

JACKSON COUNTY ZONING COMMISSION

7:00 p.m.

Monday, September 9, 2024

Community Room, Jackson County Courthouse
201 W Platt Street, Maquoketa, Iowa

Commissioners Present: Chair Monica McHugh, Vice Chair Tom Stewart, Commissioners Sandra Gerlach, Mike Burke, Emerita Kies, Kristine Pfab, and John Manson.

Commissioners Excused:

Commissioners Absent:

Staff Member Present: Zoning Administrator Lori Roling and Administrative Assistant Becca Pflughaupt

CALL TO ORDER AND ROLL CALL: The meeting was called to order by Chair McHugh at 7:00 p.m. and roll call taken. A sign-in sheet was distributed. The Zoom meeting was launched. There were at least 10 people attending the meeting via Zoom. Those in attendance that were noted were:

- Brent
- Mary Ann's tablet
- Anita
- Jleemon
- Beth
- iPhone (79)
- iPhone (6)
- 86945948468
- 563-593-0166
- BFI

Those in attendance in person were:

- Peggy Flenker, 110 S Prospect St, Maquoketa, IA
- Craig Flenker, 110 S Prospect St, Maquoketa, IA
- Tom Daurelle, 1016 N Angus Ct, Maquoketa, IA
- Alice Daurelle, 1016 N Angus Ct, Maquoketa, IA
- Bryan McLeod, 4640 48th Ave, Baldwin, IA
- DaVonne Eberhart, 1289 235th Avenue, Delmar, IA
- Justin Alden, 39849 300th St, Bellevue, IA
- Alaina Kilburg, 1060 185th Ave, Maquoketa, IA
- Jim Taplan, 5430 550th Ave, Sabula, IA
- Landon & Alissa Rorah, 27318 24th St, Maquoketa, IA
- Jenn Kutsch 1075 235th Ave, Delmar, IA

MINUTES: Motion by, Stewart seconded by Kies, to approve the minutes of the August 19, 2024 Zoning Commission meeting with adding the statement that "Additional people in attendance that likely did not sign in." under Those in attendance. Motion carried by the following vote: Aye – Manson, Burke, Gerlach, Stewart, McHugh, Kies, and Pfab; Nay – None.

CASE – ZC24-01: Preliminary Subdivision Plat Approval

Chair McHugh opened the public hearing and stated that it was a public hearing regarding zoning only. We've been through this application before; it was approved March of 2023 but it did not pass through the Army Corps of Engineers until July 2024. Subdivision survey, and plat was approved previously, and the process had to start over due to the delay from the Army Corps of Engineers. The new tube is adequate for drainage and runoff per the letter from Secondary Roads.

Staff Member Roling provided aerial views of the subject property and surrounding area from the staff report. It is already zoned R1 and is currently being served by community water, private sewer will still need to be provided. Lots meet our plating ordinance. McHugh asked if the city was going to run sewer and Roling doesn't believe so. Six lots will be added.

Chair McHugh asked Alden for comments. McHugh asked if there were any neighbors that would like to speak concerning the subdivision. Mary Ann was speaking through Zoom, but it wasn't picking up the audio. We were able to get that tech issue resolved and Mary Ann had no input. Leemon states nothing has changed from the previous plat other than the 15" pipe that had been addressed. Roling asked for further input regarding the plat. Roling asked if there was anyone that wanted to speak on the subdivision plat. McHugh asked once more if there was anyone else wanting to speak regarding the subdivision plat, there were no other public comments.

Motion by Stewart, second by Gerlach, to close the public hearing. Motion carried by the following vote: Aye – Manson, Burke, Gerlach, Stewart, McHugh, Kies, and Pfab; Nay – None.

Motion by Burke, seconded by Gerlach, to approve the subdivision. Motion carried by the following vote: Aye – Manson, Burke, Gerlach, Stewart, McHugh, Kies, and Pfab; Nay – None.

