



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Planning Division

m e m o r a n d u m

TO: The Urbana Plan Commission

FROM: Rebecca Bird, AICP, Planner II

DATE: May 17, 2012

SUBJECT: CCZBA-701-AT-11: A request by the Champaign County Zoning Administrator to amend Sections 6.1.1 and 6.1.4 of Champaign County Zoning Ordinance regarding conditions for approval and removal of wind turbines.

Introduction & Background

The Champaign County Zoning Administrator is requesting a text amendment to the Champaign County Zoning Ordinance in Champaign County Case No. CCZBA-701-AT-11 regarding conditions for approval and removal of wind turbines. The County recently processed their first application for a Special Use Permit for a wind farm (California Ridge Wind Farm, Case 696-S-11). In processing the application, several needed improvements to the ordinance were identified during the public hearing process. The proposed text amendment addresses these weaknesses.

The proposed changes can be summarized as follows:

- Proposed changes to the application process in response to waivers required in Case 696-S-11 and intended to minimize the need for waivers for future wind farms.
- Proposed changes to add a Permanent Erosion and Sedimentation Control Plan as a requirement of the ordinance.
- Proposed changes to improve the decommissioning requirements of the ordinance based on lessons learned in Case 696-S-11:
 - Proposed changes to the current requirement for a “reclamation agreement” to a requirement for a “site reclamation plan”.
 - Proposed changes to revise the decommissioning and site reclamation plan requirement.
- Proposed changes to revise the general site reclamation requirements to make them consistent with other changes.
- Proposed changes to add a requirement for a road use agreement at the time of decommissioning.

The proposed text amendment is of interest to the City of Urbana to the extent that it will affect zoning and land use development decisions within the City's one-and-one-half mile extra-territorial jurisdictional (ETJ) area. The City has subdivision and land development jurisdiction within the ETJ area, while the County holds zoning jurisdiction in this area. It is important that there be consistency between these two jurisdictions to the extent that certain regulations may overlap. Since development within this area may abut development within the corporate limits of the City or may eventually be annexed into the City's corporate limits, some level of consistency in zoning regulations is also desirable. Land uses in the County affect the City of Urbana in several ways, including:

- Land uses in Champaign County can potentially conflict with adjacent land uses in the City of Urbana;
- Unincorporated portions of Champaign County adjacent to the City of Urbana will likely be annexed into the City at some point in the future. Existing land uses would also be incorporated as part of annexation;
- In addition to land uses, development patterns of areas annexed into the City of Urbana will affect our ability to grow according to our shared vision provided in the 2005 Comprehensive Plan.

For these reasons, the City should examine the proposed text amendment to the Champaign County Zoning Ordinance to ensure compatibility with existing City ordinances. It is the Plan Commission's responsibility to review the proposed amendment to determine what impact it will have on the City, and recommend to City Council whether or not to protest the proposed text amendment. Under state law, a municipal protest of the proposed amendment would require three-quarters super majority of affirmative votes for approval of the request at the County Board; otherwise, a simple majority would be required.

Due to State Law and County zoning, the only aspects of this County Zoning Ordinance text amendment applicable to Urbana would be any provisions applicable more broadly than wind farm and wind turbine requirements. The specific changes are detailed in the attached memos dated January 4, 2012 and March 29, 2012.

Issues and Discussion

Urbana 2005 Comprehensive Plan

By State law, the City has an obligation to review zoning decisions within its extra-territorial jurisdiction area for consistency with the City's comprehensive plan. Champaign County's proposed Zoning Ordinance text amendment should therefore be reviewed for consistency with the City of Urbana's 2005 Comprehensive Plan. Specifically, Urbana's comprehensive plan includes the following pertinent goals and objectives:

Goal 17.0 Minimize incompatible land uses.

Objective 17.1 Establish logical locations for land use types and mixes, minimizing potentially incompatible interfaces, such as industrial uses near residential areas.

Objective 17.2 Where land use incompatibilities exist, promote development and design controls to minimize concerns.

Goal 21.0 Identify and address issues created by overlapping jurisdictions in the one-and-one-half mile Extraterritorial Jurisdictional area (ETJ).

Objective 21.1 Coordinate with Champaign County on issues of zoning and subdivision in the ETJ.

Objective 21.2 Work with other units of government to resolve issues of urban development in unincorporated areas.

Goal 33.0 Provide maximum service and dependable utilities.

Objective 33.5 Promote the use of alternative energy sources, such as wind and solar.

The proposed text amendment is generally consistent with these goals and objectives. It allows for continued agricultural use in areas outside of the City’s extra-territorial jurisdiction, while at the same time providing a means to use an alternative energy source. The proposed amendment strengthens and adds additional regulations to the current requirements for wind farms and turbines.

Zoning Impacts

Illinois State Law allows for municipalities to regulate wind farms and electric-generating wind devices within its zoning jurisdiction and within the 1.5 mile radius (ETJ) surrounding its zoning jurisdiction. Conversely, State Law does not allow for counties to regulate wind farms and electric-generating wind devices within 1.5 miles of a municipality. Essentially this means that the County does not have authority to regulate wind farms and electric-generating wind devices in the ETJ even though they would normally have zoning authority in this area. On October 4, 2010, the City of Urbana adopted regulations regarding electric-generating wind devices (Ordinance 2010-09-075) by enacting Section XIII-7, Wind Energy Systems of the Urbana Zoning Ordinance.

