



PLANNING AND ZONING

Cerro Gordo County Courthouse

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TO: Cerro Gordo County Planning and Zoning Commission

FROM: John Robbins

SUBJECT: Next Meeting – *Thursday, November 7, 2019; 4:00 p.m.; Boardroom*

Ladies and Gentlemen:

The next meeting of the Cerro Gordo County Planning and Zoning Commission is scheduled for **Thursday, November 7, 2019 at 4:00 p.m., in the Boardroom at the Courthouse.** You will be considering proposed amendments to the Zoning Ordinance to update fees and other related provisions. I will also be seeking input on a potential wind farm special use update to the ordinance.

ITEM FROM THE ZONING ADMINISTRATOR

1. Proposed amendments to the Zoning Ordinance regarding updates to fees and related provisions

I have been reviewing the fees that the Zoning Ordinance authorizes the Planning and Zoning Office to charge for reviews of requests such as rezonings, variances, or Zoning Permits over the course of the past month. It is the intent of these fees to recoup costs that the office spends in order to review requests. After reviewing our costs, I have found that the current fee structures do not recoup the approximate costs our office expends on reviews.

Fees were last raised in 2006. The costs for reviews have gone up since then. In your packets, I have included a set of notes and a listing of the proposed changes. What follows is an explanation of the enclosed documents.

In the “Zoning fees notes” page, there are two sections. The first part is a list of the code sections within the Zoning Ordinance where the establishment of each fee is located. The second part is a rough approximation of the costs for rezoning requests, variance requests, and Special Use Permit requests. Cost breakdowns are liberally estimated for the most common and simple type of request the department conducts for each type of fee. Many of the more complex types of requests warrant more thorough reviews and time to properly assess a request and would therefore be more expensive.

In the listing of proposed changes, all the proposed amended and added language is highlighted in yellow. Where fees are listed, the current fees are written in red next to the proposed fee changes.

Zoning Permit fees are based on the estimated cost of construction. The updated fee schedule lists a permit fee that ranges in the amount from ½ of a percent of the top end of the respective cost range at the low end to one tenth of a percent of the top end of the respective range at the high end. There are many methods in which to base the permit fee, such as type of use, floor area, cost per square foot, among others. I have decided to stay with a fee schedule based on estimated construction cost to keep the fee structure simple and more predictable for applicants. The proposed fee amounts are in a middle range in contrast to the comparisons I was able to gather (about 8 counties including Webster and Boone) and the relative size of our county.

Additionally, the County has recently entered into an agreement with Schneider Geospatial to provide hosting and online permitting services. This agreement will allow us the ability for applicants file applications online and track the status of their applications. Schneider Geospatial also provides Cerro Gordo County with the Beacon real estate website. The online permitting services will be provided through the existing Beacon real estate website. These services will also afford the county the ability to have more efficient, electronically-based internal workflows.

These new services will also give the Planning and Zoning Office the ability to accept credit cards and debit cards as forms of payments. Certain service fees are common with such forms of electronic payments. I have added a new section in the proposed amendments to the Ordinance that authorizes the Planning and Zoning Office to assess those fees separately to specific applicants in addition to permit fees instead of passing those costs onto the general taxpayer. I have also proposed a couple new definitions for this same purpose.

There are some other minor changes that fix some typos within the existing Ordinance.

We would like to discuss these proposed changes at our next meeting and ultimately make a recommendation to the Board of Supervisors. Please feel free to contact me with any questions regarding the proposed amendments.