Work Session (Jackson County Wind Energy Ordinance Draft):

Roling started the discussion stating she had made notes with what had been discussed last time and it was agreed to start at the beginning. This has been original language, and she doesn't know if this is where we are now heading. We need to potentially take it out. It was there originally. Section 1. PURPOSE Currently it states, "The purpose of this ordinance is to establish guidelines for the siting, design, and construction of Wind Energy Conversion Systems (WECS) and substations which generate electricity for use at the location of the WECS or to be sold to wholesale or retail markets. In addition, the purpose of this ordinance shall be to promote the public health, safety, comfort, and general welfare, while facilitating economic opportunities for rural residents and promoting the goal of increased energy production from renewable energy sources." Roling suggests striking out all in red and put a period.

Motion by Stewart, second by Kies, to strike out the red text. Motion carried by the following vote: Aye – Manson, Burke, Gerlach, Stewart, McHugh, Kies, and Pfab; Nay – None.

Friendly amendment by Pfab to strike out starting with, the entire sentence; "In addition, the purpose of this ordinance shall be to promote the public health, safety, comfort, and general welfare, while facilitating economic opportunities for rural residents and promoting the goal of increased energy production from renewable energy sources." Second by Burke.

Discussion followed. Stewart is not sure it's necessary, Roling states it contradicts what's in the draft. Burke wonders if something should be left in there for non-commercial WECS, thinks it would make sense for a non-commercial ordinance. It is an economic opportunity for the farmer putting it up, an opportunity for a rural resident. It's increasing the goal of energy production for that particular person. Stewart thinks it's more to the point and it's not as subjective to take it all out. Kies agrees, it doesn't take away, we can get by without that. That was agreed.

Motion carried by the following vote: Aye – Manson, Burke, Gerlach, Stewart, McHugh, Kies, and Pfab; Nay – None.

Roling addressed that she went through the draft ordinance to make the FAA and square foot consistent that was brought up last meeting.

Section 2. DEFINITIONS

Commercial Wind Energy Conversion System (C-WECS): A WECS of equal to or greater than (100/40) kW in total name plate generating capacity **or greater than 100' in height**. It was decided to leave the text as is.

Stewart stated that he had gone out to the Mike Duhme farm. He asked Roling what the total height of his was. Roling said Duhme told her it was 100'. Stewart went out to get a feel of the scale of it.

Roling spoke of page 3, Total Height (WECS): The highest point, above ground level, reached by the rotor tip or any other part of the WECS. **Note new language: Total height restriction of C-WECS shall be no greater than 400'**. Roling stated that is from ground to turbine tip.

Page 7, Section 11. Setbacks.

Some of the comments McHugh has heard and read, instead of stating inhabited structures to look at changing it to property lines or right of way lines. John, what's your thoughts, I'm going to stick with my 2000' from property line. Heard too many negative comments. He wants it instead of inhabited structures to be property line. Roling states they can do both. Pfab, Kies, Stewart all agrees property line. Burke still says inhabited structures. Gerlach has a question regarding the way it's worded currently. If she wants to build in the future, can she build whatever she wants on her property. Stewart states that's why he switched his view as he wants to protect neighbors building rights. Pfab prefers property line.

Motion by Pfab, second by Kies, to remove 11. a) Inhabited Structures. Each wind turbine shall be set back from inhabited structures over 144sq' that are permanently occupied by humans or livestock, a distance no less than (i) two (2) times its total height or (ii) one thousand three hundred twenty (1,320) feet, whichever is greater. Waivers to this stipulation may be granted. MET Tower setbacks shall be a minimum of 1.1 times the

total height of the tower.

McHugh states they can go through the BOA, instead of allowing them to be closer to the structure, if we go from property line. 1250' from property line makes it further away. Motion carried to remove 11. a) Inhabited structures by the following vote: Aye – Manson, Burke, Gerlach, Stewart, McHugh, Kies, and Pfab; Nay – None.

Moving on to 11.b) Property Lines. Setback from neighboring property lines should be no less than 1.10 times the height of the tower unless appropriate waivers have been received from the adjoining property owner. At no time shall any part of the wind turbine and meteorological tower overhang an adjoining property without securing appropriate easements and waivers from adjoining property owners.

Manson motions to change from 1.10 times the height of the tower to 2000' from proposed tower to property line. Pfab seconds.

