by the Fountain County Highway Superintendent.
  - e. Throughout the life of the project as repairs to WECS are made, road repairs will be completed each time the company's equipment traverses Fountain County roads if the Fountain County Highway Superintendent deems repairs be necessary, at the wind developer's expense.
  - f. The location of all WECS access roads must be approved by the appropriate Fountain County staff and may not be located closer than 2,000 feet from any residence as measured from the center of the access road to the corner of the residence.
- S. **Dust Control.** Reasonable dust control measures will be required by the County during construction of the WECS.
- T. **Sewer and Water.**
- 1. Any facility shall comply with existing septic and well regulation as required by the Fountain County Health Department and the State of Indiana Department of Public Health.
  - 2. Wells within one mile of each site shall be inspected by a licensed certified Indiana well installed prior to and following construction. All

expenses associated with the inspections shall be at the expense of the developer. Any damage caused by vibration or the operations of WECS or their construction shall be repaired at the expense of the developer and construction companies and these companies are required to provide commercial water tanks and water to affected homes until an investigation is complete and problems, if caused by WECS construction or operation, are mitigated.

- U. **Height.** The following height limitations apply to this Article:

Use	Height Limitation
Micro Wind System tower	120 feet
MET tower	325 feet
Wind Farms, Wind Turbines, WECS	600 feet

- V. **Fire Prevention and Emergency Response Plan and Requirements.**

1. Description of the potential fire and emergency scenarios that may require a response from fire, emergency medical services, police or other emergency responders.
2. Designation of the specific agencies that would respond to potential fire or other emergencies.
3. Description of all emergency response training and equipment needed to respond to a fire or other emergency including an assessment of the training

- W. The site plan and other documents shall illustrate and describe mitigation measures to minimize potential impacts on the natural environment including, but not limited to wetlands, avian and wildlife (migratory bird patterns and bat population effects), other fragile ecosystems, historical/cultural sites and antiquities.

- X. **Shadow Flicker.** At no time shall a wind turbine's tower, nacelle, or blades create shadow flicker on any non-participating landowner's residential property. For the purpose of this section a nonparticipating landowner shall be defined as a landowner on which a tower does not physically sit.

- Y. **Property Value Guarantee** will be offered by the wind developer to all residents and landowners within two miles of a wind turbine. Fair market value will be established by, at minimum, two reputable appraisers of the Fountain County Plan Commission's choice to establish baseline data for property values at the wind developer's expense. If the property value of a home decreases and a home or landowner is unable to sell his property after the wind turbines are erected, the developer will pay that landowner the difference or buy the property at the baseline fair market value determined prior to construction of the wind project.

- Z. Prior to meeting with landowners in Fountain County to secure leases and holding private meetings with residents, the wind developer must notify every household and landowner within five miles of a planned wind project of their intentions to develop a wind farm in the area via certified letter. The wind developer must also notify the Fountain County Board of Zoning Appeals and the Fountain County Planning Commission, in writing, of its intent to develop a wind farm in Fountain County prior to notice being sent to residents and landowners and prior to meeting with landowners to secure wind lease contracts in Fountain County.

#### **6.04 SPECIAL EXCEPTION APPROVAL REQUIRED**

- A. Unless exempted under Section 6.02, all wind turbine generators and anemometer towers shall be subject to special exception approval and all requirements for special exception uses contained in this Article and in this ordinance for special exceptions generally. In addition to the general standards of approval for special exception, all special exceptions regulated under this Article shall comply with the following standards of approval:
1. The use shall meet all general requirements listed above in Section 6.03.
  2. All irrevocable letters of credit and bonds required by this Article must be submitted to the Board of Zoning Appeals or designated staff at the time of the application for special exception.
  3. As specified in Section 6.03 a Noise Study is submitted including satisfactory mitigation measures to assure that no nearby residential uses will be subjected to noise impacts greater than 32 dBA at the property line.
  4. The special exception, if granted by the BZA, for a proposed project shall be valid for a period of one (1) year in which to apply for an Improvement Location Permit, after which, approval shall terminate and be of no further force or effect if construction in earnest of the approved tower/s has not commenced.
- B. **Application Requirements.** Prior to the construction of a WECS, the Applicant shall obtain approval for the following: (1) an Application for a Special Exception from the Fountain County Board of Zoning Appeals ("BZA") to permit a WECS in any zone list under table A, (2) Request for Variance for any variances anticipated on the WECS Project, and (3) Drainage approval as required by any applicable Fountain County regulations when deemed necessary, (4) an Improvement Location Permit from the Board of Zoning Appeals.
1. The Application for Special Exception
    - a. The application shall be filed with the Fountain County Board of Zoning Appeals and include the following items:

- (i) A WECS Project summary, including, to the extent available: (1) Each turbine's point location, including its name plate generating capacity; the make and model of the WECS that will be installed; the maximum height of the WECS Tower(s) measured from the base to the tip of the blade in vertical position and diameter of the WECS(s) rotor(s); and (2) a description of the Applicant, Owner, and Operator, including their respective business structures.
- (ii) The name(s), address (es), and phone number(s) of the Applicant(s), Owner and Operator, and all property owner(s) with WECS or associated utility lines on their properties. All leases for properties with WECS must be filed in the Fountain County Recorder's Office within 45 days of the contract being signed agreeing to a wind lease or said contract is null and void in Fountain County.
- (iii) A topographic map of the project site and the surrounding area which shall encompass an area at least a quarter mile radius from the proposed project site with contours of not more than five-foot intervals.
- (iv) A site plan at an appropriate scale showing (standard sheet of 36 inches by 24 inches and individual tower site not greater than 1-inch equals 20 feet): the proposed location of the wind energy facility (including planned locations of each WECS Tower; WECS access roads; Substations; electrical cabling; and ancillary equipment). In addition, the site plan shall show: Primary Structures within one mile of any WECS; property lines, including identification of adjoining properties; setback lines; public roads; location of all above-ground utility lines within a distance of two (2) times the WECS Tower Height of any WECS Tower; recognized historic or heritage sites as noted by the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources; and any wetlands based upon a delineation prepared in accordance with the applicable U. S. Army Corps of Engineer requirements and guidelines.
- (v) Location of all existing underground utility lines associated with the WECS site.
- (vi) All required hearing filing fees as prescribed by this ordinance.

## 2. The Application for Improvement Location Permit

- a. The Applicant shall apply for an Improvement Location Permit. In addition to the information required on the Improvement Location Permit Application and those documents required under section 6.03, the Applicant shall provide the following information prior to the issuance of an Improvement Location Permit:
- (i) Location of all utility lines within a radius equal to two (2) times the height of the proposed WECS.
  - (ii) Location of all underground utility lines associated with the WECS site.
  - (iii) Dimensional representation of the structural components of the tower construction including the base and footings.
  - (iv) Schematic of electrical systems associated with the WECS including all existing and proposed electrical connections.
  - (v) Manufacturer's specifications and installation and operation instructions and an un-redacted operations safety manual for the model of WECS that will be installed.
  - (vi) Certification by a registered professional engineer that the tower design is sufficient to withstand wind load requirements for structure as defined by BOCA.
  - (vii) All turbines shall be new equipment commercially available. Used, experimental or proto-type equipment still in testing shall be approved by the Board of Zoning Appeals as per the normal special exception process.
  - (viii) Necessary recorded access easements and necessary recorded utility easements, copies of which shall be submitted to the Fountain County Board of Zoning Appeals.
  - (ix) No appurtenances other than those associated with the wind turbine operations shall be connected to any wind tower except with express, written permission by the Board of Zoning Appeals.
  - (x) A transportation plan showing how vehicles would access the site and describing the impacts of the proposed energy project on the local and regional road system during construction and operation.
  - (xi) A revegetation plan for restoring areas temporarily disturbed during construction.

- (xii) A fire protection plan for construction and operation of the Facility.
  - (xiii) Any other item reasonably requested.
  - (xiv) A drainage plan for construction and operation.
  - (xv) An erosion control plan in compliance with all other local, state, and federal regulations.
- C. Each WECS Tower and MET tower shall require an Improvement Location Permit.