Issues of Concern

The proposed County Zoning Ordinance amendment includes changes to both wind farm regulations and to regulations regarding “non-adaptable structures”. As discussed above, the County does not have the authority to allow wind farms in the City of Urbana’s one-and-one-half mile extra-territorial jurisdiction (ETJ). Non-adaptable structures that are not wind turbines, however, could be located within Urbana’s ETJ with the approval of a Special Use Permit. According to the County Zoning Ordinance, non-adaptable structures are structures which are likely to become economically impractical to remove or put to another use once their intended use has expired.

The proposed amendments include revising this definition to include a clause stating that wind turbine towers and wind farm towers shall be considered non-adaptable structures. The proposed

amendment also includes a provision that all non-adaptable structures would be required to include a plan for decommissioning.

Since State Law prohibits counties from regulating wind farms and wind turbines in a municipality's ETJ, the proposed changes will generally not impact the City. Two exceptions to this are if a wind turbine or wind farm is located outside of Urbana's ETJ when it is approved and then subsequently becomes part of the ETJ and if a non-adaptable structure other than a wind turbine or wind tower is approved in Urbana's ETJ. According to the Champaign County Zoning Administrator, there are no non-adaptable structures other than wind turbines at this time. When asked for an example of what other type of structure could be considered a non-adaptable structure, the County Zoning Administrator stated that it would be possible that a structure similar to a grain silo could be considered a non-adaptable structure, but that this had not happened to date in Champaign County. Essentially, the proposed changes to Section 6.1.1.A *Site Reclamation Plan for NON-ADAPTABLE STRUCTURES* simply strengthens and adds to the existing requirements.

Due to the strengthening and clarification of the standard conditions for wind farms and wind turbines required by the proposed text amendment, support for alternative energy sources in the Comprehensive Plan, and the fact that municipalities may regulate wind farms and electric-generating wind devices within their ETJ, it appears that the proposed text amendment will not significantly impact the City of Urbana.

Summary of Staff Findings

1. Champaign County Zoning Case No. CCZBA 701-AT-11 would amend the Champaign County Zoning Ordinance regarding Wind Turbine and Non-Adaptable Structure Requirements.
2. The proposed zoning ordinance text amendment is generally consistent with the goals and objectives of the Urbana 2005 Comprehensive Plan.
3. The proposed zoning ordinance text amendment would not pose a significant detriment to the City of Urbana or to the extra-territorial jurisdiction of the City of Urbana.

Options

The Plan Commission has the following options for recommendations to the City Council regarding proposed text amendments in CCZBA Case No. 701-AT-11:

1. Recommend to defeat a resolution of protest; or
2. Recommend to defeat a resolution of protest contingent upon some specific revision(s) to the proposed text amendments; or
3. Recommend to adopt a resolution of protest.

Staff Recommendation

Based on the findings above, Staff recommends that the Plan Commission forward this case to the City Council with a recommendation to **DEFEAT a resolution of protest** for the proposed County Zoning Ordinance text amendment.

Attachments: Exhibit A: Memorandum to the Champaign County COW dated January 4, 2012
Exhibit B: Supplemental Memorandum dated March 29, 2012

cc: John Hall, Champaign County Zoning Administrator

To: Champaign County Board Committee of the Whole
From: John Hall, Director & Zoning Administrator
Date: January 4, 2012
RE: Zoning Ordinance requirements for wind farms

Request: Request approval to proceed with a public hearing for an amendment to the Zoning Ordinance requirements for wind farms .

This item was deferred from the December meeting.

BACKGROUND

The County Board approved the California Ridge Wind Farm (Case 696-S-11) in Resolution No. 7966 on November 17, 2011. Case 696-S-11 was the first use of the wind farm zoning requirements and several needed improvements were identified during the public hearing for that case.

Any change to the Zoning Ordinance requirements for wind farms must be adopted before the next wind farm application in order for the changes to apply to that application. It has been rumored that the next application for a wind farm special use permit may be received in February 2012.

If the Committee agrees with the proposed amendment and authorizes the zoning case to proceed, the public hearing will begin in February 2012 and the amendment could be returned to the Committee as early as March with adoption at the full Board meeting in April.

OVERVIEW OF PROPOSED AMENDMENT

Attachment A indicates the proposed changes which can be briefly summarized as follows:

- Proposed changes 1 – 5 are in response to waivers required for Case 696-S-11 and are intended to minimize the need for waivers for future wind farms.
- Proposed change 6 adds the Permanent Erosion and Sedimentation Control Plan as a requirement of the Ordinance. This was a special condition of approval for Case 696-S-11.
- Proposed changes 7 – 17 are proposed to improve the decommissioning requirements of the Ordinance based on the lessons learned in Case 696-S-11 as follows:

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- Changes 7 & 8 change the current requirement for a “reclamation agreement” in paragraphs 6.1.1A. and 6.1.4P. to simply a requirement for a “site reclamation plan”.
 - Changes 9- 17 revise the decommissioning and site reclamation plan requirement of paragraph 6.1.4 P. In particular, change 10 limits the amount of salvage value that may be used to offset decommissioning costs to no more than 70%.
 - Attachment B is the proposed paragraph 6.1.4P. with all of the proposed changes without underlining or strike out.
- Proposed changes 18- 25 revise the general site reclamation requirements of paragraph 6.1.1A. to make those requirements consistent with the changes in paragraph 6.1.4 P.
 - Proposed change 26 adds the requirement for road use agreement at the time of decommissioning to paragraph 6.1.4 F.

CHANGES FROM THE DECEMBER 6, 2011, MEMORANDUM

The Draft amendment attached to the December 1, 2011, memorandum was not complete. The State’s Attorney and I have continued to work on this amendment since December and the attached amendment is finally complete.

