

FAIRGROVE TOWNSHIP ORDINANCE NO. 2012-1

AMENDMENT TO THE FAIRGROVE TOWNSHIP ZONING ORDINANCE NO. 1993-3

An Ordinance to amend and supplement the Fairgrove Township Zoning Ordinance No. 1993-3 adopted November 20, 1993, to amend the procedures for issuing special use permits and to regulate the development of wind energy systems in Fairgrove Township, Tuscola County, Michigan.

The Board of Trustees of Fairgrove Township, Tuscola County, Michigan, ordains that the Zoning Ordinance of Fairgrove Township being commonly known as the Fairgrove Township Zoning Ordinance No. 1993-3 be amended as follows:

SECTION A

The Fairgrove Township Zoning Ordinance designated as Ordinance No. 1993-3, adopted November 20, 1993, is hereby amended in part as follows:

Section 703. Review and Issuance of Special Land Use Permit

The planning commission shall be responsible for reviewing applications for Special Land Uses and shall have the authority for disapproving or granting approval or approval with conditions.

Section 704. Materials to be Submitted for Application, Review and Approval

An application for a Special Land Use Permit shall be submitted and processed under the following procedures:

1. An Application Form shall be provided by the zoning administrator to be filled out by the applicant and shall include date of the application, the applicant's name and address in full, a statement that the applicant is the owner involved or is acting on the owner's behalf, the address of the property involved in the application (substitution may include a legal description or parcel identifications number(s)).
2. A fee paid for processing Special Land Use Permit, and if required, an escrow deposit, both determined by the Township Board of Trustees, shall be paid prior to review.
3. An initial site plan shall be prepared in conformance with Section 307 of this Ordinance.
4. A description shall be provided of how the specific requirements for that Special Land Use Permit, as required in following charts, are to be met. This description may be in text, map or both.
5. The complete application package must be submitted to the Zoning Administrator at least twenty-five (25) days before the Planning Commission meeting at which it will be considered.

6. Fifteen (15) copies of the application package shall be submitted to the Zoning Administrator.

Section 705. Procedures for Review

1. **PLANNING COMMISSION REVIEW AND HEARING.** The Special Land Use Permit application package shall be the subject of a public hearing conducted by the Planning Commission that conforms to the following process:
 - a. **PUBLIC HEARING ON SPECIAL USE.** The Planning Commission shall hold a public hearing on the application as part of the meeting in which the Special Land Use Permit is considered. A notice of public hearing shall be mailed and published in a newspaper of general circulation in the Township not less than fifteen (15) days before the date of such hearing, as specified in Section 103 of the Michigan Zoning Enabling Act, PA 110 of 2006, as amended.
 - b. **APPLICATION REVIEW.** The Planning Commission shall review the Special Land Use Permit application and conduct an informal review of the initial site plan(s) for the proposed use, using the procedure and standards presented in Section 307 as a guide and any specific standards identified for the Special Land Use by this Chapter. The Planning Commission may provide comments and helpful suggestions regarding the initial site plan to the applicant, including requests for additional information.
 - c. **CONSIDERATION OF SPECIAL LAND USE PERMIT.** Following the close of the public hearing, consideration of the Special Land Use Permit application shall take place.
 - 1) **OPEN MEETING.** Note that the Open Meetings Act requires this vote to take place in an open public meeting.
 - 2) **PROMPT DECISION.** In the interest of fairness and a timely response for all concerned parties, the Planning Commission shall render their decision on the Special Land Use Permit during the same meeting in which the public hearing is held, unless further information must be obtained before a decision can be made. In such cases, action upon the Special Land Use Permit may be tabled to a public meeting of the Planning Commission to be held on a specific date which is identified in the motion to table.
 - 3) **ACTION.** Following its review of the Special Land Use Permit application, the Planning Commission shall take one of the following actions:
 - i. Issue the special land use permit if it is found to satisfy the requirements of this Chapter.
 - ii. Place conditions on the special land use permit to ensure that it complies with the requirements of this Chapter.
 - iii. Deny the special land use permit if it is found that the proposed use fails to satisfy the requirements of this Chapter. In the event of denial, the applicant

shall be informed of the decision in writing, with the reasons for denial contained in the letter.

