

Frequently Asked Questions

For Worth County Zoning Commission Public Comment Draft of Ordinance Related to Commercial Wind Development

A. About the Draft in General

1. What is this Draft?
 - a. *This is a document that was developed by the Worth County Zoning Commission as result of actions taken by the Board of Supervisors on April 12, 2021 where they passed a Resolution calling for a Moratorium on commercial wind development projects until research and recommendations could be completed regarding potential rules in Worth county to govern those type of projects. This draft represents current thoughts of the Zoning Commission and is being produced for the express purpose of obtaining public comment on it. The Commission desires feedback on the details of this document so that they can consider them for potential updates prior to submission of any recommendations to the Board of Supervisors.*
2. Where did this draft come from?
 - a. *It was developed over a period several weeks by reviewing language from wind-related ordinances from 34 different counties across Iowa, and after conversations with representatives from Invenergy, Worth County Farm Bureau, Worth County Engineer, Worth County Conservation, Worth County Board of Health, and the Zoning Administrator of Kossuth County (Kossuth County being a neighboring county that recently passed a commercial Wind Ordinance (in 2018)). Most of the language contained in this draft was initially extracted from ordinances in place in several counties in Iowa, then discussed and adjusted by the Zoning Commission as a group over a period of weeks. It represents the unanimous decision for content from the Commission of a proposed draft for public comment/feedback.*
3. Does this mean we'll have county-wide zoning?
 - a. *No. This ordinance is separate from the Zoning Ordinance. It is applicable only to commercial wind development, but it is applicable county-wide.*
4. What about Commercial Solar Development?
 - a. *The Zoning Commission will discuss a need for guidance related to commercial solar farms separately and determine recommendations after that. The focus of this effort has been on commercial wind development.*
5. Is it allowed for this to be separate from the Zoning Ordinance?
 - a. *Yes, there are several counties in Iowa that have a Zoning Ordinance as well as a stand-alone ordinance related to commercial wind development or renewable energy.*

6. Is this the Ordinance that will be in place now?

No, this is merely the first step in development of recommendations for the Board of Supervisors. Its purpose is to solicit specific feedback. From that feedback, the Zoning Commission will develop final recommendations and proposals and present them to the Board of Supervisors.

7. Once the Board of Supervisors get the recommendations from the Zoning Commission, will they pass this as the ordinance to manage commercial wind development in the county?

a. That's not possible to know. Once the Supervisors get the recommendation it is purely up to them how they decide to proceed. They could table the recommendation and take no action, they could make changes to the recommendations and proceed with required public hearing on their proposed ordinance, or they could take the recommendations as is and proceed with their required public hearing on the proposed ordinance. They could also seek additional information before proceeding – it is purely up to the Supervisors. However, if they decide to proceed with any ordinance, Iowa law requires opportunity for public comment with the Supervisors before they vote on it.

B. About the Zoning Commission

1. Why did the Zoning Commission do this and not the Board of Supervisors?

a. The Zoning Commission is established by the Board of Supervisors to provide recommendations and regulations related to land use in the unincorporated areas of the county. One of the responsibilities of the Zoning Commission is for "...the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the County and its environment which will promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development." As a result of the decisions by the Supervisors on April 12, 2021, and in light of these responsibilities, the Zoning Commission took up this work to develop the recommendations for the Supervisors.

2. Will the Zoning Commission be passing an ordinance after this feedback?

a. No. The role and authority of the Zoning Commission is to develop recommendations related to land use and present those recommendations to the Board of Supervisors. The Board of Supervisors, as an elected body, is the only entity in the county with legislative authority to pass a county ordinance.

3. Who is on the Zoning Commission?

a. The Zoning Commission is appointed by the Board of Supervisors. It consists of five members that are appointed for three-year terms. Term appointments are staggered so that some members terms continue when others expire. Currently, the members are Jeff Gorball (Chair), David Quisley (co-chair) Justin Faber, Todd Rothove, and Dana Thomas.

4. I heard that Jeff Gorball was not supposed to be on the commission because he doesn't live in a zoned township. Is that true?

a. Jeff Gorball was initially appointed to the Zoning Commission by the Board of Supervisors in 2015 and has been subsequently reappointed since then. He was most recently re-appointed in January 2019 for a three-year term. In October 2020 while serving as the county Zoning

Administrator at the request of the Board of Supervisors, Jeff highlighted to the Supervisors that the county Zoning Ordinance stated that the members of the Zoning Commission and the Board of Adjustment be appointed from the zoned townships in the county, and that he and some other members of those bodies did not reside within the three zoned townships. The Supervisors acknowledged the discrepancy but said the appointments will stay due to difficulty in getting qualified persons willing to serve. The discrepancy was again discussed with the Supervisors in January 2021 with similar result after the Supervisors noted that Iowa Law simply required that a majority of the Zoning Commission reside in the county. As such, Jeff has continued to serve on the Commission and was elected Chair of the Zoning Commission in April 2021.