ATTACHMENT

- A Revised Draft example amendment**
- B Proposed Paragraph 6.1.4 P.**

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NOTE THAT ADDITIONS SINCE 12/6/11 ARE IN DOUBLE UNDERLINING AND DELETIONS SINCE 12/6/11 ARE IN DOUBLE STRIKE OUT

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

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

2. Revise paragraph 6.1.4 F.1. to read as follows:

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

3. ~~Revise Delete~~ paragraph 6.1.4 F.1. u. ~~to read~~ as follows:

- ~~u. The Applicant shall agree that the County shall design all STREET upgrades in accordance with the IDOT Bureau of Local Roads and Streets Manual, 2005 edition, unless the relevant highway authority finds that alternative requirements are necessary or sufficient to meet public safety needs.~~

4. Revise paragraph 6.1.4 J. to read as follows:

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

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

- (3) The separation of all WIND FARM structures from adjacent NON-PARTICIPATING DWELLINGS OR PRINCIPAL BUILDINGS or uses shall be dimensioned on the approved site plan and that dimension shall establish the effective minimum separation that shall be required for any Zoning Use Permit unless the Board authorizes a lesser separation in a special condition of approval that is also consistent with any required waivers of paragraph 6.1.4 C. ~~Greater separation and somewhat~~ Different locations for WIND FARM structures may be provided in the approved site plan for the Zoning Use Permit provided that the ~~greater separation does not increase the noise impacts~~ final locations of WIND FARM TOWERS comply with any ~~that were approved in the~~ authorized waivers or special conditions of approval of the WIND FARM County Board SPECIAL USE Permit. WIND FARM structures include WIND FARM TOWERS, substations, third party transmission lines, maintenance and management facilities, or other significant structures.

6. (NO CHANGE FROM 12/6/11) Add new paragraph 6.1.4 E.7. as follows:

7. Permanent Erosion and Sedimentation Control Plan

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

7. (NO CHANGE FROM 12/6/11) Revise paragraph 6.1.1A. to strike references to “reclamation agreement” and replace with “site reclamation plan”.

8. (NO CHANGE FROM 12/6/11) Revise paragraph 6.1.4P. to strike references to “reclamation agreement” and replace with “site reclamation plan”.

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95. Delete paragraphs 6.1.4P.3. (d), (e), and (f) and add new paragraphs 6.1.4P.3.(d) through (h) as follows:

- ~~(d) — A standard choice of law provision stating that the agreement is controlled by Illinois law.~~
- ~~(e) — A standard indemnification clause that indemnifies the county with respect to any and all liability arising out of the agreement.~~
- ~~(f) — A standard severability provision.~~
- ~~(g) — A guaranteed minimum amount of \$65,000 per turbine (net of any authorized salvage value) that shall be updated annually to reflect the known rate of inflation.~~
- (d) A stipulation that at such time as decommissioning takes place the applicant or its successors in interest are required to enter into a Roadway Use and Repair Agreement with the relevant highway authority.
- (e) A stipulation that the Applicant shall provide evidence of any new, additional, or substitute financing or security agreement to the Zoning Administrator throughout the operating lifetime of the project.
- (f) A stipulation that the Applicant shall be obliged to perform the work in the site reclamation plan before abandoning the WIND FARM or prior to ceasing production of electricity from the WIND FARM, after it has begun, other than in the ordinary course of business. This obligation shall be independent of the obligation to pay financial assurance, and shall not be limited by the amount of financial assurance. The obligation to perform the reclamation work shall constitute a covenant running with the land
- (g) The site reclamation plan shall provide for payment of any associated costs that Champaign County may incur in the event that decommissioning is actually required. Associated costs include all administrative and ancillary costs associated with drawing upon the financial assurance and performing the reclamation work and shall include but not be limited to attorney's fees; construction management and other professional service fees; and the costs of preparing request for proposals and bidding documents required to comply with state law or Champaign County purchasing policies.
- (h) — The Applicant shall adjust the amount of the reclamation agreement to ensure that the reclamation agreement reflects current and accurate information as follows:
 - (1) — The Applicant shall use an independent Illinois Licensed Professional Engineer to provide updated estimates of decommissioning costs and salvage value to reflect any changes due to inflation and or change in salvage price at least once every three years for the first 12 years of the Reclamation Agreement and at least once every two years thereafter.

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- ~~(2) At all times the combined value of the irrevocable letter of credit and escrow account shall equal or exceed the amount of the independent engineer's cost estimate as increased by known and documented rates of inflation since the WIND FARM was approved and an amount for any future years left in the anticipated lifetime of the WIND FARM at an assumed minimum rate of inflation of 3% per year.~~
- (h) The depth of removal of foundation concrete below ground shall be a minimum of 54 inches.
- (i) A stipulation that should the site reclamation plan be deemed invalid by a court of competent jurisdiction the WIND FARM SPECIAL USE Permit shall be deemed void.
- (j) A stipulation that the Applicant's obligation to complete the site reclamation plan and to pay all associated costs shall be independent of the Applicant's obligation to provide financial assurance.
- (k) A stipulation that the liability of the Applicant's failure to complete the site reclamation plan or any breach of the site reclamation plan requirement shall not be capped by the amount of the financial assurance.
- (h) If the Applicant desires to remove equipment or property credited to the estimated salvage value without the concurrent replacement of the property with property of equal or greater salvage value or if the Applicant installs equipment or property increasing the cost of decommissioning after the WIND FARM begins to produce electricity, at any point, the Applicant shall first obtain the consent of the Zoning Administrator. If the Applicant's lien holders remove equipment or property credited to the salvage value the Applicant shall promptly notify the Zoning Administrator. In either of these events the total financial assurance shall be adjusted to reflect any change in total salvage value and total decommissioning costs resulting from any such removal or installation.