2. **SITE PLAN REVIEW.** Should the Special Land Use Permit application be approved, or approved with conditions, the next required step prior to the applicant seeking building permit(s) is to conduct the site plan review process as detailed in Section 307. The site plan review by the Planning Commission may occur at a separate meeting from which the Special Land Use Permit application was considered.
3. **REAPPLICATION.** An application for a Special Land Use Permit that has been denied, may not be resubmitted until one (1) year after the date of denial has passed.
4. **TERMS OF PERMIT.** A Special Land Use Permit consists of a permit that specifies the Special Land Use which is to be allowed and any conditions which were attached by the Planning Commission. If a use established under a Special Land Use Permit is discontinued for a period of one (1) year, the Special Land Use Permit shall expire. To reestablish the use after such expiration will require granting a new Special Land Use Permit, starting with a new application.
5. **REVOCAION.** The privilege of a Special Land Use Permit is subject to all the conditions that have been attached to it during the process described above. Except as noted in item 4 – Terms of Permit, the permit remains valid as long as all of those conditions are met and is transferable from owner to owner or “runs with the land.” However, the Planning Commission shall revoke any Special Land Use Permit after it has been proven that the permit conditions have been violated.
 - a. **FIRST NOTICE.** The Zoning Administrator shall send written notice of a violation to the holder of the permit by certified mail. The notice shall state that correction must be made within thirty (30) days or the Planning Commission will revoke the Special Land Use Permit and order the use to cease.
 - b. **CONSIDERED NONCONFORMING.** From the time the Zoning Administrator's notice of violation is issued, until compliance with all Special Land Use Permit conditions is restored, the use in question shall be treated as an unacceptable Nonconforming Use.
 - c. **PLANNING COMMISSION ACTION.** The Zoning Administrator shall notify the Planning Commission of the violation of conditions of the Special Land Use Permit at the next regular Planning Commission meeting, and revocation of the Special Use Permit shall be considered then. The Planning Commission's meeting will usually take place before the thirty (30) day period for the first notice has expired. In that case, the resolution to revoke the Special Land Use Permit should be worded so that it takes effect only if compliance with all requirements is not restored. It shall also include authorization for the Zoning Administrator to order the permit holder to cease the permitted use if the violations are not corrected by the end of the first notice period.
 - d. **SECOND NOTICE AND ORDER.** After expiration of the thirty (30) day period, the Zoning Administrator shall notify the permit holder by certified mail that the Special Land Use Permit has been revoked, and the use for which the permit was granted must cease within sixty (60) days from the date of this second notice.

- e. ENFORCEMENT OF ORDER. Failure to comply with the order to cease an activity for which a Special Use Permit has been revoked is a violation of this Ordinance, subject to all penalties thereof
6. APPEALS. An appeal to the decision of the Fairgrove Township Planning Commission regarding a Special Land Use Permit application is to be considered by the Circuit Court and shall not be considered by the Zoning Board of Appeals.

Section 706 Standards to Consider When Reviewing Special Land Use Permits

1. STANDARDS ATTACHED TO SPECIAL USE PERMIT APPLICATION REVIEW. Before approving or denying a Special Land Use Permit Application, the Planning Commission shall find and record adequate data, information, and evidence showing that such a use on the proposed site, lot(s), or parcel(s) meets or does not meet these general standards:
 - a. The proposed special use shall be harmonious with and in accordance with the general objectives, intent, and purpose of this Ordinance.
 - b. The proposed special use shall be designed, constructed, operated, maintained, and managed so as to be harmonious and appropriate in appearance with existing or intended character of the general vicinity.
 - c. The proposed special use shall be served adequately by essential public facilities and services, such as: highways, streets, police and fire protection, drainage structures, refuse disposal; or the persons or agencies responsible for the establishment of the proposed use shall be responsible to provide adequately any such services.
 - d. The proposed special use shall not create excessive additional requirements at public costs for public facilities and services.
2. ADDITIONAL CONDITIONS. The Planning Commission may stipulate any additional conditions or safeguards deemed necessary to achieve the objectives of this Ordinance. These conditions may include but are not limited to changing the parking, lighting or building configuration to promote compatibility on the site. These may be defined during the Site Plan Review process or during consideration of whether to grant the Special Land Use Permit. All conditions attached to the approval of the site plan are also conditions of the Special Land Use Permit. These conditions, and the reasoning behind them, must be documented in the Planning Commission's minutes, written on the site plan itself, communicated to the applicant in writing, and based directly on the intent of this ordinance. The permit will not take effect until the conditions of approval are accepted by the applicant, signified by the signatures on the site plan itself, of both the applicant and the Planning Commission chairman.
3. ENFORCEMENT OF CONDITIONS. The breach of any condition shall be cause for the Planning Commission to revoke a Special Land Use Permit.

