

**Document #196550**  
**RECORDER'S OFFICE, WELLS COUNTY, ND 6/2/2009 10:20 AM**  
**I certify that this instrument was filed for record this date**  
**CARRIE K. KRAUSE, County Recorder**  
**By /s/ Carrie K. Krause**

**WELLS COUNTY ZONING ORDINANCE (WCZO)**  
**ARTICLE 12 – WIND ENERGY FACILITIES**  
**DATED 2009**

**12 ARTICLE 12 WIND ENERGY FACILITIES**

**12.1 Wind Energy Facilities**

12.1.1 Purpose

The purpose of the ordinance is to provide a regulatory framework for the siting, construction and operation of wind energy facilities in the County, subject to reasonable restrictions, which will preserve the safety and well-being of the residents, while allowing equitable and orderly development of wind energy facilities.

12.1.2 Regulatory framework

12.1.2.1 Zoning

Wind energy facilities may be constructed within the County, subject to the restrictions and conditions of this ordinance.

12.1.2.2 Principal or accessory use

A different existing use or an existing structure on the same parcel shall not preclude the installation of a wind energy facility or a part of such facility on such parcel. Wind energy facilities that are constructed and installed in accordance with the provisions of this ordinance shall not be deemed to constitute expansion of a nonconforming use or structure.

12.1.2.3 Applicability

The requirements of this ordinance shall apply to all wind energy facilities with one or more wind turbines rated at 100 kilowatts nameplate capacity or larger constructed after the effective date of this ordinance. No operation of an existing wind energy facility shall be allowed without full compliance with this ordinance and its wind energy facility siting permit, and no modification or alteration of an existing wind energy facility shall be allowed without issuance of a new wind energy facility siting permit pursuant to 12.1.3.

### 12.1.3 Wind energy facility siting permit

#### 12.1.3.1 Application for permit

No work, except for wind monitoring, soil testing and other survey work, may commence to construct a wind energy facility until a County wind energy facility siting permit (“permit”) has been issued by the County Commission. The prospective permittee shall submit an application for said permit to the County Zoning Commission. The application shall be signed by an authorized representative of the prospective permittee, include a fee of \$1,000 plus \$250 for each proposed wind turbine up to a total amount of no more than \$10,000, and the following information:

- 12.1.3.1.1 The complete name, legal address and phone number of the prospective permittee and responsible contact person.
- 12.1.3.1.2 A USGS topographical map of the wind energy facility and 500 feet of all adjoining properties along the wind energy facility perimeter, which map shall show all existing features, including property boundaries, structures, improvements, roads, utility lines, public facilities and natural features. The map shall also show location of all proposed improvements for the wind energy facility, including wind turbines, MET towers, electrical lines and roads. Each proposed wind turbine shall be numbered and fully described in technical details, including rotor diameter, model, manufacturer and distances measured in feet from property lines and from existing improvements for each proposed wind turbine.
- 12.1.3.1.3 Details as to how the prospective permittee will comply with each item in 12.1.4.
- 12.1.3.1.4 A schedule for the proposed start and completion of construction of the wind energy facility.
- 12.1.3.1.5 Copies or signed summaries of all leases and easements for wind turbines, associated equipment and infrastructure to be sited within the County and any written agreements between the prospective permittee and affected parties holding associated wind rights on adjoining properties established for the purpose of seeking a setback variance(s) pursuant to 12.1.5.3.

#### 12.1.3.2 Public hearings

Upon receipt of the application, the Zoning Commission and any experts it may retain, shall review the application, and in its discretion, may hold a public hearing on the application within 45 days from receipt of the application, providing at least 15 days notice prior to the hearing in the official newspaper of Wells County and mailing written notice to property owners within 500 feet of the proposed wind energy facility.

#### 12.1.3.3 Deliberation and decision

If the Zoning Commission finds that the prospective permittee will comply with all requirements, it may, within 30 days after the hearing, issue a permit.