## **6.05 OPERATION**

- A. Interference. If, after construction of the WECS, a written complaint is made related to interference with local broadcast residential television, telecommunication, communication or microwave transmissions, the Owner or operators shall be notified in writing and the Owner or Operator shall take reasonable steps to respond to minimize the complaint. Applicant, owner and/or operator shall take such actions as may be required to mitigate interference with electromagnetic communications, such as public safety communications, emergency medical communications, emergency management communications, radio, telephone, microwaves, GPS for agricultural use, military defense radar or television signals caused by any WECS. In addition, the applicant, owner and/or operator shall comply with the following:
1. Failure to remedy a complaint - If the Board of Zoning Appeals determines that an owner or operator has unreasonably failed to remedy verified interference with the broadcast of residential television, telecommunication, communication or microwave transmissions within ninety (90) days after owner or operator received a written complaint related thereto, the Board of Zoning Appeals may take appropriate action to rescind the permit or approval associated to the WECS in question. This does not apply to interference with private telecommunications systems.
- B. **Coordination with Local Fire Department**
1. The WECS applicant, owner or operator shall submit to all providers of emergency services serving the WECS Project area a copy of the as-built site map in digital format, if requested.
  2. Upon request by the local fire department, the Owner or Operator shall cooperate with the local fire department to develop the fire department's emergency response plan.
  3. Nothing in this section shall alleviate the need to comply with all other applicable fire laws and regulations.

**C. Materials Handling, Storage and Disposal**

1. All solid wastes related to the construction, operation and maintenance of the WECS shall be removed from the site promptly and disposed of in accordance with all federal, state and local laws.
2. All hazardous materials or waste related to the construction, operation and maintenance of the WECS shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.

D. An ongoing log of maintenance activities performed on all WECS shall be submitted on an annual basis.

**6.06 LIABILITY INSURANCE**

The Owner or Operator of the WECS(s) shall maintain a current general liability policy covering bodily injury and property damage and name Fountain County as an additional insured with limits of at least \$2 million per occurrence per wind tower and \$5 million in the aggregate with a deductible of no more than \$5,000.

**ARTICLE 7 – AMENDMENTS**

**7.01 AUTHORITY:** The ratification, amendment, or repeal of this Ordinance, shall at all times be controlled by the form, procedures, and authorization as set forth in I.C. 36-7-4-600 et. seq. and any and all amendments thereto.

**7.02 PETITIONS:** Petitions for amendments shall be filed with the Fountain County Advisory Plan Commission, and the Petitioner shall, upon such filing, and whether the proposed amendment is enacted or not, pay a filing fee as established by the Fountain County Advisory Plan Commission and the cost of public notice that is required.

**ARTICLE 8 – DEFINITIONS**

**8.01 GENERAL:** Certain words used in this Ordinance are defined below. Words used in the present tense shall include the future; the singular number shall include the plural, and the plural the singular; the male gender shall include the female gender and the female gender shall include the male gender; and the word “shall” is mandatory and not permissive.

A. **BOARD OF ZONING APPEALS:** The Fountain County Board of Zoning Appeals.

B. **BUILDING SET BACK LINES:** A line extending across a lot establishing the minimum open space to be provided between the front line of buildings and the front lot line in a recorded subdivision.

C. **COMMERCIAL SOLAR ENERGY SYSTEM (CSES):** A solar electricity generation collection system principally used to capture solar energy, convert it to



electrical energy or thermal power, and supply electrical or thermal power, primarily or solely to sell the electricity at wholesale for use in locations other than where it is generated, and consisting of one or more ground-mounted, solar arrays or modules, or solar related equipment including but not limited to collection and feeder lines, substations, ancillary buildings, accessory equipment and other facilities or devices utilized in a solar electricity generation system.