4. The following charts detail the specific standards and requirements for each special land use described in Section 405, and are required in addition to the four general standards described above.

Section 707. Charts of Standards, Requirements, and Conditions for Special Land Use Permits

The following charts detail the standards, requirements and conditions for special land uses as reference in Section 405 and as identified above.

SECTION 708. WIND ENERGY CONVERSION SYSTEM

a. INTENT.

- 1) Promote the safe, effective and efficient use of small wind energy systems installed to reduce the on-site consumption of non wind utility supplied electricity.
- 2) Permit the safe, effective and efficient siting and operation of utility grid wind energy conversion systems and farms.

b. DEFINITIONS

- 1) Ambient: Ambient is defined as the sound pressure level exceeded 90% of the time or L90.
- 2) ANSI: American National Standards Institute.
- 3) dB(A): The sound pressure level in decibels. Refers to the “a” weighted scale defined by ANSI. A method for weighting the frequency spectrum to mimic the human ear.
- 4) Decibel: The unit of measure used to express the magnitude of sound pressure and Sound intensity.
- 5) Decommission: To remove or retire from active service.
- 6) Height of Structure: The height of the structure is to the highest point on the tip of a fully vertical rotor blade.
- 7) Inhabited Structure: Any existing structure usable for living or non-agricultural commercial purposes, which includes but is not limited to working, sleeping, eating, cooking, recreation, office, office storage, or any combination thereof. An area used only for storage incidental to a residential use, including agricultural barns, is not included in this definition. If it is not clear by this definition, the Zoning Administrator shall make a determination of any structure regarding whether or not if it is inhabited.

- 8) IEC: International Electro technical Commission. The IEC is the leading global organization that prepares and publishes international standards for all electrical, electronic and related technologies.
- 9) ISO: International Organization for Standardization. ISO is a network of the national standards institutes of 156 countries.
- 10) Limited Participating Parcel: A property within Fairgrove Township that participates in a lease or easement agreement, or other contractual agreement, with an entity other than the entity submitting a Special Land Use Permit application for the purposes of developing of a utility grid wind energy system.
- 11) Non-Participating Parcel: A property within Fairgrove Township that is not subject to a wind turbine lease or easement agreement at the time an application is submitted for a Special Land Use for the purposes of constructing a utility grid wind energy system.
- 12) On Site Use Wind Energy Systems: An On Site Use wind energy system is intended to primarily serve the needs of the consumer.
- 13) Participating Parcel: A property within Fairgrove Township that participates in a lease or easement agreement, or other contractual agreement, with an entity submitting a Special Land Use Permit application for the purposes of developing of a utility grid wind energy system.
- 14) Rotor: An element of a wind energy system that acts as a multi-bladed airfoil assembly, thereby extracting through rotation, kinetic energy directly from the wind.
- 15) SCADA Tower: A freestanding tower containing instrumentation such as anemometers that is designed to provide present moment wind data for use by the supervisory control and data acquisition (SCADA) system.
- 16) Shadow Flicker: Alternating changes in light intensity caused by the moving blade of a wind energy system casting shadows on the ground and stationary objects, such as a window at a dwelling.
- 17) Sound Pressure: Average rate at which sound energy is transmitted through a unit area in a specified direction. The pressure of the sound measured at a receiver.
- 18) Sound Pressure Level: The sound pressure mapped to a logarithmic scale and reported in decibels (dB).
- 19) Utility Grid Wind Energy Systems: A Utility Grid wind energy system is designed and built to provide electricity to the electric utility grid.
- 20) Wind Energy Conversion System (WECS): A wind energy conversion system which converts wind energy into electricity through the use of a wind turbine generator and includes the turbine, blades, and tower as well as related electrical equipment. This does not include wiring to connect the wind energy system to the grid.

21) Wind Site Assessment: An assessment to determine the wind speeds at a specific site and the feasibility of using that site for construction of a wind energy system.

22) On Site Wind Energy Systems (Net Metering) An On Site Use wind energy system is intended to primarily serve the needs of the consumer. An On Site Use wind energy system shall be considered a use by right in the Agricultural district and subject to setback restrictions from all property lines.

- c. WIND ENERGY SYSTEM SITE ASSESSMENT FOR UTILITY GRID WIND ENERGY SYSTEMS: Prior to construction of a Utility Grid wind energy system, a wind site assessment is conducted to determine the wind speeds and the feasibility of using the site. Anemometer towers or "Met Towers," more than 65 feet in height used to conduct a wind site assessment for possible installation of a utility grid wind energy system shall also be a Special Land Use.