Discussion followed. Stewart has done reading and has seen where 1.1 is a fairly standard measurement, he'd be willing to go 1.25 but it seems 2000' is pretty restrictive when talking about a 400' tower, but 1.1 is a uniform standard recommendation.

Manson doesn't think 1.1 is enough. Kies would be willing to go 1500' but no less than that. Burke states he could live with 1500', would rather be a quarter of a mile but won't haggle. Gerlach is ok with 1500'. Pfab still prefers 2000'.

All in favor say Aye -

All in favor say Nay

McHugh determined we needed to do a roll call vote on that. Roll call vote:

Tom Stewart – nay

Mike Burke – nay

Sandra Gerlach – nay

Emerita Kies – nay

John Manson – yes

Kristine Pfab – aye

Monica McHugh - no

2000' has been defeated

Motion to setback from property line to 1500' by Kies

Pfab seconds

Motion carried by the following vote: Aye – Burke, Gerlach, Stewart, McHugh, Kies, and Pfab; Nay - Manson

Motion carried to change 1.10 to 1500'

McHugh states, with that in mind, Public Right of way, we also have the 1.1, do we want to change that to 1500'. Burke motions, Pfab seconds.

Manson states, I'm just trying to protect the private landowner. Kies, no comment.

Stewart, I think we need to make this and the next one, consistent, so yes, I support that.

Burke, I have the same idea. Gerlach states to keep it consistent. Do you want to

amend the motion to add communication and electrical lines. Stewart makes the

motion, Kies seconds. Motion carried to change to 1500'. Stewart pointed out that we

just voted on the amendment, we haven't voted on the original motion. So technically,

we need to vote on the original motion. The original motion to change the public right

of way to 1500'. Motion carried by the following vote: Aye – Manson, Burke, Gerlach, Stewart, McHugh, Kies, and Pfab; Nay - none

Roling provided language from the Linn County ordinance that was adopted July 31, 2024, regarding Noise Analysis. Roling had highlighted their ordinance, stating, "The average decibel limit is specific to source of the sound and does not count against cumulative ambient decibel levels as established in a baseline acoustic evaluation." They read through the document. Stewart asked Roling how much sound Mike's puts out; Roling said she had no idea. Stewart said it was surprisingly loud to him. He stated he was within the fall zone, 100' of the base. Roling states she worked with other agencies to help guide the placement windmill. Stewart does view a personal windmill differently than a commercial, but he was trying to imagine if it was just loud for its size, or it was a bad morning. McHugh states that the ones in Boone County she doesn't believe are that loud, you can hear them, but they are not that loud, she has stood under one on her family's property, you can hear it, but I think because his is smaller, it's closer to the ground you are closer to the motor. Roling stated she was between two of them in Poweshiek County, it was windy, so there was ambient noise, and were in the high 70's, low 80's on her noise meter.

McHugh states she likes the pre- and post-construction noise evaluation. It is found in the Linn County ordinance 7) c. "A pre- and post-construction noise evaluation shall be completed by a certified professional by the Institute of Noise Control Engineering (INCE), or a licensed Professional Engineer (PE) to verify compliance with the County's standards."

Roling states to go back to 12.b. where we took out noise and changed it to sound. We can re-word that since it does go to property line but be mindful, right now, we're at 50(dBA) decibels measured at the nearest inhabited structure. McHugh states that needs changed from inhabited structures to property line. McHugh is inclined to keep it at 50, she's looking for comments; to change to sound analysis from noise, she likes the pre- and post-construction sound analysis. McHugh states Linn County is written better. Continuing with Linn County's ordinance: 7) d. "Every five (5) years a noise evaluation shall be completed, at the Operators expense, by a certified professional by the Institute of Noise Control Engineering (INCE), or a licensed Professional Engineer (PE) to verify compliance with the County's standards." Burke asks if there is a certified professional, McHugh states re-evaluation is not a bad idea, discussion agrees five years is reasonable.