- D. **COMMISSION OR PLAN COMMISSION:** The Fountain County Advisory Plan Commission.
- E. **COMPREHENSIVE PLAN:** The most recent Comprehensive Plan of Fountain County on file with the Fountain County Recorder.
- F. **COUNTY COMMISSIONERS:** The legislative body of the county government.
- G. **CSES PERMIT:** The permit issued by the Zoning Administrator for operation of a Commercial Solar Energy System as described in Article 9 hereof.
- H. **DIRECTOR:** The Director of the Fountain County Advisory Plan Commission.
- I. **EASEMENT:** A right of use over the property of another.
- J. **ESSENTIAL SERVICES:** The erection, construction, alteration or maintenance by public utilities, legislative bodies, or municipal or other governmental agencies of underground or overhead gas, electrical, conduit, steam, water, sewage, drainage or other distribution systems, including, but not limited to poles, wires, mains, drains, sewers, pipes, signals, hydrants, public way signs, transmission equipment, towers, antennas, microwave disc, and any other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of service by such public utilities, legislative bodies, or municipal or other governmental agencies. This definition shall also include municipal buildings. This section and Essential Services shall not apply to Commercial Solar Energy Systems.
- K. **FRONT YARD:** The space not containing any structures or storage areas between a structure or storage area and a public way street, road, or right-of way.
- L. **FRONTAGE:** The width of a lot measured along a continuous and straight line connecting the side lot lines at a point where said side lot lines intersect the right-of-way line of a street, road, or highway from which such lot has legal access.
- M. **GARBAGE COLLECTOR:** A business operation owned by a legislative body or private entity to collect, but not dispose of, refuse, garbage, or trash whether by contract or private pay.
- N. **JUNK:** Scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or zinc, and all other scrap metals and their alloys, and bones, rags, used cloth, used rubber, used rope, used tinfoil, used bottles and cans, or old used machinery, used tools, used

appliances, used fixtures, used utensils, used lumber, used boxes and crates, used pipe or pipe fixtures, used automobiles, trucks, or airplanes, tires, and other manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition, but are subject to being dismantled.

- O. **JUNKYARD:** Any place where junk, waste, discarded, or salvage materials are bought, exchanged, sold, stored, baled, packed, disassembled, or handled, including automobile wrecking yard, house wrecking, and structural steel materials and equipment, but not including the purchase or storage of used furniture and household equipment used or salvaged materials as a part of a manufacturing operations. Any site in which vehicles are cannibalized shall be determined to be a junkyard.
- P. **LEGISLATIVE BODY:** The governing body of an incorporated town, city, or county.
- Q. **LOT, MINIMUM AREA:** The horizontal projection area of a lot computed exclusive of any portion of the right-of-way of any Public Way.
- R. **LOT OF RECORD:** Any lot that individually, or as part of a subdivision, has been recorded in the office of recorder of the Deeds of the County.
- S. **LOT, WIDTH OF:** The calculated measurement at the front property line.
- T. **MICRO WIND SYSTEM:** A free standing or building-mounted wind system that has a nameplate capacity (manufacturer's rating) of 10 kilowatts or less, and does not exceed a total height of 120 feet. Micro wind systems are subject to regulations in all zoning districts.
- U. **MUNICIPAL BUILDING:** A building or structure housing a Legislative Body Office or a non-business public use, including, but not limited to, police, fire, library, and utility structures.
- V. **NON-CONFORMING STRUCTURE:** A structure designed, converted, or adapted for use prior to the adoption of the ordinance prohibiting the structure.
- W. **NON-CONFORMING USE:** Any use or arrangement of land or structure legally existing at the time of enactment of the Fountain County Zoning Ordinance or any of its amendments, which does not conform to the provisions of the Fountain County Zoning Ordinance or the Fountain County Subdivision Control Ordinance.
- X. **OWNER:** Any individual, firm, association, syndicate, co-partnership or corporation having proprietary interests in the land upon which the proposed request for action is requested.

