

CHAPTER 12
ADDITIONAL REGULATIONS FOR SPECIFIC USES

Section 12.01 Regulations for *Controlled uses*.

(A) Intent.

Controlled uses are hereby recognized as having objectionable secondary impacts. A concentration of *controlled uses* in a particular area can increase the impact of those objectionable secondary impacts to the point where a deleterious impact is created on area properties. In order to prevent the concentration of *controlled uses* and to prevent such deleterious impacts from leading to the development of blighted areas, any *controlled use*, in addition to the permitted *use* and development standard regulations specified in any primary zoning *district*, shall also be subject to the additional regulations of this Chapter.

(B) Recognized *Controlled uses*.

- (1) *Adult Business*.
- (2) Casinos and all other areas where gambling games are conducted;
- (3) Establishments for the sale of beer or intoxicating beverages for consumption on the premises, excluding restaurants at which the serving of such beverages is incidental to the serving of food as the principal activity;
- (4) Off-track, pari-mutual wagering facilities.

(C) Districts Permitted.

Controlled uses are permitted only as a *special exception use* in the C Commercial and I Industrial Districts. See Section 4.06 TABLE of Official Uses.

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(D) Definitions for Adult Businesses.

The following terms related to adult businesses shall be defined as set forth below. All other terms shall have the meanings set forth in Chapter 19 Definitions, of this ordinance.

- (1) **“ADULT BUSINESS”** means an *adult bookstore, adult motion picture theater, adult mini motion picture theater, adult motion picture arcade, adult cabaret (a.k.a. Class B cabaret), adult drive-in theater, adult live entertainment arcade, adult massage parlor, adult motel, or adult service establishment.*
- (2) **“ADULT BOOKSTORE”** means an establishment having as a preponderance of its stock-in-trade or its dollar volume in trade, books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.
- (3) **“ADULT BUSINESS, ENLARGEMENT OF”** means an increase in the size of the building, structure, or premises in which the adult business is conducted by either construction or use of:
 - (a) An adjacent building;
 - (b) An additional building; or
 - (c) The construction or use of any portion of an adjacent building or additional building, whether located on the same or an adjacent lot or parcel of land.
- (4) **“ADULT BUSINESS, ESTABLISHING”** means any of the following:
 - (a) The opening or commencement of an adult business as a new business;
 - (b) The conversion of an existing business, whether or not an adult business, to any of the adult businesses defined herein;
 - (c) The addition of any of the features of 1 or more of the adult businesses defined herein to an existing business;
 - (d) The addition of any of the adult businesses defined herein to any other existing adult business; or
 - (e) The relocation of any adult business.

- (5) “**ADULT BUSINESS, RECONSTRUCTION OF**” means the rebuilding or restoration of any nonconforming adult business use which was damaged or partially destroyed by an exercise of the power of eminent domain, or by fire, flood, wind, explosion, or other calamity, or act of God if the damage or destruction exceeds 50% of the fair market value of the building, structure, or the facilities affected.
- (6) “**ADULT BUSINESS, RESUMPTION**” means the reuse or reoccupation of a nonconforming adult business use which has been discontinued for a period of 6 or more consecutive months.
- (7) “**ADULT BUSINESS, STRUCTURAL ALTERATION OF**” means any change which would prolong the life of the supporting members of a building or structure such as bearing walls, columns, beams or girders, except such changes as are ordered made pursuant to the provisions of the Unsafe Building Law, I.C. 36-7-9-1, and any amendments thereto.
- (8) “**ADULT CABARET** (a.k.a. **CLASS B CABARET**)” means any cabaret, nightclub, bar, tavern, restaurant or similar establishment, not including a 21 and over cabaret, a family cabaret, family restaurant, or family restaurant with lounge, which features:
 - (a) Persons who appear in a state of semi-nudity;
 - (b) Live performances by topless or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers where the performances are distinguished or characterized by the exposure of specified anatomical areas or by emphasis on specified sexual activities;
 - (c) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons; or
 - (d) Persons who engage in lewd, lascivious, or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.
- (9) “**ADULT DRIVE-IN THEATER**” means an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats in which a preponderance of the total presentation time is devoted to the showing of materials distinguished or characterized by an emphasis on matter depicting, describing, or

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- relating to specified sexual activities or specified anatomical areas for observation by patrons.
- (10) ***“ADULT LIVE ENTERTAINMENT ARCADE”*** means any building or structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee to view from an enclosed or screened area or booth a series of live dance routines, strip performances, or other gyrational choreography which performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas.
- (11) ***“ADULT MINI MOTION PICTURE THEATER”*** means an enclosed building with a capacity of more than 5 but less than 50 persons, used for presenting films, motion pictures, video cassettes, slides, or similar photographic reproductions in which a preponderance of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.
- (12) ***“ADULT MOTEL”*** means a hotel, motel, or similar establishment offering public accommodations for any form of consideration which provides patrons, upon request, with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
- (13) ***“ADULT MOTION PICTURE ARCADE”*** means any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-reducing devices are maintained to show images to 5 or fewer persons per machine at one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.
- (14) ***“ADULT MOTION PICTURE THEATER”*** means an enclosed building with a capacity of 50 or more persons used for presenting films, motion pictures, video cassettes, slide or similar photographic reproductions in which a preponderance of the total presentation time is devoted to showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.
- (15) ***“ADULT SERVICE ESTABLISHMENT”*** means any building, structure, premises, or other facility, or any part thereof, under common ownership or control which

- provides a preponderance of services involving specified sexual activities or display of specified anatomical areas.
- (16) ***“ADULT USE, NONCONFORMING”*** means any building, structure, or land legally established as an adult business prior to the effective date of this chapter, but which would be prohibited, regulated, or restricted under the provisions of this chapter.
- (17) ***“SERVICES INVOLVING SPECIFIED SEXUAL ACTIVITIES OR DISPLAY OF SPECIFIED ANATOMICAL AREAS”*** means (as used to define an adult service establishment). Any combination of 2 or more of the following activities:
- (a) The sale or display of books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas;
 - (b) The presentation of films, motion pictures, video cassettes, slides, or similar photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons;
 - (c) The operation of coin- or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors or other image producing devices to show images to 5 or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas; or
 - (d) Live performances by topless or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers, where the performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas.
- (18) ***“SPECIFIED ANATOMICAL AREAS”*** means any of the following:
- (a) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolae; or
 - (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

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(19) “*SPECIFIED SEXUAL ACTIVITIES*” means any of the following:

- (a) Human genitals in a state of sexual stimulation or arousal;
- (b) Acts of human masturbation, sexual intercourse, or sodomy;
- (c) Fondling or other erotic touching of human genitals, pubic regions, buttocks, or female breasts;
- (d) Flagellation or torture in the context of a sexual relationship;
- (e) Masochism, erotic or sexually oriented torture, beating, or the infliction of pain;
- (f) Erotic touching, fondling, or other such contact with an animal by a human being; or
- (g) Human excretion, urination, menstruation, vaginal, or anal irrigation as part of or in connection with any of the activities set forth in divisions (1) through (6) of this definition.