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

4. The amount of the irrevocable letter of credit required in paragraph To comply with paragraph 6.1.1 A.5., the Applicant shall provide financial assurance in the form of an irrevocable letter of credit and an escrow account shall be as follows:
- (a) At the time of Special Use Permit approval the amount of financial assurance to be provided for the site reclamation plan the irrevocable letter of credit shall be 210% of the net decommissioning cost as determined in the of an independent engineer's cost estimate to complete the decommissioning work described in Sections 6.1.1 A. 4. a. and 6.1.1A.4.b. and 6.1.1A.4.c. or less if specifically authorized by the Board. The net decommissioning cost shall be the total costs of performing the

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~~decommissioning work minus a maximum credit for the salvage value of the project. The determination of net decommissioning cost shall limit the use of estimated salvage value as follows:~~

- ~~(1) Estimated salvage value shall be based on the average salvage price of the past five years as published in a reputable source for salvage values and shall reflect sound engineering judgement as to anticipated changes in salvage prices prior to the next update of estimated salvage value.~~
- ~~(2) No more than 60% 70% of the total estimated salvage value shall be used in determining the net decommissioning cost as estimated by an independent engineer even though the total actual salvage value shall be available in the event that decommissioning is actually required.~~
- ~~(3) The depth of removal of foundation concrete below ground shall be a minimum of 54 inches.~~
- ~~(4) The credit for salvage value attributable to any WIND FARM TOWER may not exceed the estimated cost of removal of the above ground portion of that WIND FARM TOWER on the subject site.~~

~~(b) If Salvage value is being credited to site reclamation costs may be deducted from decommissioning costs as follows:~~

~~(1) One of the following standards shall be met:~~

~~(1) The Applicant shall:~~

- ~~i. The Applicant shall maintain the WIND FARM TOWERS free and clear of liens and encumbrances, including financing liens and shall provide proof of the same prior to issuance of the SPECIAL USE Permit; or~~
- ~~ii. The developer Applicant shall deduct from the salvage value credit the amount of any liens or encumbrances on the each WIND FARM TOWERS, at any point at which the credit is to be calculated; or~~
- ~~iii. Any and all financing and/or financial security agreements entered into by the Applicant shall expressly provide that the agreements are subject to the covenant required by Section 6.1.1.A.2 that the reclamation work be done. Applicant shall provide evidence of this to the Zoning Administrator prior to Zoning Use Permit approval.~~

~~(2) The Applicant shall provide proof of compliance with paragraph 6.1.4 P.4.(b)(1) prior to issuance of any Zoning Use Permit and upon every renewal of the financial assurance and at any other time upon the request of the Zoning Administrator.~~

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- ~~(23)~~ The developer Applicant shall provide in the site reclamation plan for legal transfer of the STRUCTURE to the demolisher to pay the costs of reclamation work, should the reclamation work be performed.
- ~~(4)~~ Estimated salvage value shall be based on the average salvage price of the past five years as published in a reputable source for salvage values and shall reflect sound engineering judgement as to anticipated changes in salvage prices prior to the next update of estimated salvage value.
- ~~(5)~~ The deduction from the decommissioning costs for salvage value shall be capped at 70% of the total estimated salvage value even though the total actual salvage value shall be available in the event that decommissioning is actually required.
- ~~(6)~~ The credit for salvage value attributable to any WIND FARM TOWER may not exceed the estimated cost of removal of the above-ground portion of that WIND FARM TOWER on the subject site.
- (c) The GOVERNING BODY has the right to require multiple letters of credit based on the regulations governing federal insurance for deposits.

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

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

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

- ~~(5)~~ The Applicant shall adjust the amount of the financial assurance to ensure that it reflects current and accurate information as follows:
- ~~(1)~~ At least once every three years for the first 12 years of the financial assurance and at least once every two years thereafter the Applicant shall use an independent Illinois Licensed Professional Engineer to provide updated estimates of decommissioning costs and salvage value ~~and net decommissioning cost~~ by including any changes due to inflation and / or change in salvage price. The Applicant shall, upon receipt, provide a copy of the adjusted Professional Engineer's report to the Zoning Administrator.
- ~~(2)~~ At all times the total combined value of the irrevocable letter of credit and the escrow account shall be increased annually as necessary to reflect actual rates of inflation over the life span of the WIND FARM and the amount

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shall be equal to or exceed the following:

- ~~i.~~ the amount of the independent engineer's cost estimate as increased by known and documented rates of inflation since the WIND FARM was approved; ~~plus~~
- ~~ii.~~ and an amount for any future years left in the anticipated 25 year life span of the WIND FARM at an assumed minimum rate of inflation of 3% per year.

13. Add new paragraph 6.1.4 P.4. ~~(b)~~(6) (f) as follows:

(6f) Should the salvage value of components be adjusted downward or the decommissioning costs adjusted upward pursuant to paragraph 6.1.4 P. 4. (d), the amount to be placed in the escrow account pursuant to this paragraph 6.1.4P.4. shall be increased to reflect the adjustment, as if the adjusted estimate were the initial estimate.