#### 12.1.3.4 Demonstration of compliance

The permit issued pursuant to 12.1.3.3 shall be contingent upon the permittee's final demonstration of compliance with the requirements of the permit following completion of construction of the wind energy facility. Within 90 days of wind energy facility construction, the permittee shall submit to the Zoning Commission an updated and final USGS topographical map, or survey if available, providing all information pursuant to 12.1.3.1.2 and demonstrating actual compliance with the requirements and conditions of the permit.

#### 12.1.4 General requirements for wind energy facilities

The appearance, lighting, facility footprint, agricultural operations, roads and power lines must meet the following requirements:

12.1.4.1 Wind turbines shall be painted a non-reflective, non-obtrusive color.

12.1.4.2 Wind Turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.

12.1.4.3 Each wind turbine shall be marked with a visible identification number to assist with provision of emergency services, and the permittee shall file with local fire departments, law enforcement and the County emergency management coordinator a wind energy facility map identifying wind turbine locations and numbers.

12.1.4.4 Wind turbines shall not be artificially lighted, except to the extent required by the FAA or other applicable authority.

- 12.1.4.5 At wind energy facility sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, and location that will blend the wind energy facility to the natural setting and existing environment.
- 12.1.4.6 At wind energy facility sites, the location and construction of access roads and other infrastructure shall, to the extent reasonably possible, minimize disruption to farmland, the landscape and agricultural operations within the County.
- 12.1.4.7 The permittee shall promptly replace or repair all fences or gates removed or damaged during all phases of the wind energy facility's life, unless otherwise negotiated with the affected landowner. When the permittee installs a gate where electric fences are present, the permittee shall provide for continuity in the electric fence circuit.
- 12.1.4.8 The permittee shall ensure that, following completion of construction of a wind energy facility, County roads will be repaired or restored to a condition at least equal to the condition prior to construction of such facility.
- 12.1.4.9 The permittee shall place electrical lines, known as collectors, and communication cables underground when located on private property. Collectors and cables shall also be placed within or adjacent to the land necessary for wind turbine access roads, unless otherwise negotiated with the affected landowner. (This paragraph does not apply to feeder lines.)
- 12.1.4.10 The permittee shall place overhead feeder lines on public right-of-ways, if public right-of-ways exist, or the permittee may place feeder lines on private property. A change of routes may be made as long as the feeders remain on public right-of-ways and approval has been obtained from the governmental unit responsible for the affected right-of-ways. When placing feeders on private property, the permittee shall place the feeder in accordance with the easement negotiated with the affected landowner.
- 12.1.5 Setbacks  
The following setbacks and separation requirements shall apply to all wind turbines in a wind energy facility:
- 12.1.5.1 Each wind turbine shall be set back from the nearest occupied dwelling, commercial building or publicly-used structure or facility at a distance not less than 1.25 times its total height or 1,250 feet, whichever is greater.

12.1.5.2 Each wind turbine shall be set back from the nearest public road or above ground communication or electrical line at a distance not less than 200 feet, determined at the center of the existing right-of-way.

12.1.5.3 Each wind turbine shall be set back from the wind energy facility perimeter at a distance not less than two and one half times the rotor diameter of the wind turbine. A variance may be granted if an authorized representative or agent of the permittee and those affected parties on adjoining properties with associated wind rights sign a formal and legally-binding agreement expressing all parties' support for a variance that waives or reduces the setback requirement.

12.1.6 Minimum ground clearance

The blade tip of any wind turbine shall, at its lowest point, have ground clearance of no less than 75 feet.

12.1.7 Restoration of property

Within 180 days of termination or abandonment of leases or easements for a wind energy facility in the County, the permittee shall cause, at its expense, the removal of all structures to a depth of four feet below pre-construction grade and to replace the surface.

12.1.8 Transfer of wind energy facility siting permit

In the event of a change in ownership or controlling interest in a wind energy facility and the transfer of the permit, any successors and assigns of the original permittee shall comply with the requirements and conditions of such permit for the duration of operation of a wind energy facility. Within 30 days of such change in ownership or controlling interest of any entity owning a wind energy facility, the parties to the transaction shall notify the Commission in writing and provide information pursuant to 12.1.3.1.1. The notification shall be signed by the authorized representatives or agents of both the original permittee and the entity to which the permit is being transferred.