2. Review of commercial wind farm regulation for a potential Zoning Ordinance revision

I am beginning to consider a potential revision to the Zoning Ordinance to add commercial wind farms, commonly referred to as commercial wind energy conversion systems (C-WECS), as its own special use category. We currently regulate wind farms under “public utility structures and accessory equipment including their transmitting stations and towers” under Article 20.2(J) of the Zoning Ordinance, which is under the same category as substations, communication towers, and utility scale solar energy installations. I have enclosed a copy of this part of the ordinance in your packets. These different types of structures and developments obviously have differing elements that make them each unique. I believe it is a good idea to separate each of these types of special uses into their own categories with applicable requirements. As we have more pressing development pressure for wind farm developments, I would like to begin the revisions with commercial wind farms. I am seeking your input on the type of requirements a possible revision should include and the elements we should consider. We will hold a public hearing in the coming months, but at this point, I would like to take extra time to research appropriate regulation and consider how other counties regulate wind farms.

In the last year, the Board of Adjustment (Board) has granted Special Use Permits for two wind farm developments. A 3-turbine, community development level (not requiring its own

substation), development was approved in June 2019 for a location about 1 mile east of Mason City city limits. The Board also recently approved a Special Use Permit application for the redevelopment of the Clear Lake Wind Farm south of Ventura; the formal permit is scheduled to be approved at the next Board of Adjustment meeting.

I have included a copy of the permit for the redevelopment of the Clear Lake Wind Farm in your packets. As a special use, the Board is able to apply conditions under Iowa Code 335 (County Zoning) to special uses that are reasonable to regulate more impactful uses such as a wind farms. As can be seen, there are conditions listed that the applicant must abide by under the permit.

It is common in zoning ordinances to list specific requirements that address common issues associated with a special use to provide predictability in the ordinance and minimum requirements that applicants must meet. The Board has the authority to apply extra conditions that apply to the particular request. Currently, we only have limited requirements and have typical conditions we require in Special Use Permits for wind farms. It is my intent to make many, if not most, of our typical conditions applied to wind farms as part of the requirements along with adding any other necessary requirements.

In your packets, I have included a summary paper from the Iowa Environmental Council on county zoning approaches in Iowa and general recommendations on regulating wind farms along with three ordinance examples from around the state that have different regulatory elements pertaining to wind farms. The summary paper provides a good summary of common regulatory practices in Iowa among counties and addresses some of the more common aspects for this type of special use.

Please note that in the paper, there is a fundamental misunderstanding of terminology used within Iowa county zoning ordinances and associated processes, specifically “special exceptions,” “conditional uses,” and “special uses.” The paper explains these as having different meanings and regulatory processes. However, under Iowa zoning law, under Iowa Code Chapter 335 for county zoning, these terms are synonymous and should always go through a County Board of Adjustment if a county has adopted a zoning ordinance. The state code uses the term “special exceptions” to grant authority to a Board of Adjustment to place conditions on certain types of impactful uses like wind farms. Zoning ordinances refer to all three terms, but more commonly use “conditional uses” or “special uses.” Our ordinance uses the term “special uses.” A Board of Adjustment is able to place additional conditions in addition to the minimum requirements under the authority granted to it under state law.

Besides this misunderstanding in the paper, it does an excellent job in addressing the common aspects that are commonly regulated for wind farms. The different elements I would like you to consider are as follows:

Setbacks

This is the most effective tool that addresses the biggest potential impacts that can result from utility scale wind turbines. Zoning ordinances typically have minimum setbacks from road right-of-way, non-participating property lines, dwellings and other occupied structures, unoccupied structures, and utility lines. Some also have minimum setbacks from wildlife areas, other wind turbines, residentially zoned property, or incorporated city limits.

Establishing appropriate minimum setback distances helps to mitigate or eliminate many of the biggest potential impacts, including visual impact, noise, and shadow flicker potential. The recommended required setback from the nearest dwelling ranges from 1,000’-1,250’, though some developers self-impose a setback no closer than 1,400’ from the closest residence.

Developers tend to state anything greater than 1,500' is too restrictive and limits development potential too greatly. The benefit of mitigating noise and other impacts at greater distances than 1,250' is increasingly marginal according to the research.

The most common required setback from a road right-of-way, non-participating property line, and utility lines is 1.1 times the height of the respective turbine measured to the tip of the rotor blade at its highest rotational point. The summary paper also recommends the option for neighbors to enter into waiver agreements to the required setbacks if they so choose.