- Y. **PUBLIC WAY:** A Public Way includes any highway, street, avenue, road, boulevard, lane, court, alley, places, or any designed parcel used for public transportation.
- Z. **REAR YARD:** That area of a lot encompassing the space between the nearest foundation of a building to a rear lot line and the rear lot line, extending to the side lines of the lot, and measured as the shortest distance from that foundation to the rear lot line, which shall be that yard at the opposite end of the lot from the front yard.
- AA. **RECYCLING COLLECTION POINT:** A tract of land and/or structure that is used for the collection of recyclables on a periodic basis by a non-for-profit organization, a fraternal group, a school district or a church group.
- BB. **RECYCLING CENTER:** A structure used commercially for collecting, storing, or purchasing materials for recycling, such as, but not limited to, aluminum, copper, or brass.
- CC. **RIGHT-OF-WAY:** A strip of land occupied or intended to be occupied by a public way, pedestrian way, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or sewer main, special landscaping, drainage swale, or for other special uses.
- DD. **SANITARY LANDFILL:** A parcel of land used for the disposal of accumulations of refuse or other discarded materials.
- EE. **SET BACK:** The distance between the right-of-way of a public way and a principal and/or accessory structure.
- FF. **SPOT ZONING:** The process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners. The extension or expansion of an adjacent area of a zoning classification shall not be construed as spot zoning.
- GG. **SUPPLY YARD:** A business establishment storing or offering for sale wholesale building supplies, steel supplies, coal, heavy equipment, feed and grain, and similar goods. A supply yard does not include the wrecking, salvage, cannibalizing, dismantling, or storing of automobiles or similar vehicles.
- HH. **USE:** The purpose or activity for which the lot, parcel, tract, building, or structure thereon is designated, arranged, or intended, or for which it is occupied or maintained.
- II. **WATER & SEWAGE TREATMENT PLANT:** A building, structure or facility where water and/or sewage are treated and processed for the health and safety of the public by either a Legislative Body or private enterprise.

- JJ. **WIND ENERGY CONVERSION SYSTEM (WECS):** The equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, wind tower, transformer, turbine, vane, wind farm collection system, wire, or other component used in the system.
- KK. **WIND FARM:** Two or more large or small wind systems on a single property or aggregated properties for the purpose of converting and then storing or transferring energy from the wind into usable forms of energy.
- LL. **WIND FARM COLLECTION SYSTEM:** All the low-voltage wiring and cabling connecting any wind turbine with another wind turbine or to a place where voltage is stepped up, commonly known as a substation or switching station, and all wiring or cabling connecting a turbine, system, switching station or substation to electrical transmission lines or interconnectivity facility that connects the system to the electrical service grid.
- MM. **WIND TURBINE GENERATOR:** A tower, pylon, or other structure, including all accessory facilities, upon which any, all, or some combination of the following are mounted and are a part of a micro wind system, small wind system, or large wind system: 1. A wind vane, blade, or series of wind vanes or blades, or other devices mounted on a rotor for the purpose of converting wind kinetic energy into electrical energy. 2. A shaft, gear, belt, or coupling device used to connect the rotor to a generator, alternator, or other electrical or mechanical energy-producing device. 3. A generator, alternator, or other device used to convert the mechanical energy transferred by the rotation of the rotor into electrical energy.
- NN. **WIND TURBINE GENERATOR HEIGHT:** The distance between the ground and the highest point of the wind turbine generator tower including blades, when a blade is at its highest point of rotation.
- OO. **YARD:** An open space on the same lot, parcel, or tract with a building or structure unoccupied and unobstructed from its lowest level upward, except as otherwise permitted by the ordinance.
- PP. **YARD, FRONT:** A yard extending across the full length of the front lot line between the side lot lines.
- QQ. **YARD, REAR:** A yard extending along the full length of the rear lot line between the side lot lines.
- RR. **YARD, SIDE:** A yard extending along a side from the front to the rear yard.
- SS. **ZONING ADMINISTRATOR:** The individual assigned by the Fountain County Commissioners to perform the duties and responsibilities set forth in this Ordinance or otherwise set forth in Indiana Code §36-7-4.

**ADDITIONAL TERMS:** Terms not specifically defined herein shall have the meanings set forth in by the interpretation of the Fountain County Board of Zoning Appeals.

