

# Worth County Zoning Commission

## Report and Recommendations Related to Commercial Wind Development in the County

June 28, 2021

### Background

On April 12, 2021, the Board of Supervisors (Board) passed Resolution 2021.04.05 which implemented a temporary moratorium on construction of Commercial Wind Energy Systems for the purpose of drafting and adopting any necessary and proper revisions to an ordinance governing those activities.

The Zoning Commission (Commission), having responsibility in the county to review and recommend land use plans and ordinances took up the work to perform that research and develop recommendations related to this topic. The Commission began this work on April 21, 2021.

### Research for Commission Recommendations

The overall goal of the research work by the commission was to develop factual information and understanding of the issues from a broad range of sources, and was focused on ensuring that we had a balance of information and considerations from as many stakeholders as feasible, while at the same time seeking not to founder in research and discussion forever. The research work undertaken by the commission consumed of hundreds of hours and consisted of:

1. Consideration of comments and concerns made public during Board meetings and via petitions submitted to the Board.
2. Invited speakers from;
  - a. Invenergy
  - b. Worth County Farm Bureau
  - c. Worth County Engineer
  - d. Worth County Conservation
  - e. Worth County Board of Health
  - f. Kossuth County Zoning (neighboring county having recently passed a Wind-specific ordinance)
3. Research of ordinances in effect from 38 counties across all regions of IA.
4. Research of commercial wind development issues contained in State and Federal agency documents and literature.
5. Research of commercial wind development issues contained in peer-reviewed scientific journals.
6. \* Research of unsolicited documents received by the commission that was provided by invited speakers, by organizations advocating issues around commercial wind development, and by citizens in and around Worth County.

\* It should be noted that while the commission considered the information provided pursuant to item 6, caution was exercised to ensure that information that was considered had an authoritative source and we tried to steer clear of clear extreme biases.

7. Public Comment. After consideration of information developed via initial research described above, the commission prepared a draft containing details of a proposed ordinance and shared that draft for comment to the public at-large. In addition, we sent copies of the draft for comment to the County Attorney, County Auditor, County Conservation, County engineer, County Board of Health, North Iowa Area Council of Governments (NIACOG) Farm Bureau, and Invenergy.

Subsequent to making the draft public, the commission solicited written comments and held a public hearing for verbal comment.

- a. Written comments were received from a wide variety of individuals and agencies, some of which were from outside of the county and from commercial wind energy companies or organizations. Comments ranged from general in nature for or against the proposal, and others provided detailed recommended changes and rationale.
- b. The Public hearing consisted of at least 110 persons on site, and untold number tuned in at different times via Zoom. During the meeting the Commission heard opinions presented from approximately 30 people. The commission held the meeting open for comment for as long as there was anyone that wished to speak.
- c. Of particular disappointing note, **Invenergy declined to comment on the details in draft, after first stating that they would.** Instead, their representative at the public hearing stated that since they claimed any ordinance would not apply to them due to their claim of vested rights, that it would be senseless to comment on the draft.

## Development of Final Recommendations

The proposed ordinance we are presenting today is the culmination of several iterations of content and detail. We went through multiple debates and versions prior to the draft presented for public comment. After receipt of comments we sorted and categorized each comment so that the Commission could consider each of them in context. In other words, every comment specific to a certain topic, such as setbacks for example, were listed together so that the Commission could view and consider all of them at the same time. We also received several comments that were in general terms either supportive or not of the draft but did not contain specific recommendations. These too were consolidated and considered by the Commission as part of our consideration and debate for changes.

The draft today contains a large number of changes as a result of the comments we received in writing and verbally during the public hearing. While we may not have included a specific recommendation submitted by someone, every recommendation was discussed and considered. To this end, we have also prepared and will provide a document that presents the rationale behind some of the main aspects that most people seemed to comment on – those of setbacks, sound and shadow flicker. Those are not the only areas of the draft however that were impacted and changed as a result of comments we received. There were over fifty other aspects of the draft that were changed as result of the comments, many of which added clarity to reduce confusion or misunderstanding, in addition to changes of content.