Prior to the installation of the tower, an application for a Special Land Use permit shall be filed with the local government that will include:

- 1) applicant identification,
- 2) a site plan,
- 3) a copy of that portion of the applicant's lease with the land owner granting authority to install the Met tower and requiring the applicant to remove all equipment and restore the site after completion of the wind site assessment, and
- 4) proof of the applicant's public liability insurance. The distance from the center of a Met tower and the property lines between the leased property and the non-leased property shall be at least the height of the Met tower. Leased property can include more than one piece of property and the requirement shall apply to the combined properties.

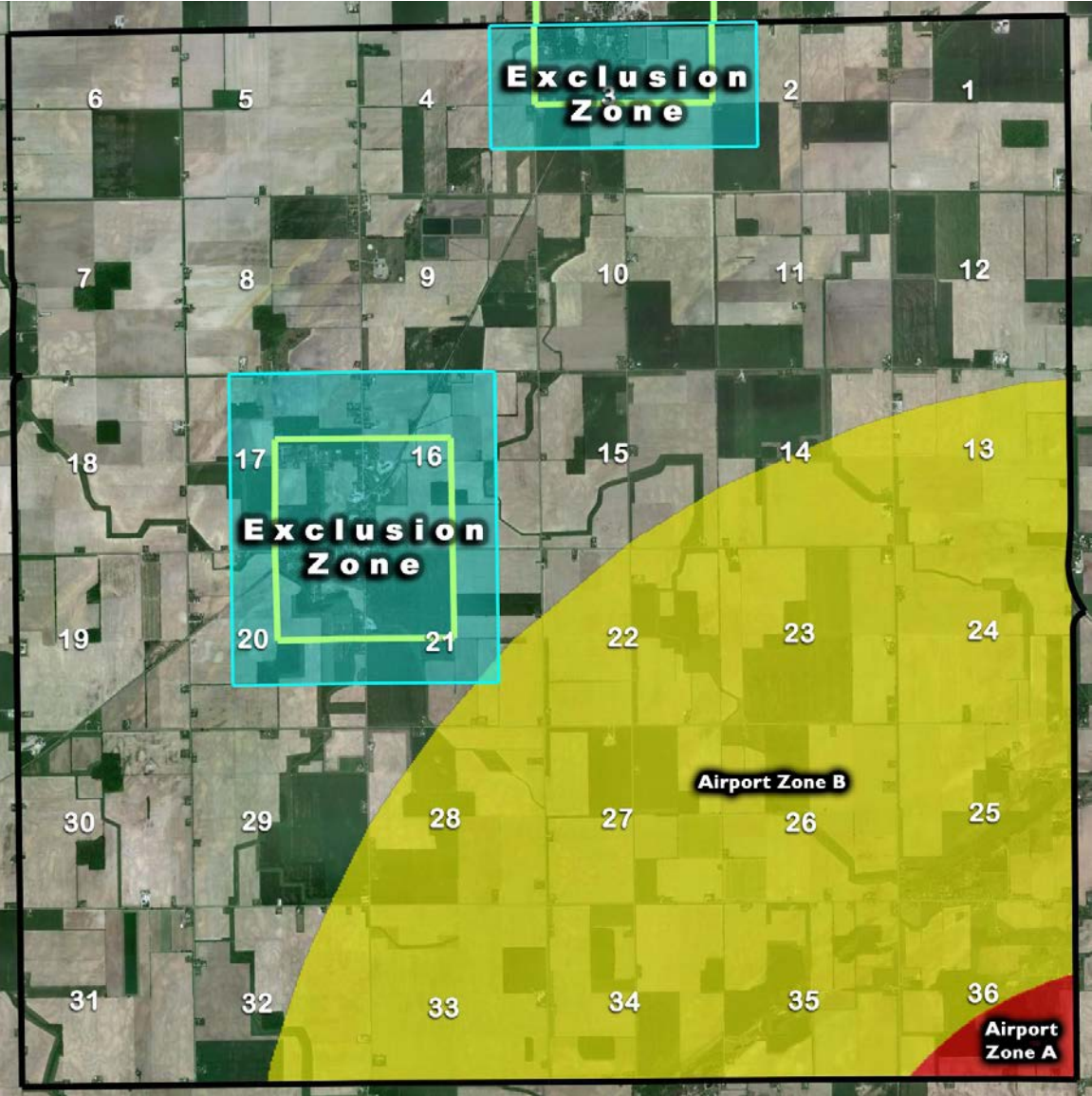
- d. UTILITY GRID WIND ENERGY SYSTEMS: A Utility Grid wind energy system is designed and built to provide electricity to the electric utility grid. Utility Grid wind energy systems shall be considered a Special Land Use. Prior to the installation of a Utility Grid wind energy system, an application for a Special Land Use permit shall be filed with the local government and shall include the following:

- 1) Applicant Identification: Applicant name and address in full, a statement that the applicant is the owner involved or is acting on the owner's behalf, the address of the property involved in the application (substitution may include a legal description or parcel identifications number(s)), and any additional contact information. Each application for a utility grid wind energy system shall also be dated to indicate the date the application is submitted to Fairgrove Township.
- 2) Project Description: A general description of the proposed project including a legal description of the property or properties on which the project would be located and an anticipated construction schedule.

- 3) Procedure: The Planning Commission review of a Special Land Use Permit application for a utility grid wind energy system is a two-step process. The first step is the public hearing and decision by the Planning Commission, per the procedures for review in Section 705. The second step, which may occur at a separate meeting for a utility scale wind energy system, is the site plan review process by the Planning Commission as described in Section 307. A decision on the Special Land Use Permit application by the Planning Commission is inclusive of all proposed wind turbine components, underground electrical lines, sub-station(s), underground electrical lines, junction boxes, laydown yard(s), concrete batch plant(s), and any operations/maintenance building(s).
- 4) Site Plan: The site plan shall include maps showing the physical features and land uses of the project area, both before and after construction of the proposed project. The site plan shall include
 - a) the project area boundaries,
 - b) the location, height, and dimensions of all existing and proposed structures and fencing, and anti climbing devices.
 - c) the location, grades, and dimensions of all temporary and permanent on-site and access roads from the nearest county or state maintained road,
 - d) existing topography,
 - e) water bodies, waterways, wetlands, and drainage channels, and
 - f) all new infrastructure above ground related to the project.
- 5) Insurance: Proof of the applicant's public liability insurance.
- 6) Consent Documents: Copies of any written waivers from neighboring property owners.
- 7) Sound Pressure Level: Copy of the modeling and analysis report.
- 8) Certifications: Certification that applicant has complied or will comply with all applicable state and federal laws and regulations. Copies of all such permits and approvals that have been obtained or applied for at time of the application. Note: Land enrolled in Michigan Farmland Preservation Program through *Part 361 of the Natural Resources and Environmental Protection Act, 1994 Act 451 as amended, more commonly known as PA 116*, must receive approval from the Michigan Department of Agriculture to locate a WECS on the property prior to construction. .
- 9) Visual Impact: Visual simulations of how the completed project will look from four viewable angles.
- 10) Environmental Impact: Copy of the Environmental Impact analysis.
- 11) Avian and Wildlife Impact: Copy of the Avian and Wildlife Impact analysis.

- 12) Shadow Flicker: Copy of the Shadow Flicker analysis.
- 13) Manufacturers' Material Safety Data Sheet(s): Documentation shall include the type and quantity of all materials used in the operation of all equipment including, but not limited to, all lubricants and coolants.
- 14) Decommissioning: Copy of the decommissioning plans and a description of how any surety bond, if required, is applied to the decommissioning process.
- 15) Complaint Resolution: Description of the complaint resolution process.
- 16) An applicant shall remit an application fee and if required, an escrow deposit, in the amount specified in the fee schedule adopted by the Board of Trustees. This schedule shall be based on the cost of the application review and may be adjusted from time to time. If professional review of plans is required those costs shall be born by the applicant with his consent.
- 17) Fire suppression plan.
- 18) STANDARDS AND REQUIREMENTS. The Utility Grid wind energy system project shall meet the following standards and requirements:
 - a) Exclusion Zone: In addition to the Wind Energy Overlay District that encompasses the entirety of Fairgrove Township, all proposed Utility-Grid Wind Energy Systems are subject to an Exclusion Zone.
 - i. It is the intent and purpose of the Utility-Grid Wind Energy Exclusion Zone to provide residents of Fairgrove Township and adjacent villages relief in specified areas from wind energy systems. The exclusion zone around the villages is based on the potential build out of Fairgrove Township based on the Future Land Use plan shown in the Township's adopted Master Plan. Fairgrove Township permits Utility-Grid Wind Energy Systems as a special land use requiring a Special Land Use Permit within the Wind Energy Overlay. Wind turbines that are part of a Utility-Grid Wind Energy System are restricted from all property in the Exclusion Zone as depicted as the blue boundary on the Utility-Grid Wind Energy Exclusion Zone Map shown below, regardless of the zoning district.
 - ii. The boundaries of the Utility-Grid Wind Energy Exclusion Zone are hereby defined and established as shown on the map, shown below, which accompanies this Zoning Ordinance and which map, with all explanatory matter thereon, is hereby made a part of this Zoning Ordinance.
 - iii. Where uncertainty exists with respect to the boundaries on the Utility Grid Wind Energy Exclusion Zone Map, the following rules shall apply:
 1. The blue boundaries indicated as approximately following the streets or highways shall be construed to be such boundaries.
 2. The blue boundaries indicated as approximately following Township boundary lines or following lot lines shall be construed as following said lines.