It was discussed to add all of Linn County 7). Replace our 12. Sound with their 7) Noise Analysis. McHugh believes theirs is clearer. She does though think we need to leave d. in for waivers, leave the 50 dBA and not 55 dBA like theirs. Change noise to sound and instead of windstorms, use weather events. Gerlach asks who's going to enforce that every five years. Roling states it would be zoning office. Gerlach asks, what if they don't comply. Roling states one thing she's been talking to the assistant county attorney is fines, right now we don't have anything specific outside of our normal fines. Kies states this would be different; these are big corporations. Roling says if there's a better way to do it, then we should. McHugh asks, "are we discriminating against corporations than individuals?" Roling states we don't have anything different for our commercial industrial properties that are in violation. We have to look at our zoning, McHugh states.

We have smaller incorporated farms, I'm not sure we want to do that. Do we want to change fines based on zoning. Roling states we can ask our county attorney, and if we can have them at the meetings from here on out. Gerlach asks does it do any good to put that paragraph in there, if we're not going to do anything about it. Burke states it's better to have it there than not. Roling states we can keep it there and see if we can work with the county attorney on developing specific fines or violation of anything; sound, shadow flicker, and enforcing not cleaning up from damage.

Motion to replace number 12. Sound with Linn County 7) with the exception of decibel level and change noise to sound and keep the 50 dBA. Kies makes the motion and Pfab seconds.

Motion carried by the following vote: Aye – Manson, Burke, Gerlach, Stewart, McHugh, Kies, and Pfab; Nay – None

Moving on to 13. Safety. j) "Electromagnetic Interference (EMI) No wind energy device/facility shall be located within the microwave path of an emergency communication tower. Any wind energy device / facility shall not cause interference with existing radio signals, telephone service, television reception (including satellite television reception) or microwave signals. If it is determined that the interference is being created due to the wind energy device / facility, the owner shall take the necessary corrective measures to eliminate interference."

Roling asks who has that burden to prove, what does that burden look like or detail. McHugh says she struggles with this because the weather affects her cell phone, and she just doesn't think this really can be enforced or how it can be proven. Roling stated using cell phones as an example, she used to get service in places she doesn't now. Technology will change, there's been a huge jump in the last ten years, a huge difficulty enforcing and how to prove it. Kies questions you mean difficulty on how to prove it. Roling states we're going to blame anything that may not actually be the effect. Stewart states, I believe the argument is going to be made, it does happen, it is real but where's the proof, how do you prove it, how do you mitigate it, but in a public hearing, we're going to hear that in an argument, I'm just not sure on how to handle it. Burke states I don't know how you prove it or disprove it, but leave it in there and let someone else throw it out if they think it needs thrown out, I would rather have something there that someone can work with if there is some way. Pfab states leave it in because at some point maybe you can prove it. Burke doesn't believe it's hurting anything that it's there. Roling states the county doesn't have the burden of proof, of proving there's an issue. Burke states, apparently, it's the person having the issue to carry the burden of proof, but it's not right for the person having the problem prove it either. McHugh struggles with it. Kies states leave it, Stewart states leave it, Burke agrees, Gerlach agrees. Gerlach spoke of her satellite service, it was intermittent, and it was determined that the leaves had grown out on the trees, they came out and moved the dish and it worked again. How do we know it's directly related to the problem? Stewart says if it's the windmill they can turn it off and see. Gerlach agrees, they can start eliminating. Leave the statement in the ordinance and try to get fines if they do not follow through.

Moving on to 14. Shadow Flicker Throughout 14, the draft reads; "non-participating residence, or occupied community building". There was discussion about doing some clean up language on structures. Roling read the structures definition and said we do not have inhabited structures as a definition, and we probably need to add that and go back to what we were using before. McHugh states we took that out and changed it to structure. Do we want to change that in 14.a) and b)? We were still using inhabited structures even the time before last, we were using permanent structure instead of occupied structures. We can work on that definition, and we'll probably need to add a definition to keep it consistent and to keep out any uncertainties. McHugh states she struggles with inhabited structures. Gerlach states it can say inhabited it doesn't have to say permanently inhabited. It's been recently that we took it out and changed it to structure. McHugh states there are some that are part time inhabited. Burke says what are we going to consider part time. Gerlach says to get rid of permanent. Get rid of permanent and have it occupied by humans or livestock. McHugh says remember that when we get there.