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

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

1215. Add the following to paragraph 6.1.4P.5.:

- (c) There is a delay in the construction of any WIND FARM TOWER of more than 6 months after construction on that WIND FARM TOWER begins.
- (d) Any WIND FARM TURBINE appears in a state of disrepair or imminent collapse and/or creates an imminent threat to the health or safety of the public or any person.
- (e) Any WIND FARM TURBINE is otherwise derelict for a period of 6 months.
- (f) The WIND FARM is in violation of the terms of the WIND FARM SPECIAL USE permit for a period exceeding ninety (90) days.
- (g) The Applicant has failed to maintain financial assurance in the form and amount required by the special use permit or compromised the COUNTY's interest in the site reclamation plan.
- (h) The COUNTY discovers any material misstatement of fact or misleading omission of fact made by the Applicant in the course of the special use permit zoning case.

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1316. (NO CHANGE FROM 12/6/11) Add new paragraph 6.1.4P.6. as follows:

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

1417. (NO CHANGE FROM 12/6/11) Renumber existing paragraph 6.1.4P.6. and revise as follows:

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

1518. Revise existing paragraph 6.1.1A. to make consistent with the changes proposed in 9 through 14.

1619. Revise existing paragraph 6.1.1A. to replace references to 6.1.1C. with references to 6.1.1A.

20. Revise paragraphs 6.1.1 A. 1. through 5 to read as follows:

6.1.1 Standard Conditions that May Apply to Specific SPECIAL USES

A. Site Reclamation Plan for NON-ADAPTABLE STRUCTURES

1. In the course of BOARD review of a SPECIAL USE request, the BOARD may find that a proposed STRUCTURE is a NON-ADAPTABLE STRUCTURE. Any WIND FARM shall be a NON-ADAPTABLE STRUCTURE. In such a case the developer The Applicant for the SPECIAL USE request for a NON-ADAPTABLE STRUCTURE shall enter into a reclamation agreement submit a site reclamation plan with to the COUNTY BOARD for the subject site. The site reclamation plan shall be binding upon all successors of title to the land.
2. The site reclamation plan shall be binding upon all successors of title to the land. Prior to the issuance of a SPECIAL USE Permit for such NON-ADAPTABLE STRUCTURES, the landowner shall also record a covenant incorporating the provisions of the ~~reclamation agreement~~ site reclamation plan on the deed subject to the LOT, requiring that the reclamation work be performed and that a letter of credit be provided for financial assurance.
3. Separate cost estimates for Section 6.1.1A4a, ~~and 6.1.1A4b, and 6.1.1A4c~~

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shall be provided by an Illinois Licensed Professional Engineer.

- a. Cost estimates provided shall be subject to approval of the BOARD.
 - b. Except as provided in Section 6.1.4.P, the salvage value of the components of the NON-ADAPTABLE STRUCTURE shall not be credited to the cost estimates.
4. The ~~reclamation agreement~~ site reclamation plan shall provide for:
- a. removal of above-ground portion of any STRUCTURE on the subject site; site grading; and, interim soil erosion control;
 - b. below-ground restoration, including final grading and surface treatment;
 - c. any environmental remediation required by State or Federal law;
 - d. provision and maintenance of a letter of credit, as set forth in Section ~~6-1.1C.5~~ 6.1.1A.5.
5. No Zoning Use Permit for such SPECIAL USE will be issued until the developer provides the COUNTY with an irrevocable letter of credit to be drawn upon a federally insured financial institution within 200 miles of Urbana or reasonable anticipated travel costs shall be added to the amount of the letter of credit. The irrevocable letter of credit shall be in the amount of one hundred fifty percent (150%) of an independent engineer's cost estimate to complete the work described in Section 6.1.1A4.a., Section 6.1.1.A.4.b, and Section 6.1.1.A.4.c, except a different amount may be required as a standard condition in Section 6.1.4 P. This letter of credit, or a successor letter of credit pursuant to Section 6.1.1A6 or 6.1.1A12 shall remain in effect and shall be made available to the COUNTY for an indefinite term or for a different term that may be required as a standard condition in paragraph 6.1.4 P.

21. Add new subparagraph 6.1.1 A. 5. e. to read as follows:

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

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ADAPTABLE STRUCTURE relating to its use or denying the NON-ADAPTABLE STRUCTURE a permit necessary for its lawful operation.

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

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

23. Revise paragraph 6.1.1 A. 12. to read as follows:

- 12. Upon transfer of any property subject to a letter of credit pursuant to this Section, the new owner of record shall submit a new irrevocable letter of credit of same or greater value to the Zoning Administrator, prior to legal transfer of title, and shall sign submit a new reclamation agreement site reclamation plan, pursuant to Section 6.1.1C.A.4.a., and, for WIND FARMS, Section 6.1.4.P. Once the new owner of record has done so, the letter of credit posted by the previous owner shall be released, and the previous owner shall be released from any further obligations under the reclamation agreement site reclamation plan.

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

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

25. In Section 3 revise the definition of "non-adaptable structure" to read as follows:

NON-ADAPTABLE STRUCTURE: Any STRUCTURE or physical alteration to the land which requires a SPECIAL USE Permit, and which is likely to become economically unfeasible to remove or put to an alternate USE allowable in the DISTRICT (by right or by SPECIAL USE). This term shall include, but not be limited to, a WIND TURBINE TOWER and a WIND FARM TOWER.

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26. Add new subparagraph 6.1.4 F. 3. as follows:

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

~~**16. OPTIONAL Revise paragraph 6.1.4P, so that it is separate from paragraph 6.1.1A, and so that it contains all necessary requirements for WIND FARM decommissioning.**~~

Attachment B. Proposed Paragraph 6.1.4 P.