C. About the Draft Details

1. What are the setback requirements?
 - a. *The physical setbacks are established for safety purposes and vary depending on what is intended to be protected. Table 1, in Section 1 of the Ordinance establishes each condition and setback. However, of primary concern is often related to homes and property. The ordinance establishes a 3-step approach to protection of property. It first establishes that the protection is of the property at-large, and not just a residence. Therefore, the setback is to the property line of adjacent properties. Next, it recognizes that the safety distance for one particular type and size of turbine is not necessarily the same as another. Therefore, three conditions are established; 1) specified distance of 1600 feet, 2) a multiplier of 3.75 times the total height of the turbine (height of tip of rotor bald at peak), and 3) the safety distance specified by the turbine manufacture for things like fire, ice throw, runaway blades, etc.... The ordinance requires all three distances to be known and says that the setback for each turbine is equal to the longest of those three items.*
2. Do the setback distances as described prevent me from having a turbine on my property?
 - a. *Not necessarily, the physical setback (among some other items) can be waived. As long as the owner of the adjacent property agrees, the ordinance allows for a waiver to the setback to a minimum of 110 percent of the total height of the turbine.*
3. What about shadow flicker, might I still get flicker with the setback?
 - a. *The ordinance manages physical setback designed for safety purposes and manages shadow flicker independently. Section 1.3 contains details. It requires that adjacent properties will not be subjected to any shadow flicker, unless that property owner agrees and a waiver is granted.*
4. What about Noise, might I still get noise from the turbine or blades with the setback?
 - a. *The ordinance manages physical setback designed for safety purposes and manages noise independently. Section 1.3 contains details. It requires that adjacent properties will not be subjected to any noise above specified levels, unless that property owner agrees and a waiver is granted. The Wind developer is required to perform computer modeling in advance to design locations so that adjacent properties will not be subjected to noise above specified levels, and requires that actual measure noise not exceed those levels after installation. The levels specific are daytime (6:00 AM-10:00 PM) 45dBA and 60dBC peak noise, and nighttime*

(10:00 PM – 6:00 AM) 40dBA and 60 dBC peak noise. Again, this can be waived if agreed by the adjacent property owner.

5. Why are the setbacks, noise limit and shadow flicker limit established at the property line instead of at a residence?
 - a. *The expectation is that the rights of each property owner should be protected by their government. To this extent, the right to full enjoyment of their land, within reasonable and legal conditions, should be accounted for in land-use regulations. Since there are safety concerns associated with physical setbacks and annoyance and nuisance concerns related to noise and shadow flicker, it stands that a person's property at-large should be protected versus simply that part of their land that a home may now reside. If the limits were at a current residence vs. property line, the right of future enjoyment of a portion of the property could essentially be taken from them for the benefit of another. This 'taking' of rights from a non-participating landowner via regulation for the benefit of another is not deemed appropriate. It is for this reason that the draft establishes the rights and protections at the property lines. It should also be noted that a non-participating landowner is allowed to waive these rights/limits and accept a closer standard. Section I.4 provides details on the waivers.*
6. What happens if the turbine is not compliant with the ordinance requirements?
 - a. *The ordinance specifies a complaint and resolution process that provides guidelines for complaint investigation and cessation of operation in the event of a validated violation. Section VI.2 contains details. Developers are required to legally acknowledge the terms of the Ordinance so this process can be enforced in court.*
7. What would be the process for an energy company to start a project in the County?
 - a. *Sections III and IV of the ordinance provide details of the application, review and approval process. The ordinance provides a detailed series of requirements that includes an early review of the project details by certain state and federal agencies as well as county departments for their comments and recommendations. Subsequent to that, the developer is required to submit project details and their response to those agency/department recommendations to the county and schedule a public hearing in advance of submission for permits. There are also additional earlier points of engagement with the county and public that are recommended to help ensure awareness by the public in advance of permit application. Assuming the application follows the application requirements and meets the required standards of the rest of the ordinance, and unless the Board of Adjustment finds a conflict, the project is approved.*
8. What if the developer wants to change things after getting approval?
 - a. *The explicitly prohibits any change that would result in violation of the setbacks and other standards called out in Section I of the ordinance. Further, any change would require approval of the Zoning Administrator or Board of Supervisors depending on circumstances. Section IV.4 contains details.*
9. What about turbines after they fail or are too old to operate?
 - a. *The ordinance addresses this in three aspects;*

- 1) *any type of failure (fire, blade breakage, etc...) is required to be address as seen as feasible and as agreed to by the Board of Supervisors. Section VI.1 provides details.*
- 2) *Any turbine that requires or is desired to be upgraded in a manner that would change the structure, height or operating capacity would be the subject of a new permitting process and be required to adhere to all aspects of the ordinance. Section VI.3 contains details.*
- 3) *Turbines which have reached end of life and which will not be upgraded are required to be removed (to a depth of 4 feet) and land returned to original conditions. To help ensure this occurs, the permit holder is required to provide a performance bond or letter of credit equal to the estimated cost of doing so. The estimate is required to be developed by a qualified 3rd party not affiliated with an energy company and approved by the Board of Supervisors. This is required to be updated every 5 years. Section VII.1 contains details.*

10. What about tile damage?

- a. *The ordinance requires the developer to map known public drainage and establishes physical setback limits. It also requires the developer to repair any damage in a time period acceptable to the county engineer. Further, with regard to private tile, it also requires the developer to repair damage as soon as feasible and agreeable to the landowner. Also, in light of the fact that some damage may not be known for years, it requires that the developer use GPS tracking on all off road use of equipment in excess of 80,000 pounds and provide that tracking data to the county to aid in damage claim adjudication. Section V.2, V.3 and V.5 contain details.*

11. Can the developer sell or transfer the project to someone that does not have to comply with the rules?

- a. *No. As part of the permit the developer agrees that they cannot sell or transfer the project to anyone without approval of the Board of Supervisors, and only if the entity that will get the transfer agrees in writing that they are bound by the terms of the ordinance and separate agreements initially signed by the developer. Section IX contains details*