(E) Spacing and Distance Regulations.

(1) Measurement of Distance for *Controlled uses*:

- (a) All measurements shall be from the lot lines of the lot or out lot occupied by the *controlled use*;
- (b) All distance measurements shall be measured in a straight line, without regard to intervening *buildings, structures* or objects.

(2) Spacing Between *Controlled Uses*. No building or lot may be used, and no building may be erected, moved, structurally altered or enlarged within one-thousand (1,000) feet of any two (2) *controlled uses*.

(3) Spacing Between an *Adult Business* and Other Uses and Districts. No building or lot may be used, and no building may be erected, moved, structurally altered or enlarged within five-hundred (500) feet of any:

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- (a) District within the City of Mishawaka, St. Joseph County or Elkhart County which allows any residential use as a *primary use*;
- (b) A lot being *legally established* for a *dwelling use*, *religious use*, school use or park use;
- (c) Any *use* established for the care of children, ages birth to 18; or
- (d) Any of the following districts:
 - 1. In the Town of Osceola:
 - R1 Single Family District
 - R2 Multi Family District
 - OB Office Buffer District
 - PUD Planned Unit Development District (that does not specifically include *adult businesses as permitted uses*)
 - 2. In St. Joseph County:
 - A: Agricultural District
 - R: Single Family District
 - R-2: Residential District
 - O/B: Office / Buffer District
 - O: Office District
 - B: Business District
 - C: Commercial District
 - PUD Planned Unit Development (that does not specifically include adult businesses as permitted uses)
 - 3. In the City of Mishawaka:
 - R-1 Single Family
 - R-2 Single and Multifamily
 - R-3 Preference for Multifamily
 - R-4 Mobile Home Park
 - C-2 Shopping Center
 - PUD Planned Unit Development
 - 4. In Elkhart County:
 - Any residential or agricultural district

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(F) Continuation of Nonconforming *Controlled Use*. This sub-Section 12.02 is subject to the provisions of Chapter 3 *Nonconforming Lots, Uses, Buildings, Structures or Signs*, provided, however, a *controlled use* may be structurally altered for the purposes of constructing, enlarging or refurbishing kitchen, food service, restroom or indoor storage areas, if such structural alterations are performed within the existing *building*, and the seating capacity or patron service area is not increased.

(G) Exterior Display for *Adult Businesses*.

Notwithstanding any other provisions of this Ordinance to the contrary, no *adult business* shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decorations, *sign*, show window or other opening from any public *right-of-way*.

Section 12.02 Standards for Manufactured Home Dwellings.

(A) Construction. All manufactured home dwellings shall comply with the following requirements:

- (1) Compliance with Federal Standards. Each module of a manufactured dwelling home must bear a label certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standards Law of 1974 (42 U.S.C. 5401 et seq.);
- (2) Date of Construction. Each manufactured home dwelling shall have been constructed after January 1, 1981;
- (3) Main Floor Area. Each manufactured home dwelling shall have at least nine-hundred and fifty (950) square feet of main floor area (exclusive of garages, carports and open porches); and,
- (4) Multiple Sections. Each manufactured home dwelling shall be composed of more than one (1) section.

(B) Installation Standards. All manufactured home dwellings shall be installed in compliance with the following requirements:

- (1) Permanent Perimeter Enclosure Required. Each manufactured home dwelling shall be set into an excavated area with crawl space walls or basement walls constructed in accordance with the terms of the Indiana One and Two Family Dwelling Code. The space between the floor joists of the manufactured home dwelling and the excavated

- under-floor grade shall be completely enclosed with a permanent perimeter enclosure, except for required openings; and,
- (2) **Support System.** All load-bearing foundations for a manufactured home dwelling shall be installed in conformance with the regulations of the Indiana One and Two Family Dwelling Code and with the manufacturer's installation specifications.
- (C) **Siding Standards.** The siding materials used on all manufactured home dwellings shall be limited to the following:
- (1) Residential horizontal aluminum lap siding;
 - (2) Residential horizontal vinyl lap siding;
 - (3) Wood-grain, weather resistant, pressboard siding;
 - (4) Stucco siding;
 - (5) Brick siding; or,
 - (6) Stone siding.
- (D) **Roofing Standards.** The roofing materials used on all manufactured home dwellings shall be limited to the following:
- (1) Asbestos shingles on a roof pitched according to the design specifications of the shingles;
 - (2) Fiberglass shingles on a roof pitched according to the design specifications of the shingles;
 - (3) Shake shingles on a roof pitched according to the design specifications of the shingles;
 - (4) Asphalt shingles on a roof pitched according to the design specifications of the shingles;
 - (5) Slate; or,
 - (6) Tile.

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Section 12.03 Regulations for Wireless Telecommunications Facilities.

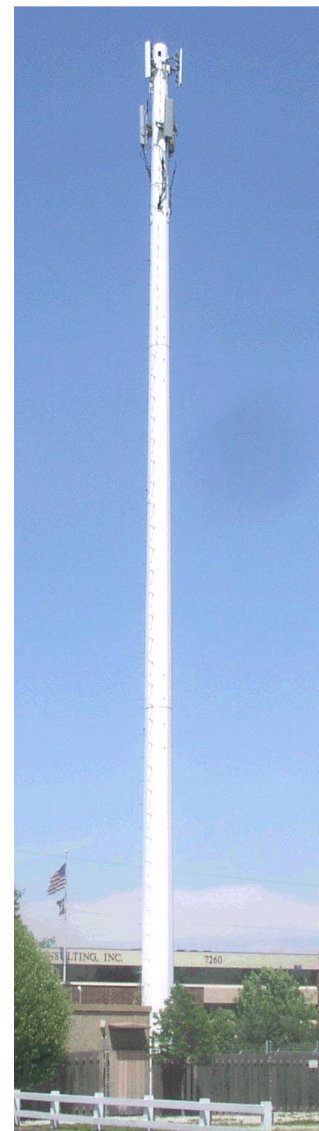
(A) Intent.

This Section 12.03 creates the framework for the siting of *wireless telecommunications facilities* in a manner which protects the public health, safety and general welfare of the community; provides comprehensive service to the community; protects the community from visual clutter; is compatible with existing and future land use; and preserves significant view corridors.