The topic of misunderstanding is an area I want to briefly touch on. Several general comments received simply said that if the draft were an ordinance that it would “*prohibit further commercial wind development in the county*”, or “*this would be the most restrictive ordinance in the state*”. I believe those to be gross misunderstandings, and not an accurate perspective of the proposal. The 1600-foot setback to property lines was often cited as one of the main reasons for those statements. Clearly, the authors did not read, or consider in their comment, that the proposed ordinance also includes a clause that allows a waiver of that set back to a measure of 1.1 times the height of the turbine. That provides for a means to reduce the setback by at least 71%. I believe that there are few ordinances in IA that allow for that kind of setback reduction. I would also point out the Madison County wind ordinance passed in December 2020 included a 1.5 mile setback from property lines of non-participating landowners.

Likewise, while the sound threshold was often cited as “*too low to allow any turbines*”. The thresholds in the proposal are set based on factual, normal noise levels in a rural area, and those too can be changed

by waiver. Simply put, the proposal in no way sets out to preclude commercial wind development in the county. It merely establishes the rules and guidelines by which such development shall occur.

Our guiding principles for development of the details in the proposal began with the concept of protection of property rights of all landowners in the county, coupled with recognition of need for economic development supportive of revenue for essential services, but which is also consistent with the goals and strategies of the County Comprehensive Development Plan.

Specifically, we began with the notion that all landowners have a right to enjoyment and use of their property. We recognized that some landowners may, or have chosen, to give up or sell certain rights on their land, including the rights to be free from effects of a commercial wind turbine. That is evident in the 'Effects' language contained in the wind easement agreements signed by some landowners. It is their privilege to give up or sell those rights. However, that privilege ends at their property line. The rights of the adjacent property remain and should not be taken away because a neighbor sold theirs. Nor should a government regulation cause those rights to be infringed upon or taken for the benefit of their neighbor or a commercial entity using that neighbor's property for their own financial gain, unless that property owner also chooses to give up or sell those 'effects' rights. We believe that is a basic principle throughout the United States. It is for that reason that we established the sound, shadow flicker, and safety setbacks at the property lines. We have a separate document that provides insight into our rationale for the limits established in the proposal.

Our belief is that the proposed ordinance is a fair and balanced approach to wind development in the county. It is an ordinance providing guidance on land use specific to commercial wind turbines in the county, and it is consistent with the authorities for county government specified in IA code chapter 335. It first provides protection for rights and welfare of its citizens, as well as county natural resources and infrastructure. At the same time, it provides for a balanced and consensus approach for continued commercial wind development in the county.

The draft we propose is likely not perfect – no ordinance ever is. It is however, formed on a broad range of considerations and put together as a system of rules that work together to provide what the Commission feels is the best possible approach. Certainly, we may learn of things not considered as a result of living with and using this ordinance. Changes can always be made in the future. However, we urge the Board to recognize the huge effort and hundreds of hours and considerations from all stakeholders and pass this draft as presented. If, as part of the Supervisors deliberation and further public comment there are changes to be considered, we urge the board to reach out to the commission for our perspective. As noted a moment ago, the proposal is written as an integral system and what may seem like a simple change in one area could have ramifications in others.

Lastly, I would like to thank all that participated and provided input into this process, especially the work of the Zoning Commission members. They were asked to expend a substantial amount of time and interruption to their normal routines to take on this work in a timely manner, and I want to publicly thank them. I also want to note that at every turn they tried to set aside personal feelings and professionally perform their role as commissioners for the good of the county and its citizens.

## Recommendations

1. On behalf of the Zoning Commission, and as result of unanimous decision by that commission, I present the draft for an Ordinance Regulating the Construction and Operation of Commercial Wind Energy Conversion Systems in Worth County and urge your prompt review and approval.
2. We recommend that the towns and cities in Worth County, if they have concerns of C-WECS installed in close proximity that could hamper future expansion of city limits, that they pursue

action on their own to claim extraterritorial rights as may be available via Iowa Statutes. We make this recommendation in light of a public comment suggestion that the Commission propose a 2-mile set back from city limits for all towns and cities in the county. After consideration of that suggestion, the Commission decided that subject was best decided by individual cities versus a blanket requirement.

3. If the Board of Supervisors approve an ordinance with sound level thresholds, we recommend that the Supervisors consider funding for the County Board of Health to purchase a sound level measuring device sufficient to be used to initially screen sound level complaints associated with C-WECS operation. The concept is not to use that device or the Board of Health to adjudicate such complaints, but rather act as an initial screening to determine if a complainant may have a complaint worth pursuing. Facilitating this initial screening could serve to preclude potentially expensive testing from a professional acoustician where the noise thresholds are clearly not violated.

Thank you, and I'd be happy to address any questions you may have at this time.

Jeff Gorball  
Chair, Worth County Zoning Commission