JANUARY 4, 2012

- P. Standard Condition for Decommissioning and Site Reclamation Plan
1. The Applicant shall submit a signed site reclamation plan conforming to the requirements of paragraph 6.1.1 A.
 2. In addition to the purposes listed in subparagraph 6.1.1 A. 4. the site reclamation plan shall also include provisions for anticipated repairs to any public STREET used for the purpose of reclamation of the WIND FARM and all costs related to removal of access driveways.
 3. The Site reclamation plan required in paragraph 6.1.1 A. shall also include the following:
 - (a) A stipulation that the applicant shall notify the GOVERNING BODY by certified mail of the commencement of a voluntary or involuntary bankruptcy proceeding, naming the applicant as debtor, within ten days of commencement of the proceeding.
 - (b) A stipulation that the Applicant shall agree that the sale, assignment in fact or at law, or such other transfer of Applicant's financial interest in the WIND FARM shall in no way affect or change Applicant's obligation to continue to comply with the terms of this Agreement. Any successor or assignee shall assume the terms, covenants and obligations of this Agreement and agrees to assume all reclamation liability and responsibility for the WIND FARM.
 - (c) Authorization for the GOVERNING BODY and its authorized representatives for right of entry onto the WIND FARM premises for the purpose of inspecting the methods of reclamation or for performing actual reclamation if necessary.
 - (d) A stipulation that at such time as decommissioning takes place the applicant or it's successors in interest are required to enter into a Roadway Use and Repair Agreement with the relevant highway authority.
 - (e) A stipulation that the Applicant shall provide evidence of any new, additional, or substitute financing or security agreement to the Zoning Administrator throughout the operating lifetime of the project.
 - (f) A stipulation that the Applicant shall be obliged to perform the work in the site reclamation plan before abandoning the WIND FARM or prior to ceasing production of electricity from the WIND FARM, after it has begun, other than in the ordinary course of business. This obligation shall be independent of the obligation to

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pay financial assurance, and shall not be limited by the amount of financial assurance. The obligation to perform the reclamation work shall constitute a covenant running with the land

- (g) The site reclamation plan shall provide for payment of any associated costs that Champaign County may incur in the event that decommissioning is actually required. Associated costs include all administrative and ancillary costs associated with drawing upon the financial assurance and performing the reclamation work and shall include but not be limited to attorney's fees; construction management and other professional service fees; and the costs of preparing request for proposals and bidding documents required to comply with state law or Champaign County purchasing policies.
- (h) The depth of removal of foundation concrete below ground shall be a minimum of 54 inches.
- (i) A stipulation that should the site reclamation plan be deemed invalid by a court of competent jurisdiction the WIND FARM SPECIAL USE Permit shall be deemed void.
- (j) A stipulation that the Applicant's obligation to complete the site reclamation plan and to pay all associated costs shall be independent of the Applicant's obligation to provide financial assurance.
- (k) A stipulation that the liability of the Applicant's failure to complete the site reclamation plan or any breach of the site reclamation plan requirement shall not be capped by the amount of the financial assurance.
- (l) If the Applicant desires to remove equipment or property credited to the estimated salvage value without the concurrent replacement of the property with property of equal or greater salvage value or if the Applicant installs equipment or property increasing the cost of decommissioning after the WIND FARM begins to produce electricity, at any point, the Applicant shall first obtain the consent of the Zoning Administrator. If the Applicant's lien holders remove equipment or property credited to the salvage value the Applicant shall promptly notify the Zoning Administrator. In either of these events the total financial assurance shall be adjusted to reflect any change in total salvage value and total decommissioning costs resulting from any such removal or installation.

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4. To comply with paragraph 6.1.1 A.5., the Applicant shall provide financial assurance in the form of an irrevocable letter of credit and an escrow account as follows:
 - (a) At the time of Special Use Permit approval the amount of financial assurance to be provided for the site reclamation plan shall be 210% of the decommissioning cost as determined in the independent engineer's cost estimate to complete the decommissioning work described in Sections 6.1.1 A. 4. a. and 6.1.1A.4.b. and 6.1.1A.4.c.
 - (b) Salvage value may be deducted from decommissioning costs as follows:
 - (1) One of the following standards shall be met:
 - i.* The Applicant shall maintain the WIND FARM TOWERS free and clear of liens and encumbrances, including financing liens and shall provide proof of the same prior to issuance of the SPECIAL USE Permit; or
 - ii.* The Applicant shall deduct from the salvage value credit the amount of any lien or encumbrance on each WIND FARM TOWER; or
 - iii.* Any and all financing and/or financial security agreements entered into by the Applicant shall expressly provide that the agreements are subject to the covenant required by Section 6.1.1.A.2 that the reclamation work be done.
 - (2) The Applicant shall provide proof of compliance with paragraph 6.1.4 P.4.(b)(1) prior to issuance of any Zoning Use Permit and upon every renewal of the financial assurance and at any other time upon the request of the Zoning Administrator.
 - (3) The Applicant shall provide in the site reclamation plan for legal transfer of the STRUCTURE to the demolisher to pay the costs of reclamation work, should the reclamation work be performed.
 - (4) Estimated salvage value shall be based on the average salvage price of the past five years as published in a reputable source for salvage values and shall reflect sound

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engineering judgement as to anticipated changes in salvage prices prior to the next update of estimated salvage value.