(B) Policy.

The following policy statements are set forth to provide guidance to wireless communications facility providers in the placement of *wireless telecommunication facilities* within the *Town*. It is hereby declared that the Town of Osceola Telecommunications Policies for the corporate limits of the *Town* shall be to:

- (1) Facilitate the comprehensive provision of wireless telecommunication services to the residents and businesses of the *Town*;
- (2) Maximize the use of existing and approved telecommunication towers, *buildings*, and *structures* to accommodate new wireless *telecommunication antennas* in order to minimize the number of telecommunication towers needed to comprehensively serve the community;
- (3) Minimize the number, height, obtrusiveness, and the visual impacts of telecommunications towers, associated equipment, and *buildings*;
- (4) Encourage *wireless telecommunication facilities* to be located in areas which are least disruptive to residential, park, *open space*, and *greenway* uses and to be as unobtrusive and invisible as reasonably possible;
- (5) Ensure that the height of telecommunications towers has the least visual impact and is no greater than required to achieve service area requirements and potential co-location;

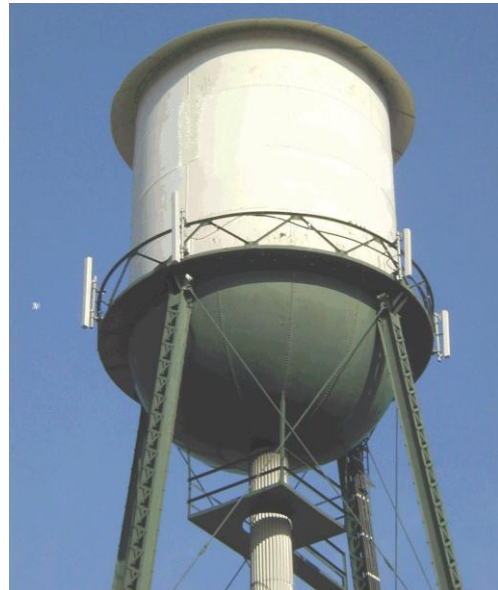


Tapering Monopole
with Co-Location
Using Slick Antenna

- (6) Site telecommunications towers to minimize locations which are visually solitary or prominent when viewed from residential areas or any *public way*;
 - (7) Site telecommunications towers at locations which are obscured by vegetation, tree cover, topographic features, *buildings* or other *structures* to the maximum extent feasible;
 - (8) Protect views of and vistas from architecturally or historically significant *structures* and historically significant landscapes so that these architectural or historical resources are not impaired or diminished by the placement of telecommunications towers; and
 - (9) Avoid potential damage to adjacent properties from telecommunication towers failure through structural design standards and *setback* requirements.
- (C) **Applicability.** Notwithstanding any other provision of this Ordinance to the contrary, *wireless telecommunications facilities*, when such are permitted by and in compliance with federal law and the laws of the State of Indiana (including but not limited to non-interference with public safety telecommunications), shall be regulated and governed by the regulations and requirements of this Chapter.
- (D) **Amateur Radio Exemption.** This Chapter shall not apply to nor be construed to apply to Amateur Radio Operators who are licensed to operate a radio or transmitter by the Federal Communications Commission under Part 97 of the Federal Communications Commission's Rules.
- (E) **Compliance with Other Laws.** A telecommunications tower shall be erected and operated in compliance with the most current Federal Communication Commission and Federal Aviation Administration rules and regulations and other applicable federal and state standards. All telecommunications towers shall comply with all ordinances of the *Town* not in conflict with this Chapter.
- (F) **Siting Hierarchy of Wireless Telecommunications Facilities.** Development of *wireless telecommunications facilities* shall be in accordance with the following siting alternatives hierarchy. The order of ranking, from highest to lowest, shall be from sub-Section (F)(1), to sub-Section (F)(2), to sub-Section (F)(3), outlined below. Where a lower ranked alternative is proposed, the applicant must demonstrate by substantial evidence that higher ranked options are not technically feasible or available.
- (1) **Co-location.** The co-location of *antenna* on existing telecommunication towers and associated equipment or *buildings* shall comply with the following regulations:

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- (a) The co-location or placement of new telecommunications *antennas* upon existing telecommunications towers are hereby declared as permitted uses in all districts and may be issued an *improvement location permit* provided all development standards outlined in Section 12.03 (H) Telecommunications *Antennas Mounted on Existing Buildings or Structures* below, are met.
 - (b) Associated equipment or *buildings*, when located within an existing compound area that is in compliance with this Ordinance, may be issued an *improvement location permit* provided all development standards outlined in Section 12.03 (I) Associated Equipment or *Buildings* and Compound Area Requirements below, are met.
- (2) Existing *Structure* or *Building* Utilization. The utilization of existing *structures* and *buildings* for placement of *antenna* and associated equipment or *buildings*, including surface-mounted and roof-mounted applications of *telecommunication antennas* on existing *buildings* and structure-mounted applications of *telecommunication antennas* on water towers, electric-line transmission towers, or other existing *structures*, shall comply with the following regulations:



Antenna on an Existing
Structure

- (a) The placement of new telecommunications *antennas* upon existing *structures* and *buildings* are hereby declared as permitted uses in all districts and may be issued an *improvement location permit* provided all development standards outlined in Section 12.03 (H) Telecommunications *Antennas Mounted on Existing Buildings or Structures*, below, are met;
- (b) Associated equipment or *buildings*, when located within an existing *building* or compound area that is in compliance with this Ordinance, may be issued an *improvement location permit* provided all development standards outlined in Section 12.03 (I) Associated Equipment or *Buildings* and Compound Area Requirements below, are met.