Motion to change the entire section 14. Shadow Flicker from "non-participating residence, or occupied community building" to "non-participating residence or structure" throughout section 14

Pfab makes the motion, Burke seconds. There is no further discussion and motion carried by the following vote: Aye – Manson, Burke, Gerlach, Stewart, McHugh, Kies, and Pfab; Nay – None.

Roling asks if we should strengthen the definition of structure. Just to spell out even animal buildings. We know the intent. McHugh thinks it kind of covers everything. Roling asks if it will be misinterpreted. Stewart asks what are the concerns. They believe they are ok with it. Pfab thinks maybe have less. McHugh thinks when they were looking at this it was to avoid having someone pull in a camper and set there. There will always be something, and we've had this discussion on structures before in the past.

There was discussion on Shadow Flicker e) and f) on page 10.

Under thirty (30) hours they will curtail operations and at twenty (20) hours they have to provide mitigations, Pfab stated, so it's not redundant.

McHugh states the damaged Cedar County WECS that have not been cleaned up and everyone has seen the videos and something unknown to McHugh until the last few days was that those two turbines were prototypes, they were not mass produced. Stewart states the wind companies come in and they generally sell the power, they don't sell the site. McHugh's concern is that in the news report the original company that built them, they have changed hands many times. Stewart states that's typical. Gave the Coggon solar field as an example, built by a company and it's already changed hands once or twice, then lawsuits trail around trying to find who is actually responsible. Roling asks, can we write in that we don't allow first generation or prototypes. McHugh stated no to experimental, but how do we do that? Did it never go into full production, Gerlach asks? Cedar County's two turbines didn't go into mass production. Pfab asks can we restrict unless they've been into mass production.

McHugh states, how do we know that they're experimental. Roling states anything to avoid what happened in Cedar County. Stewart states the tech is always changing so the next generation may be the best one. McHugh states, the biggest issue is not so much that they are prototypes it's that the clean up has not been done. Roling wants to add additional language for catastrophic failure and timelines. It's the one thing we're not seeing. Stewart is asking, is the hard time getting it cleaned up because they are having a hard time pinning down the company? How do we pin down the company for the catastrophic failures? Roling states she likes to hear all sides, the 6 turbines that had catastrophic failure, the ones in Greenfield, Iowa, she's talked to the MidAmerican Energy Rep and, all six of those sites are cleaned up. McHugh states it was because Ragbrai was going through. Stewart states it was because a competent company was behind it. McHugh states they changed the route to bring the bicyclists through.

Pfab asks won't it all go back to punitive fines; McHugh is questioning can we add on to it. There are all sorts of things that could happen. So, the company is out there, but have they sold it, have they filed for bankruptcy. Stewart states don't we have it written in, if they have to provide a bond for decommissioning, can we tie that to catastrophic failure. Roling states we don't specifically spell out a decommissioning bond. McHugh states we do need to add in something in that talks about catastrophic failures, Roling wants something more specific like a decommissioning bond. Stewart says, that's probably something we need talk to the County Attorney about bond money? Gerlach asks, getting back to that five years again, how much time do they have to complete the paperwork? McHugh states it's up to the Board of Supervisors – it will be up to them, they should put those rules together, in this case, it's something that should be handled by the board as they're familiar with things like this.

Pfab questioned whether the state has some way of knowing if a turbine is in use, Roling had reached out to the Iowa Utility Board, IUB, they stated no and sent 8 pages of spreadsheets regarding nationwide electrical data.

McHugh wants additional language for discontinuing, decommissioning and add catastrophic events. She would like to see adding in on catastrophic failures that a plan to clean up needs to be submitted to the county within thirty days. Burke questioned, thirty days of the incident? Yes, thirty days of the incident, McHugh asks if there are any thoughts on that. Burke states put something in there to have some money available. Burke thought there was something in there, Roling bonding is part of the language for decommissioning. McHugh says they talked about putting an escrow in and vaguely remembers the assistant county attorney mentioning that. Roling states we will need a definition of catastrophic failure and asks if they want her to look at that under other counties.