- 3. The blue boundaries indicated as approximately parallel to the center lines of streets or highways shall be construed as being parallel to and at such distance as indicated by given distance or scaled dimension.
- 4. Note that the green boundaries depicted on the exclusion zone map represent the approximate boundaries of Akron Village and Fairgrove Village.
- 5. The yellow and red contours depicting the approximate locations of any Airport Zones from the Tuscola Area Airport are shown for informational purposes only and are not exclusion zones.



- b) Setbacks from Inhabited structures: Each wind turbine, as measured from the centerline of its tower base shall be set back from the nearest wall of an inhabited structure by a distance of no less than 1,320-feet.
- c) Setbacks from Property Lines:
 - i. Participating Parcel: A setback for a wind turbine from the property lines of adjacent participating property is not required.
 - ii. Non-Participating Parcel: The distance between a wind turbine and the property lines of adjacent non-participating properties shall be at least 1.2 times its total structure height.
 - iii. Limited Participating Parcel: A setback for a wind turbine from the property lines of adjacent limited participating property shall be at least 0.5 times the diameter of the rotor, or at 200 feet, whichever is greater.
- d) Wind turbines and access roads: Wind related facilities shall be located so as to minimize the disruption to agricultural activity and, therefore, the location of towers and access routes is encouraged along internal property lines.
- e) Public Roads: Each wind turbine shall be set back from the nearest public road a distance no less than 1.2 times the total height of the structure determined at the nearest centerline for such public road.
- f) SCADA (supervisory control and data acquisition) or meteorological (Met) towers shall also comply with the property set-back requirement. The setback shall be at least the height of the SCADA or Met tower. An Operations and Maintenance Office building, a sub-station, or ancillary equipment shall comply with any property set-back requirement that may be applicable to that type of building or equipment. Overhead transmission lines and power poles shall comply with the set-back requirements applicable to public utilities.
- g) Sound Pressure Level: The sound pressure level generated by a Utility Grid wind energy system shall not exceed 55 dB(A) as measured at an inhabited structure on non-participating parcels. This sound pressure level shall not be exceeded for more than 3 minutes in any hour of the day. If the ambient sound pressure level exceeds 55 dB(A), the standard shall be ambient dB(A) plus 5 dB(A).
- h) As part of the application and prior to installation, the applicant shall provide modeling and analysis that will confirm that the Utility Grid wind energy system will not exceed the maximum permitted sound pressure levels. Modeling and analysis shall conform to IEC 61400 and ISO 9613. After installation of the Utility Grid wind energy system, sound pressure level measurements shall be done by a third party, qualified professional according to the procedures in the most current version of ANSI S12.18. All sound pressure levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter. Documentation of the sound pressure level measurements shall be

provided to the local government within 60 days of the commercial operation of the project.