- (3) New Telecommunications Tower Locations. New telecommunications towers and associated equipment or *buildings* shall comply with the following regulations:
- (a) Where Permitted. *Wireless telecommunications facilities* requiring the construction of a telecommunications tower, *building*, or *structure* are hereby declared as *special exception uses* in all *districts* and requiring the approval of a *special exception use* prior to the issuance of an *improvement location permit*, provided, however, no new telecommunications tower shall be located within five-hundred (500) feet of a residential *district* or *use* unless the applicant can demonstrate through the materials required by sub-Section 12.03 (F) (3) (d), below, that there are no other locations, *buildings* or *structures* beyond five-hundred (500) feet of a residential *district* or *use* which are available and which can provide the necessary wireless telecommunications services to the residents and businesses of the *Town*;
 - (b) Alternatives Exhausted. The applicant for a *wireless telecommunications facility special exception use* shall demonstrate that they have exhausted all efforts to locate the proposed telecommunications *antennas* upon existing telecommunications towers, *buildings* or *structures* in the geographical area of the proposed telecommunications *antennas*. In the event that a wireless communications provider claims that efforts to locate the proposed telecommunications *antennas* upon existing telecommunications towers, *buildings* or *structures* failed because of the demanded lease amount of the owner of an existing telecommunications tower, such dispute over fair market value shall be settled as set forth in sub-Section 12.03 (F) (3) (c), below.
 - (c) Fair Market Value. In the event of dispute between wireless telecommunications providers regarding the fair market value of rental for a co-location on an existing telecommunications tower which is subject to a requirement to provide co-location at a reasonable and non-discriminatory basis and at a cost not materially exceeding fair market value, the applicant, at the applicant's cost, shall select an independent appraiser to determine fair market value of such rental. In the event of a dispute over the appraisal results, the wireless telecommunication providers shall employ a new appraiser subject to the approval of the *Zoning Administrator*. The new appraisal shall be performed at the expense of the wireless telecommunication providers involved in the dispute. The expense of the new appraisal shall be equally shared between the wireless telecommunication providers and the results shall be conclusive.
 - (d) Additional Special Exception Use Filing Requirements. In addition to the requirements specified in Section 15.03 (I) Special Exception Uses of this Ordinance and any applicable Rules of Procedure, all applications for a *special*

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exception use for a new telecommunications tower location shall include the following:

1. A service plan for the *Town*. The service plan shall demonstrate efforts to minimize the size and number of telecommunications tower locations throughout the geographical area, taking into consideration existing technology. The service plan shall include, but not be limited to the following information:
 - a. A narrative detailing:
 - i. the reason of need (coverage, capacity, new users, etc.) for a telecommunications tower or *wireless communication facility* at the requested site;
 - ii. the nature of any existing *wireless communication facility* sites indicated on the map required by sub-Section 12.03 (F) (3) (d) 1. b., below, shall be documented (i.e., freestanding structure with available heights noted, roof-mounted applications, existing telecommunications towers with information regarding co-location opportunities or limitations, service providers utilizing each such *wireless communication facility* site, etc.); and
 - iii. the manner in which the proposed placement will promote the Town of Osceola Telecommunications Policies.
 - b. A map of the *Town* identifying the following:
 - i. all existing telecommunications towers; and,
 - ii. all *structures* or *buildings* within a one (1) mile radius of the proposed site that have a height equal to or greater than the height of the proposed telecommunications tower minus thirty (30) feet; and
 - iii. in the event that a telecommunications tower is proposed within one (1) mile of the boundary of the *Town*, such map shall include the information required above for all areas within one (1) mile of the proposed telecommunications tower.
 - c. If the applicant is a licensed provider of wireless communication services, the applicant shall supply individual coverage maps of the *Town* which:

- i. identify all existing locations utilized by the licensed provider's network and reflects the current coverage levels to the *Town*;
 - ii. identify the proposed coverage levels of the licensed provider's network after the installation of the proposed *wireless telecommunication facility*; and
 - iii. in the event that the licensed provider proposes multiple sites, a separate coverage map for each additional *wireless telecommunication facility* and an overall coverage map based upon all proposed *wireless telecommunication facilities* shall be provided.
2. A certification, in a manner acceptable to the *Town* from the owner of the telecommunications tower or the property on which the telecommunications tower is located, that the telecommunications tower is available for use by another wireless telecommunications provider on a reasonable and non-discriminatory basis and at a cost not exceeding the Fair Market Value for the use of the facilities.
3. A designation by the owner of the telecommunications tower or the property on which such telecommunications tower is located of an area which is set aside for the equipment of future users of the telecommunications tower and is located:
 - i. within the proposed compound area; or,
 - ii. within a separate compound area located on the same lot and located no further from the telecommunications tower than the distance from the telecommunications tower to the proposed compound area plus fifty (50) feet.
4. Color photo simulations showing the site of the proposed telecommunications tower with a photo-realistic representation of the proposed telecommunications tower as it would appear viewed from the closest residential *district* and from adjacent public right-of-way, and photographs of the same views as in the photo simulations showing the



Tapering Monopole with Slick Antenna

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current appearance of the site without the proposed telecommunications tower.

- (G) Development Standards. In addition to complying with the requirements for a *special exception use* for the *district* in which the lot is located, all *wireless telecommunications facilities* shall comply with the following additional development standards:
- (1) Telecommunication Tower and *Antenna array*.
 - (a) Height. The maximum height of a telecommunications tower, including *antenna array*, shall be less than two-hundred (200) feet above grade.
 - (b) Telecommunications Tower Type. All new telecommunications towers shall be of a tapering monopole construction unless a determination is made in connection with a special exception request that an alternative design would better blend into the surrounding environment and is approved as a waiver of development standards as provided for and regulated in Section 15.03 (I) Special Exception Uses, of this Ordinance.
 - (c) Guys and Guy Anchors. If a guyed telecommunication tower is approved, all guys and guy anchors shall be located within the buildable area of the *lot* and shall not be located within any required *yard*.
 - (d) Security Fencing. The base of a telecommunications tower and all guy anchors shall be enclosed by security fencing. This fencing shall conform with the requirements detailed in sub-Section 12.03 (I) (1), below.
 - (e) Structural Design. A telecommunications tower shall be designed and built so as to:
 1. Be capable of use by at least two wireless communications providers for a telecommunications tower less than eighty (80) feet in height;
 2. Be capable of use by three or more wireless communications providers for a telecommunications tower of eighty (80) feet in height or greater;
 3. Accommodate *antenna arrays* consisting of nine (9) to twelve (12) *antennas* for each *antenna array*, provided, however, this regulation shall not apply to slick *antenna* applications;
 4. Locate such *antenna arrays* within fifteen (15) vertical feet of each other;
 5. Have no more than three (3) degrees of twist and sway at the top elevation;
and

6. Provide internal cable routing for all tapering monopole telecommunication towers.
- (f) *Antenna Arrays and Types.* To minimize adverse visual impacts, the *antenna* type used shall be in accordance with the following alternatives hierarchy. The order of ranking, from highest to lowest, shall be 1, 2, 3, 4, and 5, outlined below. Where a lower ranked alternative is proposed, the applicant must demonstrate by substantial evidence that higher ranked options are not technically feasible or available:
1. *Flagpole antenna* (with or without a flag, as appropriate to the setting) (See Chapter 10 Sign Regulations for information regarding flags);
 2. *Slick antennas* or *stealth antennas* other than *flagpole antennas*;
 3. *Panel antennas*, also known as directional or sectored *antennas*;
 4. *Whip antennas*; and
 5. *Dish antennas*.