Noise

Maximum audible noise limit requirements are common. The typical requirement ranges from 50-60 decibels (dBA) measured at the closest point of the nearest dwelling. Typical household noise measures at about 45-50 dBA. The summary paper does not recommend regulating sound levels and concludes required setback distances effectively account for mitigating potential noise impacts. If noise requirements are included, it recommends a requirement that is measurable, such as in decibels. Most county zoning ordinances do include noise limits in the requirements. An acoustical analysis conducted by an independent third party is usually required or requested to show a proposed development will meet requirements. We have requested this be submitted with the last two wind development permit applications.

Shadow Flicker

Shadow flicker is the effect caused by the shadow of the moving rotor blades projected from the light from the sun going through a small opening, such as a window. This effect can be annoying to property owners. Setback distances can effectively mitigate this potential impact as well. Analysis of the effect is typically measured in hours per year that a particular property could potentially be affected, which usually amounts to several minutes on a given day on average. The accepted maximum time that a particular property may be affected is a maximum of 30 hours per year. Like noise, a shadow flicker study is required or requested when there are minimum requirements to address this potential impact. About half of counties regulate this potential effect. We have also requested this be submitted with the last two wind development permit applications.

Safety

It is common to have requirements that limit access to the physical turbines and other safety requirements. Warning signage for high voltage and possible falling ice in the winter and signs with emergency contact information is also typically required. Such requirements may include requiring transmission lines be buried, requiring documentation of the turbines meeting manufacturing standards from a licensed engineer, or other requirements.

Impacts to Roads and Infrastructure

It is common to require developers to return public roads and drainage infrastructure to pre-construction conditions if damaged. Pre-construction, and sometimes post-construction, assessments are a common requirement. Some ordinances require the developer to enter into a road use agreement with the county, which we have always required by condition. We also typically have conditions that the developer obtain required utility and driveway permits from the County Engineer's Office.

Decommissioning and Abandonment

Every wind farm has a maximum life it will be in operation—potentially up to 50 years for modern wind turbine designs. At the end of the useful life of a wind farm or if the wind farm

becomes non-operational or is abandoned by the owner, it is common to address the removal of the wind turbines in the minimum requirements. Virtually every ordinance requires a decommissioning plan that also outlines the process and cost of removal of the turbines. Most ordinances require proof of the establishment of a financial instrument, such as a performance bond, letter of credit, fund, or other means, to pay for the removal of the wind development. Some ordinances require formal certification by the County Attorney. Requirements typically specify the complete removal of wind farm associated structures to a depth of 4' underground, including transmission lines and foundations, within a certain amount of time from the end of operation (e.g. 180 days).

Example Ordinances

As aforementioned, I have included three ordinance examples addressing commercial wind farms as conditional uses. The first example comes from Osceola County. This ordinance is considered something of a model ordinance in the State of Iowa by zoning professionals. This example is one of the few counties that require a road use agreement prior to construction with the county.

The second example comes from Johnson County. This ordinance is a one of the most restrictive or, at least, has the largest number of requirements than most. This ordinance contains an example that allows setback, noise, and shadow flicker waiver agreements with non-participating property owners, which is relatively uncommon in county zoning ordinances.

The third example comes from Dickinson County. This is an example of a more streamlined ordinance regulating wind farms as a conditional use. The ordinance also has a few unique aspects, such as time for review.

Please note that our ordinance also regulates wind turbines less than 120' in height for residential or on-site electricity generation as a permitted use in certain zoning districts as structures permitted above maximum height requirements. This is under Article 6.27(E) of the Zoning Ordinance. Some minor revisions to this section may be necessary to accommodate the potential revisions addressing commercial wind farms. I have also included a copy of this portion of the ordinance in your packets.

Please review the enclosed materials. The goal is to gather your input and thoughts to address the proper regulation of commercial wind farms. I look forward to your considerations to factor into this potential revision to the Zoning Ordinance.