- 19) Construction Codes, Towers, and Interconnection Standards: Utility Grid wind energy systems including towers shall comply with all applicable state construction and electrical codes and local building permit requirements. Utility Grid wind energy systems including towers shall comply with Federal Aviation Administration requirements, the Michigan Airport Zoning Act (Public Act 23 of 1950, MCL 259.431 et seq.), the Michigan Tall Structures Act (Public Act 259 of 1959, MCL 259.481 et seq.), and local jurisdiction airport overlay zone regulations. The minimum FAA lighting standards shall not be exceeded. All tower lighting required by the FAA shall be shielded to the extent possible to reduce glare and visibility from the ground. The tower shaft shall not be illuminated unless required by the FAA. Utility Grid wind energy systems shall comply with applicable utility, Michigan Public Service Commission, and Federal Energy Regulatory Commission interconnection standards. In addition, the application shall include documentation that the applicant has contacted the Tuscola County Airport Ordinance Administrator to determine what is required by the Tuscola Area Airport in terms of any required Airport Zoning Permits and how any proposed structures related to the utility grid wind energy system may be affected by any imposed height limitations as determined by the Tuscola Area Airport.
- 20) Safety: All Utility Grid wind energy systems shall be designed to prevent unauthorized access to electrical and mechanical components and shall have access doors that are kept securely locked at all times when service personnel are not present. All spent lubricants and cooling fluids shall be properly and safely removed in a timely manner from the site of the wind energy system. A sign shall be posted near the tower or Operations and Maintenance Office building that will contain emergency contact information. Signage placed at the road access shall be used to warn visitors about the potential danger of falling ice. The minimum vertical blade tip clearance from grade shall be 20 feet for a wind energy system employing a horizontal axis rotor.
- 21) Visual Impact: Utility Grid wind energy system projects shall use tubular towers and all Utility Grid wind energy systems in a project shall be finished in a single, non-reflective matte finished color. A project shall be constructed using wind energy systems of similar design, size, operation, and appearance throughout the project. No lettering, company insignia, advertising or graphics shall be on any parts of the tower, hub, or blades. Nacelles may have lettering that exhibits the manufacturer's and/or owner's identification. The applicant shall avoid state or federal scenic areas and significant visual resources listed in the local unit of government's comprehensive plan. There shall be no illumination other than that required of the FAA.

22) Environmental Impact: The applicant shall have a third party, approved by the Township or their engineer, qualified professional conduct an analysis to identify and assess any potential impacts on the natural environment including, but not limited to wetlands and other fragile ecosystems, historical and cultural sites, and antiquities. The applicant shall take appropriate measures to minimize, eliminate or mitigate adverse impacts identified in the analysis.

- a) The applicant shall identify and evaluate the significance of any net effects or concerns that will remain after mitigation efforts. The applicant shall comply with applicable parts of the Michigan Natural Resources and Environmental Protection Act (Act 451 of 1994, MCL 324.101 et seq.) including but not limited to Part 31 Water Resources Protection (MCL 324.3101 et seq.), Part 91 Soil Erosion and Sedimentation Control (MCL 324.9101 et seq.), Part 301 Inland Lakes and Streams (MCL 324.30101 et seq.), Part 303 Wetlands (MCL 324.30301 et seq.), Part 323 Shoreland Protection and Management (MCL 324.32301 et seq.), Part 325 Great Lakes Submerged Lands (MCL 324.32501 et seq.), and Part 353 Sand Dunes Protection and Management (MCL 324.35301 et seq.). The applicant shall be responsible for making repairs to any public roads, drains and infrastructure damaged by the construction of the Utility Grid wind energy system.

23) Avian and Wildlife Impact: The applicant shall have a third party, approved by the Township or their engineer, qualified professional conduct an analysis to identify and assess any potential impacts on wildlife and endangered species. The applicant shall take appropriate measures to minimize, eliminate or mitigate adverse impacts identified in the analysis. The applicant shall identify and evaluate the significance of any net effects or concerns that will remain after mitigation efforts.

- a) Sites requiring special scrutiny include wildlife refuges, other areas where birds are highly concentrated, bat hibernacula, wooded ridge tops that attract wildlife, sites that are frequented by federally and/or state listed endangered species of birds and bats, significant bird migration pathways, and areas that have landscape features known to attract large numbers of raptors.
- b) At a minimum, the analysis shall include a thorough review of existing information regarding species and potential habitats in the vicinity of the project area. Where appropriate, surveys for bats, raptors, and general avian use should be conducted. The analysis shall include the potential effects on species listed under the federal Endangered Species Act and Michigan's Endangered Species Protection Law.
- c) The analysis shall indicate whether a post construction wildlife mortality study will be conducted and, if not, the reasons why such a study does not need to be conducted. Power lines should be placed underground, when feasible, to prevent avian collisions and electrocutions. All above-ground lines, transformers, or conductors should follow any Avian Power Line Interaction Committee (APLIC, <http://www.aplic.org/>) guidelines to prevent avian mortality.