Panel Antenna



Stealth Flagpole
Antenna w/out flag



Stealth or Slick
Antenna

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- (g) Signs. No lettering, symbols, images, trademarks, signs (including banners, pennants or streamers), or advertising shall be placed on or affixed to any part of a telecommunications tower, *antenna array* or *antenna*, other than as required by Federal Communications Commission regulations regarding telecommunications tower registration or other applicable law.
 - (h) Safety. Telecommunications towers shall be constructed to minimize potential safety hazards. Telecommunications towers shall be constructed so as to meet or exceed the most recent EIA-222 standards, and prior to issuance of an *improvement location permit*, the *Zoning administrator* shall be provided with an engineer's certification that the telecommunications tower's design meets or exceeds such EIA-222 standards. Guyed telecommunications towers shall be located in such a manner that if the telecommunications tower should fall along its longest dimension, the telecommunications tower will remain within the lot lines and avoid dwelling units, habitable *structures*, public street rights-of-way, utility lines and other telecommunications towers.
 - (i) Lights. No signals, lights or other illumination (including holiday lights or outdoor strings of lights) shall be permitted on telecommunications towers unless required by the Federal Communications Commission, the Federal Aviation Administration, or the *Town*. When incorporated into the approved design of the telecommunications tower, outdoor light fixtures used to illuminate ball fields, parking areas, or similar areas, in compliance with the requirements of Chapter 9 Lighting Regulations, of this Ordinance, may be attached to the telecommunications tower.
 - (j) Modifications. If any additions, changes or modifications are to be made to a telecommunications tower, the *Zoning Administrator* shall have the authority to require proof, through the submission of engineering and structural data, that the addition, change or modification conforms to structural wind load and all other requirements of the current Building Code adopted by the *Town*.
- (H) Telecommunications *Antennas* Mounted on Existing *Buildings* or *Structures*.
- (1) Roof-Mount. Roof-mounted telecommunications *antennas* are permitted on *buildings* and *structures* in all *districts*, except for single family dwellings or two family dwellings, without a *special exception use*, provided:
 - (a) *A non-whip antenna*:
 1. Does not exceed the height of the *building* by more than ten (10) feet; and,
 2. Shall be no closer than ten (10) feet to the perimeter of the *building*.

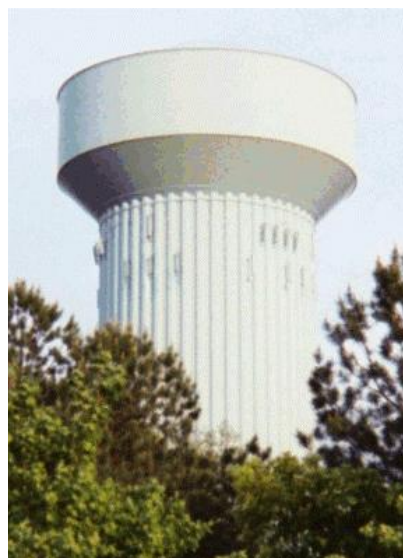
(b) *A whip antenna:*

1. Does not exceed the height of the *building* by more than fifteen (15) feet; and,
2. Shall be no closer than fifteen (15) feet to the perimeter of the *building*.

(c) Prior to installation of a roof-mounted telecommunications *antenna* or equipment, the *Zoning Administrator* shall be provided with an engineer's certification that the roof will support the proposed telecommunications *antenna* or associated roof-mounted equipment.

(2) **Surface-Mount.** Surface-mounted telecommunications *antennas* are permitted on *buildings* or *structures* in all *districts* without a *special exception use*, provided:

- (a) the *antenna* is of the *non-whip antenna* type;
- (b) the *non-whip antenna* is mounted flush with the exterior of the *building* or *structure* so that it projects no more than thirty (30) inches from the surface of the *building* or *structure* to which it is attached; and,
- (c) the *non-whip antenna's* appearance is designed to blend with the color or texture of the surrounding surface of the *building* or *structure*.



Surface Mount Antenna

(3) **Other Existing Structures.** Telecommunications *antennas* are permitted on existing utility, lighting, telecommunications towers and other *structures* in all *districts* without a *special exception use*, provided:

- (a) the existing utility, lighting, telecommunications towers and other *structure* exceeds fifty (50) feet in height above grade;
- (b) the telecommunications *antenna* does not exceed the height of the *structure* by more than ten (10) feet if a *non-whip antenna* or fifteen (15) feet if a *whip antenna*.
- (c) Existing *structures* may be rebuilt if necessary to support the load of the new telecommunications *antenna* without further zoning proceedings provided:

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1. If the *structure* to be rebuilt is not an existing telecommunications tower, the rebuilt *structure* shall comply with all applicable regulations of the district in which such *structure* is located; or,
 2. If the *structure* to be rebuilt is an existing telecommunications tower, the new telecommunications tower shall:
 - i. not exceed the height of the existing telecommunications tower; and,
 - ii. comply with all other regulations contained in this Section for the erection of a new telecommunications tower, except that a *special exception use* shall not be required.
- (4) Application. When an application for an *improvement location permit* to locate a telecommunications *antenna* on an existing *building* or other *structure* is made, the *Zoning Administrator* shall be provided with color photo simulations showing the site of the existing *structure* with a photo-realistic representation of the proposed telecommunications *antenna* and the existing *structure* or any proposed reconstruction of the *structure* as it would appear viewed from the closest residential *district* and from adjacent public *right-of-way*. The applicant shall also submit photographs of the same views as in the photo simulations showing the current appearance of the site without the proposed telecommunications *antenna*.
- (I) Associated Equipment or *Buildings* and Compound Area Requirements.
- (1) Fencing and Landscaping of Ground Mounted Associated Equipment or *Buildings*:
 - (a) Fencing Required. The compound area and all guy anchors shall be secured with a board-on-board or chain link fence of not less than six (6) feet in height nor more than ten (10) feet in height. Security wire (barbed, razor, etc.) may be located on the telecommunications tower-side of the fence but shall not extend above the top of the fence. A chain link fence, if used, shall be black vinyl coated.
 - (b) Landscaping Required. Landscaping shall be installed around the perimeter of the fenced compound area running the full length of all sides of the compound area or *building*, except for entry gates or doors. The type of landscaping required shall be based upon the open space of the fence. If the fence has an open space of:
 1. fifty (50) percent or greater, a ten (10) foot wide landscaping strip running the full length of all sides of the compound area or *building*, except for entry gates or doors, with a four (4) evergreen trees for every thirty (30) feet shall be installed on the outside of the fenced area; or,