## **ARTICLE 9—SOLAR ENERGY SYSTEMS AND FACILITIES**

- 9.01 Purpose.** The purpose of this Article is to plan for and regulate the use, improvement, and maintenance of real property and the location, condition, and maintenance of structures and other improvements as authorized by Indiana Code §36-7-2-2. The regulation of solar energy systems, solar farms and facilities and other solar energy devices is designed to protect the public health, welfare and safety. These regulations allow a Commercial Solar Energy System (CSES) as a permitted use in certain areas, and, therefore, do not have the effect of unreasonably restricting the use of such facilities other than for the preservation and protection of the public health and safety. It is the policy of Fountain County to promote and encourage the use of commercial solar energy systems and facilities, and these regulations are not intended to and do not have the effect of significantly increasing the cost of such systems, decreasing the efficiency of such systems, or impeding alternative systems of comparable cost and efficiency. Therefore, notwithstanding the provisions of Section 1.06 of this Ordinance, in the event of any conflict between Article 9 and existing provisions of laws or ordinances, or any rules, regulations or permits previously adopted or issued relating to the use of Fountain County real estate, buildings, structures or other improvements, the provisions of this Article 9 shall control.
- 9.02 Permitted Districts.** Commercial Solar Energy Systems are Permitted Uses in the Agriculture, Business and Industrial Zoning Districts.
- 9.03 Exemptions.** Solar devices which are part of the structure of a residence or business or part of the permitted yard of a residence or business and which are designed to provide electrical power, heating or cooling, or water heating only for the residence or business are exempt from this regulation.
- 9.04 Setbacks:** All ground-mounted solar panels or arrays installed as a part of a CSES must be at least thirty (30) feet from any property line, at least one hundred (100) feet from the center of any road, street, highway, alley or public way, and at least two hundred (200) feet from the property line of a non-participating landowner if adjoined by property that is zoned residential. No setback shall be required however between internal property lines of adjoining parcels participating in a CSES. Security fencing, access roads, and distribution poles and wires may be located within the set-backs but may not be located in a road right-of-way, unless otherwise approved as a part of the CSES Plan or CSES Permit and/or in the road plan described in Section 9.15.
- 9.05 Height Limitations:** Ground-mounted solar panels or arrays installed as a part of a CSES may not exceed twenty (20) feet in height as measured from the natural grade to the top of the panel or array when at its highest position.
- 9.06 CSES Permit.** Prior to constructing a CSES, an application for a CSES Permit must be filed with the Zoning Administrator by the property owners of the parcels within the

proposed CSES, or their authorized agent (including, but not limited to, the developer of the proposed CSES). The applicant must submit to the Zoning Administrator a conceptual site plan which includes the general footprint of the CSES, the approximate number of panels, the maximum generating capacity, the general location of all fences, electrical poles and lines, the location of all other equipment and structures, the general location of any and all underground electrical lines, facilities and structures, the general location of all access roads and rights-of-way, a general road use plan for construction, general specifications for equipment, compliance with all applicable industry standards and safety codes, and Federal Aviation Administration rules and regulations (collectively the "CSES Plan"). Within 15 days of receipt of an application for a CSES Permit, the Zoning Administrator will determine whether the application is complete. The Zoning Administrator will notify the applicant in writing of the determination. If the application is complete, the application will be reviewed by the Zoning Administrator as a request for a CSES Permit, as provided for in Article 9. If the application is not complete, the applicant must provide to the Zoning Administrator the supplemental information within sixty (60) days. If the applicant fails to provide the supplemental material for the application in a timely manner, the application will be dismissed.