- (5) The deduction from the decommissioning costs for salvage value shall be capped at 70% of the total estimated salvage value even though the total actual salvage value shall be available in the event that decommissioning is actually required.
 - (6) The credit for salvage value attributable to any WIND FARM TOWER may not exceed the estimated cost of removal of the above-ground portion of that WIND FARM TOWER on the subject site.
- (c) The GOVERNING BODY has the right to require multiple letters of credit based on the regulations governing federal insurance for deposits.
- (d) The Applicant shall adjust the amount of the financial assurance to ensure that it reflects current and accurate information as follows:
- (1) At least once every three years for the first 12 years of the financial assurance and at least once every two years thereafter the Applicant shall use an independent Illinois Licensed Professional Engineer to provide updated estimates of decommissioning costs and salvage value by including any changes due to inflation and / or change in salvage price. The Applicant shall, upon receipt, provide a copy of the adjusted Professional Engineer's report to the Zoning Administrator.
 - (2) At all times the total combined value of the irrevocable letter of credit and the escrow account shall equal or exceed the amount of the independent engineer's cost estimate as increased by known and documented rates of inflation since the WIND FARM was approved and an amount for any future years left in the anticipated 25 year life span of the WIND FARM at an assumed minimum rate of inflation of 3% per year.
- (e) The applicant or WIND FARM owner shall gradually pay down the value of the irrevocable letter of credit by placing cash deposits in an escrow account in equal annual installments over the first 13 years of the WIND FARM operation as follows:

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JANUARY 4, 2012

- (1) The applicant or WIND FARM owner and the GOVERNING BODY shall agree on a mutually acceptable financial institution at which an escrow account shall be established.
- (2) The GOVERNING BODY shall be the beneficiary of the escrow account for the purpose of the reclamation of the WIND FARM in the event that the WIND FARM owner is incapable of decommissioning the WIND FARM.
- (3) The applicant or WIND FARM owner shall grant perfected security in the escrow account by use of a control agreement establishing the County as an owner of record, pursuant to the Secured Transactions Article of the Uniform Commercial Code, 810 ILCS 9/101 et seq.
- (4) The applicant or WIND FARM owner shall make annual deposits to the escrow account over a 12 year period and shall simultaneously provide a replacement irrevocable letter of credit that is reduced accordingly.
- (5) At all times the total combined value of the irrevocable letter of credit and the escrow account shall be increased annually as necessary to reflect actual rates of inflation over the life span of the WIND FARM and the amount shall be equal to or exceed the following:
 - i. the amount of the independent engineer's cost estimate as increased by known and documented rates of inflation since the WIND FARM was approved; plus
 - ii. an amount for any future years left in the anticipated life span of the WIND FARM at an assumed minimum rate of inflation of 3% per year.
- (6) Any interest accrued on the escrow account that is over and above the total value required by subparagraph 6.1.4 P. 3. (b) (4) shall go to the WIND FARM owner.
- (7) In order to provide funding for decommissioning at the time of decommissioning, the WIND FARM applicant or WIND FARM owner may exchange a new irrevocable letter of credit in an amount equal to the amount in the escrow account in exchange for the GOVERNING BODY agreeing to a release of the full amount of the escrow account.

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- (f) Should the salvage value of components be adjusted downward or the decommissioning costs adjusted upward pursuant to paragraph 6.1.4 P. 4. (d), the amount to be placed in the escrow account pursuant to this paragraph 6.1.4P.4. shall be increased to reflect the adjustment, as if the adjusted estimate were the initial estimate.
5. In addition to the conditions listed in subparagraph 6.1.1 A. 9. the Zoning Administrator may also draw on the funds for the following reasons:
- (a) In the event that any WIND FARM TOWER or component thereof ceases to be functional for more than six consecutive months after it starts producing electricity and the Owner is not diligently repairing such WIND FARM TOWER or component.
 - (b) In the event that the Owner declares any wind turbine or other component to be functionally obsolete for tax purposes.
 - (c) There is a delay in the construction of any WIND FARM TOWER of more than 6 months after construction on that WIND FARM TOWER begins.
 - (d) Any WIND FARM TURBINE appears in a state of disrepair or imminent collapse and/or creates an imminent threat to the health or safety of the public or any person.
 - (e) Any WIND FARM TURBINE is otherwise derelict for a period of 6 months.
 - (f) The WIND FARM is in violation of the terms of the WIND FARM SPECIAL USE permit for a period exceeding ninety (90) days.
 - (g) The Applicant has failed to maintain financial assurance in the form and amount required by the special use permit or compromised the COUNTY's interest in the site reclamation plan.
 - (h) The COUNTY discovers any material misstatement of fact or misleading omission of fact made by the Applicant in the course of the special use permit zoning case.
6. The Zoning Administrator may, but is not required to, deem the WIND FARM abandoned, or the standards set forth in Section 6.1.4.P.5 met, with respect to some, but not all, of the WIND FARM TURBINES in the WIND FARM. In that event, the Zoning Administrator may draw upon the financial assurance to perform the reclamation work as to those WIND FARM TURBINES only. Upon completion of that reclamation work, the

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salvage value and reclamation costs shall be recalculated as to the remaining WIND FARM TURBINES in the WIND FARM.

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

CASE NO. 701-AT-11

SUPPLEMENTAL MEMORANDUM

MARCH 29, 2012

Champaign
County
Department of

PLANNING &
ZONING

Petitioner: **Zoning Administrator**

Prepared by: **John Hall, Zoning Administrator**
Andy Kass, Associate Planner

Request: Amend the Champaign County Zoning Ordinance as follows:

Part A. Revise paragraph 6.1.4 D.1. to require that documentation of design compliance with applicable industry standards be submitted prior to receiving a Zoning Compliance Certificate for either a WIND FARM or for any single WIND FARM TOWER.