2. less than fifty (50) percent but greater than twenty (20) percent, a ten (10) foot wide landscaping strip running the full length of all sides of the compound area or *building*, except for entry gates or doors, with a two evergreen trees for every twenty-five (25) feet shall be installed on the outside of the fenced area; or,
 3. twenty (20) percent or less, a ten (10) foot wide landscaping strip running the full length of all sides of the compound area or *building*, except for entry gates or doors, with one (1) ornamental tree (minimum 1 ½" caliper) planted for every twenty-five (25) feet shall be installed on the outside of the fenced area.
- (c) Interior access drives or walkways that lead to the entry into the compound area or *building* shall be hard-surfaced with asphalt or concrete.
- (2) Exterior Materials and Roof Pitch of Associated Equipment or *Buildings*.
- (a) Associated equipment *buildings*, whether ground or roof-mounted and not enclosed by a fence providing a complete sight barrier (i.e., a fence with zero open space), shall be similar in color, exterior material, and character to the main or adjoining *building* or *structure*. If ground mounted the roof pitch of the associated equipment building shall match the pitch of any existing *building* or *structure*.



Equipment Building

- (b) When an equipment building is located on a lot that does not contain an existing *building* or *structure* and is not enclosed by a fence providing a complete sight barrier (i.e., a fence with zero open space), the exterior material shall be either brick or stone. The roof pitch shall not be less than a three (3) foot vertical rise

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for each twelve (12) foot horizontal run, nor greater than a twelve (12) foot vertical rise for each twelve (12) foot horizontal run.

- (J) Abandonment and Removal of Telecommunications Towers, *Antenna Arrays*, Associated Equipment and *Buildings*.
- (1) Abandonment. Telecommunications towers, and associated ground-based equipment and *buildings* which have not been used for a period of one (1) year shall be deemed abandoned and shall be removed from the site.
 - (2) Notice Required. The owner of the telecommunications tower shall notify the *Zoning Administrator* within thirty (30) days that use of a telecommunications tower has been discontinued.
 - (3) Security Fund.
 - (a) Every telecommunications tower owner shall provide the *Town*, at the time of an application for an *improvement location permit*, a security fund in the form of cash, bond or irrevocable letter of credit to secure the payment of removing the telecommunications tower and associated ground-based equipment, *buildings* and foundations once they are determined to be abandoned per sub-Section (J)(1), above, and from which to deduct fines and penalties for non-compliance with this Section or other applicable laws.
 - (b) The amount to be provided for each telecommunications tower shall be one-hundred and twenty-five (125) percent of the cost of demolition based upon a licensed engineer's estimate of the cost of demolition of the telecommunications tower and associated ground-based equipment, *buildings* and foundations.
 - (c) Any reduction in the security fund provided, because of deductions of fines, penalties, or removal costs, shall be replenished to the total of the required amount within thirty (30) days after notice from the *Town* of the amount deducted and the deficiency created hereby.
 - (4) Refund. Within a reasonable period of time, not to exceed three (3) months after the telecommunications tower, associated ground-based equipment, *buildings* and foundations are removed, any remaining funds on deposit with the *Town* pursuant to this Section, after application and above all expenses provided for herein, shall be refunded to the appropriate owner or provider who created the security fund.

(K) Limitations on *Special Exception Uses*.

- (1) A *special exception use* which does not fully comply with the Telecommunications Policies contained herein for telecommunications towers may be granted upon a determination that such a grant better accomplishes the Telecommunications Policies set out in this Section than would a strict application of these Telecommunication Policies. Such deviations from the Town of Osceola Telecommunications Policy shall be no greater than necessary to accomplish those policies.
- (2) A *special exception use* which does not comply with the development standards of this Section 12.03 may only be granted upon:
 - (a) Approval of a waiver of development standards as provided for in Section 15.03 (I) Special Exception Uses, and regulated in Section 15.03 (H) Variance of Development Standards of this Ordinance; or,
 - (b) A separate application for and approval of a variance of development standards filed for and obtained in accordance with the requirements of Section 15.03 Board of Zoning Appeals of this Ordinance and any applicable Rules of Procedure.

Section 12.04 Regulations for Wind Energy Conversion Systems.

(A) Intent.

It is the intent of this Chapter to facilitate the comprehensive provision of *wind energy conversion systems* (“WECS”) to the businesses of the *Town*; minimize the height, obtrusiveness, and the visual impacts of WECS, and all associated equipment and *buildings*; encourage WECS to be located in such a manner as to minimize their impact to residential uses; public parks, *open space*, and *greenways*; streams, creeks bays and rivers; ensure that the height of WECS have the least visual impact, and are no greater than required to achieve their designated service; protect views of, and vistas from, architecturally or historically significant *structures* and historically significant landscapes so that these architectural or historical resources are not impaired or diminished by the placement of WECS; and avoid potential damage to adjacent properties from the failure of a WECS, through structural design standards and *setback* requirements.

(B) Classification.

WECS shall be classified as either:

- (1) A *Small Wind Energy Conversion System* (“SWECS”), designed and installed exclusively for the on-site use of any associated electric power generation; or

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- (2) A *Wind Energy Facility* (“WEF”), designed and installed exclusively for off-site use of any associated electric power generation.
- (C) Districts permitted.
- (1) A SWECS is permitted as an *accessory use* in all *zoning districts*.
 - (2) A WEF is permitted as a *special exception use* in all *zoning districts*.
- (D) General.
- (1) A *building permit* is required for the installation of all WECS, and applications for a *building permit* shall be accompanied, at a minimum, by the following:
 - (a) Standard manufacturer’s drawings of the engineering specifications for the installation requirements of the wind turbine structure, including the tower, base, and footings. This analysis is frequently supplied by the manufacturer;
 - (b) A statement that the system shall comply with all applicable rules and regulations of the electric service provider for the property, and the Indiana Utility Regulatory Commission;
 - (c) A plot plan showing the location of the SWECS relative to all property lines, on-site *structures*, off-site *structures* within 1.5 times the height of the SWECS, utility locations (such as but not limited to overhead utilities, transformers, and junction boxes), and measured distances from all streams, creeks, rivers, public parks, public open space and greenways, and historic preservation districts;
 - (d) Certification that the installer of the SWECS is certified by the manufacturer of the SWECS, and has received the necessary training to properly and safely install the SWECS. Owner-installed SWECS will require an affidavit certifying that the installation will comply with the manufacture’s specifications, and the requirements of the electric service provider of the property;
 - (e) A drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is frequently supplied by the manufacturer; and
 - (f) For a WEF, certification of the approval of the *special exception use* for a WEF by the *Town*, accompanied by a final site development plan, the site development

report and any other documentation required during the approval of the *special exception use*.