- 9.07 CSES Permit Review:** A CSES Permit application described in Section 9.06 shall be reviewed by the Zoning Administrator for compliance with the requirements of the Fountain County Zoning Ordinance, including the provisions in Article 9, and a decision rendered and provided to the applicant by the Zoning Administrator within thirty (30) days following the determination that the application is complete. The applicant may be permitted to modify its CSES plan to satisfy any concerns of the Zoning Administrator. Upon the determination by the Zoning Administrator that the CSES Permit application is approved, the Zoning Administrator shall issue a CSES Permit to the CSES Permit applicant.
- 9.08 Minor Changes to CSES Plan.** So long as the CSES is located within the footprint of, the approved CSES Plan, including the location of all improvements related to the CSES including, but not limited to, access roads, arrays, inverters, transformers, project substation(s), fences, electrical poles and lines, underground electrical lines, facilities and structures, the CSES developer or operator will not be required to seek and obtain an amendment of the CSES Permit, or be required to submit a new CSES Permit application or any additional approval.
- 9.09 Drainage Approval:** Prior to constructing a CSES, a drainage plan for the CSES site shall be submitted to the Zoning Administrator for approval by the County Engineer.
- 9.10 CSES Permit Fee:** At the time of submission of a CSES Permit application, the applicant will submit to the Zoning Administrator a nonrefundable fee in the amount of \$500.00, plus the following additional fee for a CSES that is more than one hundred (100) acres:

Acres	Additional Fee
100+ to 200	\$50
200+ to 300	\$100
300+ to 400	\$150

400+ to 500	\$200
500+ to 600	\$250
600+ to 700	\$300
700+ to 800	\$350
800+ to 900	\$400
900+ to 1,000	\$450
1,000+	\$500

- 9.11 Fencing:** Each CSES shall be surrounded by a security fence not less than seven (7) feet in height and not more than twelve (12) feet in height in order to prevent unauthorized access. All gates will be locked. The applicant will place a sign, not to exceed eight square feet in area, which contains the name and address of the operator and an emergency telephone contact number for the operator.
- 9.12 Exterior Lighting.** All exterior safety lighting installed as a part of a CSES will be developed in a manner which limits light trespass onto adjoining parcels and which is limited to the amount of light needed for maintenance, safety and security.
- 9.13 Legal Drains:** No CSES may encroach upon the seventy-five foot (75') easement of any legal drain or ditch without the express authorization of the Fountain County Drainage Board.
- 9.14 Private Drains:** No CSES may encroach upon any private drain or ditch without the express authorization to do so from the private landowner of the property upon which the private drain or ditch is situated. If the construction of the CSES requires the relocation of any private or mutual drain or ditch, such relocation must be approved by the parties to the private or mutual drain or ditch, performed at the expense of the CSES operator, and relocated in a manner so as not to materially impede the function of the drain or ditch. This obligation to refrain from encroaching upon any private or mutual drain or ditch continues and applies even if the encroachment is discovered after construction of the project.
- 9.15 Road Plan Approval:** The CSES Permit applicant will be allowed to use County roads to transport equipment, materials and supplies to the location for construction. Prior to constructing a CSES, a road plan for the CSES site shall be submitted to the Zoning Administrator. This plan must be approved by the Zoning Administrator and the County Highway Superintendent. The criteria for approval shall be compliance with this Section 9.15 of the Fountain County Zoning Ordinance. The applicant will be responsible for any road and ditch damage caused by the applicant during construction and operations. In order to ensure the applicant's financial responsibility, prior to construction of a CSES the applicant must provide to the County a bond, letter of credit or other surety in an amount determined by a third party Indiana-licensed engineer and reasonably approved by the County Engineer to be sufficient to cover the expense of remediation of damages. This bond, letter of credit or surety must be in a form reasonably acceptable to the Zoning Administrator and the Road Plan approval applicant. After construction of the project, the County Engineer will inspect the roads and ditches contained in the road use plan and

determine whether damage has resulted solely and directly because of the applicant's project. If the County Engineer finds that such damage has occurred, the Engineer will provide written notice to the applicant identifying and describing the alleged damage and the estimated cost of the proposed damage remediation. Upon notice from the County, the applicant shall use commercially reasonable efforts to repair the damage caused directly by its use. If the applicant elects not to repair the damage itself, the County will cause the remediation to occur, and the Engineer will certify to the applicant the expense of the remediation. The applicant will pay to the County the certified amount within sixty (60) days of receipt of the notice of the certified amount. If the applicant fails to timely pay the remediation expense, the County will be entitled to file a claim with the bond company or holder of the letter of credit or other surety and be paid from the bond, letter of credit or other surety.