McHugh asks for a definition of catastrophic failure including but not limiting to weather events that destroy or significantly damage beyond repair. Discussion followed regarding events that could happen similar to those whose land has been rendered unusable due to catastrophic events. Kies states that property owners signing up for this should have a contract, it shouldn't involve county or commission but should involve the business transaction between the landowner and their attorney. McHugh knows

they want the county to handle everything, but how can we force the turbine companies to do something, we don't force landowners to do, we can't cover everything. That is the responsibility of the landowner and their attorney. Roling will add catastrophic failure and a definition.

Regarding Linn County's wildlife protection, there are regulations and recommendations brought up by national and state organizations. Roling states from what she's seen from the State DNR at the state level, they don't really provide regulations, they provide recommendations. Linn County 11) a. 2. Project-related actions comply with federal and state wildlife regulations; We need to add "they shall comply with recommendations and regulations". 3. Adequate is that subjective? Per Pfab. McHugh states take out "Adequate", have it read, "Training shall be provided".

4. Coordination between the project developers and operators, wildlife agencies including Iowa Dept of Natural Resources (IDNR), and the Iowa Utilities Board (IUB) is effective and continuous. McHugh states, leave it in there, they (the IUB and the DNR) will have to be more involved as more projects happen.

Pfab asks regarding 4.b.1. Local, state and federal regulatory framework, that should involve legal enforcement. McHugh states it should, yes.

Linn county wildlife monitoring mitigation plan. McHugh states to add that in before Non-Commercial WECS as a new section, but we do need to vote on that. Make that section 7. The Wildlife Monitoring and Mitigation Plan and move Non-Commercial to number 8. Burke motions, Kies seconds, there is no further discussion and motion carried by the following vote: Aye – Manson, Burke, Gerlach, Stewart, McHugh, Kies, and Pfab; Nay – None.

Roling is questioning 1500' property line setbacks, is that from any property line they don't own, is that from any non-participating WECS property. McHugh states from any property line they don't own. That will need to be spelled out. McHugh states it should be non-owned because with how properties are put together with different parcels.

McHugh brought up that she wants the October Zoning Commission meeting to be a public hearing to then send the draft ordinance off to the Board of Supervisors. She stated they first started discussions in March of 2023, the first moratorium was end of May 2023, the first draft was September 2023. At the October meeting, we'll go through it, clean it up as we see fit, then open it to the public hearing. There will be three minutes input. Only one speaker. This is a recommendation that will be sent to the Board of Supervisors. The Board of Supervisors will be invited. Roling is looking for alternate site to accommodate a large crowd. She also stated that in October we typically move to a 6:00 p.m. start time. It will be a longer meeting, so it will be moved to 6:00 p.m. It has been decided the next meeting will be October 21, 2024, at 6:00 p.m. Location will be announced once details are finalized, public notice will be in the papers October 9 & 10, Maquoketa paper, Preston paper and Bellevue paper. It will be posted on the website in a timely manner.

Roling asks if they would like her to still speak to the county attorney about finding some wording about punitive damages. County Attorney needs to give advice on what the penalties can be and then we can come back to 281 and add in Wind Ordinance changes to that. McHugh states it's better to leave damages in and we can amend 281 based on what the county attorney tells us then send it to the board for approval. McHugh would like to go through the draft very quickly next time, so that we can do any changes or discussion so we can get to the public hearing.

ITEMS FROM COMMISSION: Other Business - None

ITEMS FROM STAFF: Next meeting: October 21, 2024, at 6:00 p.m.

NEW BUSINESS: None

ADJOURNMENT: Motion by Manson, seconded by Kies, to adjourn the September 9, 2024, Zoning Commission meeting. Motion carried by the following vote: Aye – Manson, Burke, Gerlach, Stewart, McHugh, Kies, and Pfab; Nay – None.

The meeting was adjourned at 9:25 p.m.

Respectfully submitted,

Lori Roling
Zoning Administrator

Adopted: 10/21/2024