- (2) All WECS shall comply with all Federal, State and local laws and ordinances not in conflict with this ordinance, including but not limited to:
 - (a) placement in floodplains and historic preservation districts;
 - (b) applicable FAA regulations, including any necessary approvals for installations close to airports;
- (3) No WECS shall be installed until evidence has been given that the electric utility company has been informed of the customer's intent to install an interconnected, customer-owned WECS. Off-grid systems shall be exempt from this requirement.
- (4) Signs. No WECS turbine, tower or associated building or structure may be used to advertise or promote any product or service. No word or graphic representation that may be construed as advertising, other than appropriate warning signs and the manufacturer's technical information, shall be placed on a wind turbine, tower or other associated *building or structure*.
- (5) Signal disturbance. Generators and alternators should be constructed so as to prevent the emission of radio and television signals. Upon a complaint of any signal disturbance, the operation of the WECS shall cease. The owner/operator shall correct any signal disturbance problem that is identified before the operation of the system can resume.
- (6) Appearance, color and finish. The exterior surface of any visible components must be a non-reflective, neutral color, and blend into the surrounding environment as practical as possible. White or light grey is the color of preference unless the manufacturer's color preference is proven to better blend into the environment. Rotors (blades) or vanes may be painted black to better assist in the prevention of ice build-up. Decorative items, such as flags, streamers and holiday and commemorative decorations are prohibited.
- (7) Lighting. No WECS shall be artificially lighted, unless required by the FAA or appropriate authority.
- (8) Support tower. The tower component of any WECS shall be one that is recommended and certified by the manufacturer:

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- (a) A building-mounted SWECS must be firmly anchored to the *building* (roof or wall) according to the manufacturers recommendations. Additional support brackets or cables must be anchored to the structure on which the SWECS is located; and
- (b) A WECS mounted on a self-supporting tower shall be on a tower that is of monopole design, and does not require the use of guy wires or any other means of lateral support.

(E) Small Wind Energy Conversion Systems; Development Standards.

- (1) Accessory use. A SWEC may be installed as an accessory use to a primary use. No SWEC shall be installed on any property without the existence of a primary use.
- (2) Minimum lot size, number, maximum height. The minimum lot size, the maximum number of SWECS on a lot or parcel, and the maximum height of a SWEC shall be as specified in Table 12.01, below:

Table 12.01 Minimum Lot Size, Number and Maximum Height of a Small Wind Energy Conversion System			
District	Minimum Lot /Parcel Size	Maximum Number of SWECS	Maximum Height
All Districts	1 acre	1 per acre	60'
I Industrial	-	-	80'

- (3) Height. The height of a SWECS shall be measured from one foot above ground level to the highest extension of the blade, rotor, or vane. The minimum distance between the ground and the blade, rotor, or vanes shall be ten feet, as measured at the lowest point of the arc of the blade, rotor, or vane.
- (4) Noise. SWECS shall not exceed sixty (60) decibels (dB), as measured at the closest property line. However, the sixty (60) decibels (dB) standard may be exceeded during short-term events such as utility outages and/or severe windstorms.

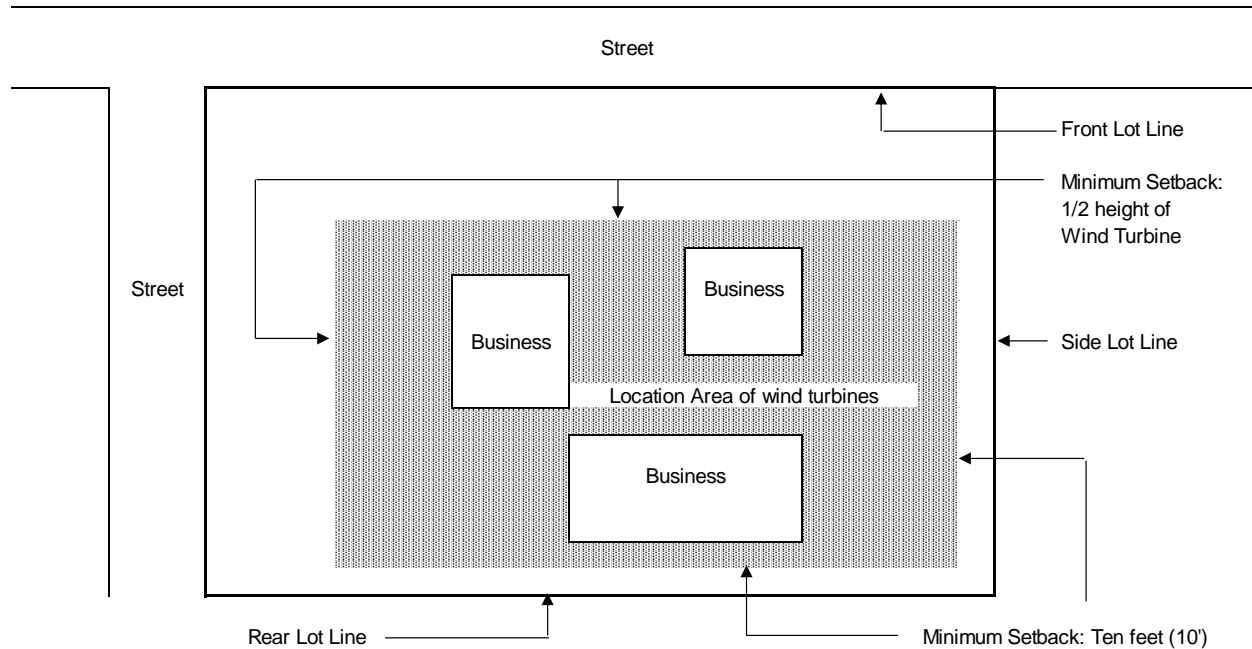
- (5) Survival speed. SWECS shall be rated by the manufacturer as having a minimum survival wind speed of one-hundred (100) miles per hour.
- (6) Setback. The minimum setback of a SWEC shall meet all of the following, measured from the edge of the support tower:
 - (a) Two hundred feet from public parks, public open space, public greenways, historic preservation districts, streams, rivers and bays, measured from the nearest property lines, district lines, and/or the top of any stream or river bank;
 - (b) One-half the height of the SWEC as measured per sub-Section (E)(3), above, to the nearest occupied off-site structure; and
 - (c) Ten feet from any side and rear property line. Any property line adjacent to a street shall be deemed a front yard, and meet the location requirements in the following illustrations.
- (7) Location on property. The location of a SWECS on a property shall be in accordance with sub-Section (E)(6), above, and with the following Illustration 1:

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Location Restrictions for Small Wind Energy Conversion System

Illustration 1
Not to Scale

Zoning Districts: C Commercial, I Industrial



- (8) Abandonment. A SWEC that is out of service for a continuous 24-month period will be deemed to have been abandoned, and shall be removed. Maintenance events which require extended periods of time beyond a 24-month period shall be brought to the attention of the *Building Department*.