- 24) Electromagnetic Interference: No Utility Grid wind energy system shall be installed in any location where its proximity to existing fixed broadcast, retransmission, or reception antennae for global positioning system correction systems (RTK), radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception unless the applicant provides a replacement signal to the affected party that will restore reception to at least the level present before operation of the wind energy system. No Utility Grid wind energy system shall be installed in any location within the line of sight of an existing microwave communications link where operation of the wind energy system is likely to produce electromagnetic interference in the link's operation unless the interference is insignificant.
- 25) Shadow Flicker: The applicant shall conduct an analysis of potential shadow flicker created by each proposed wind turbine at all inhabitable structures with direct line-of-sight to a wind turbine. Such analysis shall be documented in a shadow flicker modeling report to be submitted as part of the Special Land Use Permit Application to the Planning Commission. The analysis shall identify the locations of shadow flicker created by each proposed wind turbine and the expected durations of the flicker at these locations from sunrise to sunset over the course of a year. Site plans shall depict a contour around each proposed wind turbine that represents the predicted thirty (30) hours per year shadow flicker generated by the modeling software used in the report. The analysis shall identify all areas where shadow flicker may affect the occupants of the inhabitable structures and describe measures that shall be taken to eliminate or mitigate the problems. A shadow flicker mitigation plan shall also be submitted with the shadow flicker modeling report. Any shadow flicker complaint shall be addressed by the applicant and be mitigated. .
- 26) Decommissioning: The applicant shall submit a decommissioning plan The plan shall include:
- a) the anticipated life of the project,
 - b) the estimated decommissioning costs net of salvage value in current dollars,
 - c) the method of ensuring that funds will be available for decommissioning and restoration.
 - d) the anticipated manner in which the project will be decommissioned and the site restored.
 - e) A provision to give notice to the Township one year in advance of decommissioning. A surety bond to assure payment of the cost of decommissioning may be required.
 - f) The standard for inactivity shall be twelve (12) months.

27) Complaint Resolution: The applicant shall develop a process to resolve complaints from nearby residents concerning the construction or operation of the project. The process may use an independent mediator or arbitrator and shall include a time limit for acting on a complaint. The process shall not preclude the local government from acting on a complaint. During construction the applicant shall maintain and make available to nearby residents a telephone number where a project representative can be reached during normal business hours. A report of all complaints and resolutions to complaints shall be filed with the township on an annual basis.

28) Conflicting Provisions: In the event of a conflict between any provision in this section and any other section of this Zoning Ordinance with regard to Utility-Scale Wind Energy Systems, the provisions of this section shall control.

SECTION B

All ordinances inconsistent with the provisions of this ordinance are hereby repealed.

SECTION C

Should any section, clause or provision of this ordinance be declared by the courts to be invalid, the same shall not affect the validity of this ordinance as a whole or any part thereof other than the part declared to be invalid.

SECTION D

This ordinance shall become effective immediately after the last required publication following adoption.

CERTIFICATION OF ADOPTION

I, Karen Goodchild, as Clerk for Fairgrove Township, Tuscola County, Michigan, hereby certify the following relative to the foregoing Ordinance:

1. That the Ordinance was introduced by the Fairgrove Township Board of Trustees on August 27, 2012, and referred to the Fairgrove Township Planning Commission.

2. That the Fairgrove Township Planning Commission conducted a public hearing on September 27, 2012, to consider the Ordinance and submitted its report and recommendation to Fairgrove Township Board of Trustees on September 28, 2012.

3. That the Ordinance was referred again to the Fairgrove Township Planning Commission by the Fairgrove Township Board of Trustees on October 15, 2012.

4. That the Fairgrove Township Planning Commission conducted a second public hearing on November 8, 2012, to consider the Ordinance and submitted its second report and recommendation to the Fairgrove Township Board of Trustees on November 15, 2012.

5. That the Ordinance was adopted by the Fairgrove Township Board of Trustees on December 17, 2012, 2012, on the following vote:

Ayes: Day, Hadeway, McQuillan, Goodchild, and Aeder

Nays: None

Absent: None

6. That a **Notice of Adoption** of the Ordinance was published in the Tuscola Advertiser on December 22, 2012.

7. That the Ordinance took effect on December 29, 2012.

DATED: December 30, 2012

Karen Goodchild
Fairgrove Township Clerk

CERTIFICATE

STATE OF MICHIGAN)
) ss.
COUNTY OF TUSCOLA)

I, Karen Goodchild, the duly qualified and acting Clerk of Fairgrove Township, Tuscola County, Michigan, do hereby certify and return that the foregoing is a true and complete copy of an Ordinance adopted by the Township Board at a regular meeting of the Township Board held on the 17th day of December, 2012, the original of which is on file in the office of the Township Clerk.

IN WITNESS WHEREOF, I have hereunto affixed my official signature this 30th day of December, 2012.

Karen Goodchild
Fairgrove Township Clerk