- 9.16 Future CSES Ordinance Amendments.** In the event future amendments of the Fountain County Zoning Ordinance provide more restrictive requirements or measures for development of a CSES, and acquisition of the permits and approvals related thereto, the provisions of the Fountain County Zoning Ordinance in effect on the date the application of the CSES Permit is filed shall control the CSES and the permits and approvals related thereto. For purposes of application of IC 36-7-4-1109, the Zoning Administrator shall be considered an officer of a local governmental agency as described in IC 36-7-4-1109 (a), and a CSES Permit shall be considered a "building permit" as described in IC 36-7-4-1109(b).
- 9.17 Enforcement:** In the event of a violation of this Section, the Zoning Administrator may enforce the Ordinance using the rights and remedies provided for in Section 5.04 of the Zoning Ordinance.



THIS IS THE LAST PAGE OF TEXT FOR THE FOUNTAIN COUNTY ZONING ORDINANCE.

“I affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law.”

Name: J. Kent Minnette

Prepared By: J. Kent Minnette





**Fountain County Board of Commissioners**  
**Ordinance 2021- 9**  
**An Ordinance Adopting Amendment to the Zoning Ordinance**

**Whereas**, the Fountain County Board of Commissioners believes the proposed text amendments are consistent with Indiana Code §36-7-4-600 series and otherwise comply with Indiana Code §36-7-4 and all other legal requirements; and

**Whereas**, the Commissioners have received a certification, dated 8 July 2021, from the Fountain County Plan Commission which contains a favorable recommendation regarding the adoption of the Amendment to the Zoning Ordinance; and

**Whereas**, the Commissioners must either adopt, reject, or amend the proposed amendment or decide to further consider the proposal; and

**Whereas**, the Commissioners having considered the recommendation of the Plan Commission, public comments and written correspondence from citizens regarding the proposed amendments to the Zoning Ordinance now find as follows:

1. The Commission conducted a public hearing on 8 July 2021 on a proposal to amend the Zoning Ordinance; and
2. The Commission voted to favorably recommend to the Commissioners the proposed amendment to the text of the Zoning Ordinance; and
3. The Commissioners accept the recommendation of the Commission decide to adopt the proposed amendment to the Zoning Ordinance.

IT IS THEREFORE ORDAINED by the Fountain County Board of Commissioners of Fountain County, Indiana, that the proposed amendment to the Zoning Ordinance, attached to this Ordinance, is hereby adopted

IT IS FURTHER ORDAINED that the Auditor will record this Ordinance in the Office of the Fountain County Recorder.

IT IS FURTHER ORDAINED that any other provision of the County Code that is not specifically amended by this ordinance shall remain in full force and effect.

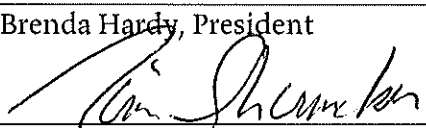
IT IS FURTHER ORDAINED that this Ordinance shall be effective 14 days after its adoption.

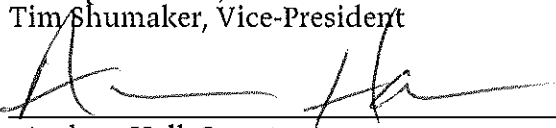


Adopted this 19th day of July 2021.

**Board of Commissioners,  
Fountain County, Indiana**

\_\_\_\_\_  
Brenda Hardy, President

  
\_\_\_\_\_  
Tim Shumaker, Vice-President

  
\_\_\_\_\_  
Andrew Hall, Secretary

Attest:

  
\_\_\_\_\_  
Colleen Chambers, Auditor

I affirm under the penalties for perjury that I have taken reasonable care to redact each social security number in this document, unless required by law. /s/ J. Kent Minnette

J. Kent Minnette, Indiana Attorney No. 21362-45, Taylor, Chadd, Minnette, Schneider & Clutter, P.C.,  
714 4th Street, Covington, Indiana, 47932, Telephone: (765) 814-2001, prepared this ordinance.