(F) Wind Energy Facility; General.

- (1) *Special exception use* required. A WEF is allowed in designated *districts* only as a *special exception use*, and after a public hearing by the *Board of Zoning Appeals* and approval by the *Council*.
- (2) Preliminary site development project meeting required. A WEF is a unique facility having to meet specific location and technical requirements. A preliminary site development project meeting is required with the local agencies, and where at a minimum, the following information is to be provided:

- (a) The location of the WEF identified on an aerial photograph, and the property tax ID numbers of the properties involved;
 - (b) The number and specifications of the wind turbines;
 - (c) The method and route of transportation of all equipment;
 - (d) The construction timeline and the production life of the WEF;
 - (e) A site plan showing the location of floodplains; wetlands; forested areas; on-site *structures*; *structures* within 500 feet of the development site; streams and legal ditches; utility lines, cables and pipelines; and
 - (f) The developer's determination of public infrastructure needs.
- (G) Wind Energy Facility; Approval.
- (1) In addition to the requirements of sub-Section (G)(2)(b) below, the developer of a WEF shall provide all applicable information under sub-Section 12.04 (D) General, above, and any additional information requested from the preliminary site development project meeting.
 - (2) Applications for a WEF as a *special exception use* shall be accompanied by the items outlined under Section 15.03 (I) Special Exception Uses, in addition to the following:
 - (a) A site plan showing, at a minimum:
 1. north arrow, written and graphic scale, general location map;
 2. legal description;
 3. the location and height (including the top of the arc of the blade) of the wind turbines;
 4. the location of all other supporting *structures* such as but not limited to sheds, offices, operation and maintenance facilities, drives, and parking areas;
 5. location of all *structures* on adjacent properties, within 300 feet of all property lines;
 6. topography lines at two-foot intervals;
 7. location of all natural features such as streams, ditches, floodplain, wetlands, and tree canopy;
 8. drainage and soil erosion control, including location of all drainage tiles; and

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9. location of all utilities and utility corridors, such as but not limited to electric transmission lines, natural gas pipe lines, petroleum pipe lines, fiber optic lines, sewer and water lines.
- (b) A site development report including but not limited to the following items:
1. the schedule and phasing of construction; the transportation route for the delivery of, and the maintenance of all equipment; provisions for the repair of any public infrastructure such as roads, ditches, and culverts;
 2. a statement describing the service area and the primary customers of the WEF;
 3. statements indicating that all utilities have been contacted relative to the location and construction of the WEF along with their responses and requirements;
 4. technical details of the facility and individual wind turbines, including but not limited to height of all wind turbines, power generation capacity, long term maintenance and replacement requirements, survival wind speed, and any other information deemed appropriate by the developer and the professional staff of the *Town* and St. Joseph County;
 5. an analysis of how the WEF will affect the operations of other facilities such as radio and television transmissions, cell phone transmissions, and radar transmissions;
 6. a statement outlining the security arrangements that will be placed on the site;
 7. an analysis of the maximum decibel levels to be anticipated at all property lines, and at all inhabitable *structures* within 300 feet of all property lines;
 8. the maintenance plan that has been established for the WEF; and
 9. a decommissioning plan outlining the method, timing and cost of the removal of one or more of the wind turbines upon the termination, abandonment, discontinuation, decommissioning or cessation of one or more of the wind turbines, or complete cessation of the operations of the WEF.
- (c) A list of all adjacent property owners within 300 feet of the project boundary lines, along with stamped and addressed envelopes.
- (d) Reports from the following agencies, and responses to any concerns raised by the respective agencies:
1. Indiana Department of Environmental Management;
 2. Indiana Department of Natural Resources;
 3. St. Joseph County Parks;

4. Historic Preservation Commission of St. Joseph County;
 5. St. Joseph County Engineer;
 6. St. Joseph County Surveyor;
 7. St. Joseph County Health Department; and
 8. The appropriate emergency response provider.
- (e) Any project-specific agreements, such as public infrastructure improvements or a payment-in-lieu of taxes agreement, must be approved prior to final project approval.
- (f) Liability Insurance covering bodily injury and property damage (naming the *Town* as an additional insurer) with limits of at least \$2,000,000 per occurrence, and \$5,000,000 in the aggregate, with a deductible of no more than \$5,000.
- (g) The requirement for liability insurance under Section 12.04 (G)(2)(f), above, shall not apply to a municipal corporation or a school corporation, as defined in IC 36-1-2-10 and 17 respectively, where any WECS within the WEF project site, is located at least one and one-half (1.5) times the height of the WECS from the nearest occupied structure.
- (H) *Wind Energy Facility - Abandonment, Discontinuation or Decommissioning of Wind Turbines and Removal of Wind Energy Facilities.*
- (1) Abandonment and/or decommissioning. Wind turbines and all associated equipment, *buildings* and foundations which have not been used for a continuous 24-month period from the last day of any known transmission of energy, shall be deemed abandoned and shall be removed from the site per the decommissioning plan. Maintenance events which require extended periods of time beyond a 24-month period shall be brought to the attention of the *Zoning Administrator* and *Building Department*.
 - (2) Security fund.
 - (a) The owner(s) of a WEF shall establish a security fund in the form of cash, bond or irrevocable letter of credit to secure the payment of removing the wind turbines and associated equipment, *buildings* and foundations that have been determined to be abandoned per sub-Section (H)(1), above, and from which to deduct fines and penalties for non-compliance with this Chapter or other applicable laws.
 - (b) The amount to be provided shall be 125% of the cost of demolition and removal of the WEF based upon a licensed engineer's estimate of the cost of demolition

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and removal. Any reduction in the security fund provided, because of deductions of fines, penalties, or removal costs, shall be replenished to the total of the required amount within thirty (30) days after notice from the *Town* of the amount deducted and the deficiency created hereby.

- (c) Within a reasonable period of time, not to exceed three months after the WEF is removed, any remaining funds on deposit with the *Town* pursuant to this Ordinance, after application and above all expenses provided for herein, shall be refunded to the appropriate owner or provider who created the security fund.
- (3) Security fund, exemption. The requirement for a security fund under sub-Section 12.04 (H)(2), above, shall not apply to a municipal corporation or a school corporation as defined in IC 36-1-2-10 and 17 respectively.