## **12.2 Resolution for Wind Energy Facilities**

The following Resolution was introduced by Commissioner Ray Schmitz and seconded by Commissioner Mark Schmitz for adoption:

WHEREAS, the Wells County Planning Commission consisting of Mike Flick, Mary Hager, Connie Kunz, Richard Leintz, Lester Lien, Daniel Mack, Jon Polries, Faye Schimelfenig and James Sitar has drafted Article 12, Wind Energy Facilities dated 2009, to be added to the Wells County Zoning Ordinance dated 2008 recorded June 3, 2008 at 8:45 am as Document #195117 in the Office of the Wells County Recorder; and

WHEREAS, said Article 12 is designed to provide a regulatory framework for the siting, construction and operation of wind energy facilities in the County, subject to reasonable restrictions, which will preserve the safety and well-being of the residents, while allowing equitable and orderly development of wind energy facilities; and

WHEREAS, the Wells County Planning Commission has approved Article 12, Wind Energy Facilities dated 2009, to be added to the Wells County Zoning Ordinance dated 2008 recorded June 3, 2008 at 8:45 am as Document #195117 in the Office of the Wells County Recorder and recommends it adoption by the County Commission; and

WHEREAS, the Board of County Commissioners hereby adds Article 12, Wind Energy Facilities dated 2009, to the Wells County Zoning Ordinance dated 2008 recorded June 3, 2008 at 8:45 am as Document #195117 in the Office of the Wells County Recorder.

NOW, THEREFORE, BE IT RESOLVED, that the County Commission of Wells County hereby adopts Article 12, Wind Energy Facilities dated 2009, to be added to the Wells County Zoning Ordinance dated 2008 recorded June 3, 2008 at 8:45 am as Document #195117 in the Office of the Wells County Recorder on this 2<sup>nd</sup> day of June, 2009.

On vote being taken, those voting 'aye': Mary Hager, Richard Leintz, Mark Schmitz, Ray Schmitz and Randi Suckut, Chairman. Those voting 'nay': None. The Chairman then declared the Resolution adopted.

/s/ Janell Rudel  
County Auditor

6-2-09  
Date

/s/ Randi Suckut  
Chairman

6-2-09  
Date

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF WELLS            )

On this 2<sup>nd</sup> day of June, 2009, personally appeared before me, a notary public within the aforesaid County and State, Randi Suckut and Janell Rudel, to me personally known to be the Chairman of the Board of County Commissioners and the Auditor, respectfully, of Wells County, and acknowledged to me that they executed the within instrument for and on behalf of Wells County.

**S E A L**

RENAE HEINTZ  
Notary Public  
State of North Dakota  
My Commission Expires May 8, 2010

/s/ Renae Heintz  
Renae Heintz, Notary Public  
Wells County, North Dakota

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF WELLS            )

I, Janell Rudel, County Auditor in and for the County of Wells, State of North Dakota, acting as Secretary of the Wells County Planning Commission, do hereby certify that the above-entitled document is a true and correct original of the Article 12, Wind Energy Facilities dated 2009, to be added to the Wells County Zoning Ordinance dated 2008 recorded June 3, 2008 at 8:45 am as Document #195117 in the Office of the Wells County Recorder which was adopted by Wells County, North Dakota, June 2, 2009.

Witness my hand and official seal of Wells County, North Dakota, this 2<sup>nd</sup> day of June, 2009.

WELLS COUNTY  
**S E A L**

/s/ Janell Rudel  
Janell Rudel, Wells County Auditor

STATE OF NORTH DAKOTA

RECORDER  
S E A L  
WELLS COUNTY, N. DAK.

Document #196550  
RECORDER'S OFFICE, WELLS COUNTY, ND 6/2/2009 10:20 AM  
I certify that this instrument was filed for record this date  
CARRIE K. KRAUSE, County Recorder  
By /s/ Carrie K. Krause