Part B. Revise paragraph 6.1.4 F. as follows:

1. Revise subparagraph 6.1.4F.1. to require that agreements between the Applicant and the County Engineer shall not be forwarded to the County Board before the special use permit is forwarded and that all other agreements shall be executed prior to the close of the public hearing before the BOARD.
2. Delete subparagraph 6.1.4 F.1. u.
3. Add new subparagraph 6.1.4 F. 3. to require at the time of decommissioning a Roadway Use and repair Agreement with the appropriate highway authority.

Part C. Revise paragraph 6.1.4 J. to require the Applicant to submit a copy of the Agency Action Report or the Detailed Action Report, if applicable that is submitted to the Endangered Species Program of the IDNR as well as the response from IDNR.

Part D. Add new subparagraph 6.1.4 E.7. to require that a permanent soil erosion and sedimentation plan be submitted for all WIND FARM TOWER sites and access roads.

Part E. Revise subparagraph 6.1.4 S.1.(c)(3) to authorize flexibility in the locations of WIND TOWERS from what is indicated on the site plan provided that the final locations comply with any required waivers or special conditions of approval and the applicant conducts a noise study to verify compliance with the maximum allowable noise limit if the location of WIND TOWERS differ on the site plan submitted with the zoning use permit application from the site plan submitted with the special use permit application.

Part F. Strike the requirement for "reclamation agreement" for NON-ADAPTABLE STRUCTURES and WIND FARMS and replace with a requirement of "site reclamation plan" and add certain other related requirements as follows:

1. In Section 3 revise the definition of "NON-ADAPTABLE STRUCTURE" to include a WIND TURBINE TOWER and a WIND FARM TOWER as currently defined in Section 3.
2. Make the following revisions to paragraph 6.1.1A.:
 - a. Strike references to "reclamation agreement" and replace with "site reclamation plan"
 - b. Revise subparagraphs 6.1.1 A. 1. through 5 as follows:
 - (1) Require a site reclamation plan for NON-ADAPTABLE STRUCTURES.
 - (2) Require the site reclamation plan to be binding upon all successors of title to the land and require reclamation work be performed and that a letter of credit be provided for financial assurance.
 - (3) Limit consideration of salvage value to be as limited by paragraph 6.1.4P.
 - c. Revise subparagraph 6.1.1A.6. to strike "120 days" and replace with "180 days" and insert "or applicant" after "landowner".
 - d. Revise paragraph 6.1.1A. to add other related requirements.
3. Revise paragraph 6.1.4P. as follows:

Brookens
Administrative Center
1776 E. Washington Street
Urbana, Illinois 61802

(217) 384-3708

- a. **Revise paragraph 6.1.4P. to strike references to “reclamation agreement” and replace with “site reclamation plan”.**
- b. **Delete subparagraphs 6.1.4P.3. (d), (e), and (f) and add new subparagraphs to require the following:**
 - (1) **At the time of decommissioning a Roadway Use and Repair Agreement.**
 - (2) **The depth of removal of foundation concrete below ground shall be a minimum of 54 inches and require that replacement soil shall meet specified minimum standards of soil quality; depth; compaction; and drainage.**
- c. **Revise subparagraph 6.1.4 P.4. (a) to require an irrevocable letter of credit and an escrow account as financial assurance to be provided for the site reclamation plan.**
- d. **Insert new subparagraph 6.1.4 P.4.(b) to require the following:**
 - (1) **Authorize salvage value to be deducted from decommissioning costs, subject to meeting specified standards.**
 - (2) **Add requirements for determining estimated net salvage value based on the average salvage price of the past five years and including any deconstruction costs.**
 - (3) **Add a limit of 70% for the amount of estimated salvage value that may be deducted from estimated decommissioning costs.**
 - (4) **Require the site reclamation plan to provide for legal transfer of the STRUCTURE to the demolisher should the reclamation work be performed.**
 - (5) **Limit the maximum allowable credit for the salvage value of any WIND FARM TOWER to no more than the estimated decommissioning cost of removal of the above ground portions of that WIND FARM TOWER.**
- e. **Renumber existing subparagraph 6.1.4 P.4. (b)(5) to become new subparagraph 6.1.4 P.4. (d) and revise to require regular adjustment to the amount of financial assurance to ensure that it reflects current information by requiring an Illinois Professional Engineer to provide an updated report of estimates of decommissioning costs and salvage values.**
- f. **Revise paragraph 6.1.4P. to add other related requirements.**

*** NOTE: The description of the Request has been simplified from the legal advertisement.**

STATUS

This case was continued from the February 16, 2012, ZBA hearing. “Part E” of the proposed amendment has been revised since the March 23, 2012, supplemental memorandum and is included below. Additional evidence is proposed to be added to the Finding of Fact.

“PART E” REVISIONS

Part E. Revise paragraph 6.1.4S.1.(c)(3) to read as follows (double strike out and double underlining are new changes):

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

PROPOSED NEW EVIDENCE AND REVISIONS

Re-letter items 17. 1., 2., and 3. to 17. A., B., and C. and add new item 17. D as follows:

- D. Regarding the requirement of Part F.3.e. that the amount of financial assurance must be adjusted every year after year 13:
 - (1) It is unlikely that the financial assurance will need adjusted every year.
 - (2) It is possible that turbulent economic conditions could arise that might require annual updates.
 - (3) Even if the update were only required more often than once every two years “as needed” some amount of review would be necessary every year in order to determine if the financial assurance would need updating.
 - (4) Therefore it is reasonable to simply to require an annual update every year after year 13.