

Dubuque County Zoning Commission

Minutes of the November 21, 2023 meeting.

Chairperson Dave George called the meeting to order at 6 p.m.

1. ROLL CALL: Members present at the Dubuque County West Campus, 1225 Seippel Rd: Dave George, Kevin Soppe, Ron Breitbach, Jerry Sigwarth and Lisa Flanagan. Member present via zoom: Sam Boyes and Kathleen Scherrman. Staff Present at the Dubuque County West Campus, 1225 Seippel Road: Tammy Henry, Ed Raber, and Amy Schmerbach.

2. APPROVAL OF MINUTES: A motion was made by Ms. Boyes, **seconded by Mr. Breitbach, and passed unanimously to approve the minutes of the October 17, 2023 meeting. Vote: 7-0.**

3. PLAT APPROVAL:

Plat of Survey of Hochrein Road Acres – Final Plat

Plat of Survey of Lot 1 thru Lot 4 of Hochrein Road Acres a consolidation and division of Lot 1, Lot 2 and Lot 3 all of the SE ¼ of the NE ¼ and the SW ¼ of the NE ¼, except Lot 1, all in Section 26, T90N, R1E, Jefferson Township, Dubuque County, Iowa.

The property is owned by Clifford Holdings LLC/Stephen Clifford and is located 1.44 miles southwest of the City of Sherrill along Hochrein Road with a total of 73.60 acres surveyed. The property is zoned R-1, Rural Residential. The purpose of the plat is to reconfigure the existing four (4) lots to allow them to sell part of the property.

The survey creates 4 lots. Lot 1 has a total of 15.81 acres surveyed and will be sold. Lot 2 has a total of 18.90 acres surveyed and will be sold. Lot 3 has a total of 36.24 acres surveyed and will be sold. Lot 4 has a total of 2.65 acres surveyed with an old schoolhouse and will remain in current ownership and agricultural use.

Lot 1 will use an existing access easement off of Hochrein Rd. Lot 2 will use an approved residential entrance off of Hochrein Road. Lot 3 will use an approved residential entrance off of Hochrein and will be sold. Lot 4 will use an approved residential entrance off of Hochrein.

Ms. Henry made a correction that Lots 2 & 4 had existing entrances, however, they were still being reviewed by the County Engineer.

Speaking to the board was Mike Weber, Weber Land Surveying, 26789 46th Ave, Bernard. Mr. Weber said he would answer any questions regarding the plat. Mr. George asked if anyone had questions for Mr. Weber and no one spoke.

A motion was made by Mr. Sigwarth, **seconded by Mr. Soppe to approve the plat. The motion passed unanimously. Vote: 7-0.**

b) Plat of Survey of Mile 600 – Final Plat

Plat of Survey of Lot 1, Lot 2 and Lot 3 of Mile 600, part of Government Lot 1 as described in a Warranty Deed filed as Instrument No. 5434-88; Lot 1 of Lot 2 of Government Lot 2; Lot 2 of Lot 2 of Government Lot 2; and Lot 15 in “Waupeton Resort Subdivision Number 2”; all in Section 30, T91N, R1E, Jefferson Township, Dubuque County, Iowa.

The property is owned by Mile 600 LLC/Patrick & Christina Kehl-Anglin and is located 1.85 miles northwest of the City of Balltown along Waupeton Road with a total of 46.10 acres surveyed. The property is zoned R-3, Single Family Residential and B-1, Business. The purpose of the plat is to allow the owners to separate their home from the recreational park/resort area and to allow them to sell Lot 1 and Lot 3.

The survey creates 3 lots. Lot 1 has a total of 21.70 acres surveyed and will be sold. Lot 2 has a total of 1.44 acres surveyed with a home and will remain in current ownership and residential use. Lot 3 has a total of 22.96 acres with homes, cabins and outbuildings and will be sold.

Lot 1 will use an existing 40’ wide access and utility easement off of North Waupeton Road. Lot 2 will use an existing 30’ wide access and utility easement off of Floodview Lane. Lot 3 will use existing entrances off of North Waupeton Road and Michaels Lane.

Ms. Henry said a small piece of B-1, Business was involved in the plat, and she said there was a small business there in the past however, it is now the home, and they would address the rezoning in the future.

Speaking to the board was Dave Schneider, Schneider Land Surveying, 906 1st St North, Farley. Mr. Schneider said the plating process was to separate the lots to fit their specific uses. Mr. Schneider said the plat was also correcting existing access and utility easements.

Mr. George asked if anyone had a question, and no one spoke.

A motion was made by Mr. Sigwarth, **seconded by Ms. Scherrman to approve the plat. The motion passed unanimously. Vote: 7-0.**

4. REZONING CASES:

ZC#11-29-23 Jeffrey & Laurie Oberfoell and Staci Frommelt A-1 Agricultural to A-2 Agricultural Residential

The applicants are requesting to rezone from A-1, Agricultural to A-2, Agricultural Residential 2.7 acres to allow the transfer of an acreage around an old existing farmstead and allow their daughter and son-in-law to build a new home to assist with the farming operation. The property is located .60 miles northeast of the City of Sherrill along Circle Ridge Road and is legally described as the N ½ Lot 1 W ½ NE and N ½ Lot 2 W ½ NE, Section 18, T90N, R2E, Peru Township, Dubuque County, Iowa.

The property is owned by Jeffrey & Laurie Oberfoell. Zoning in the area includes A-1, Agricultural to the north, south, east and west. A-2, Agricultural Residential to the north and northwest. R-1, Rural Residential to the south. The A-2, Agricultural Residential to the north on ZC#11-32-15 was to allow the sale of the farm buildings for estate purposes. The A-2, Agricultural Residential to the northwest on ZC#07-15-21 was to allow them to

replace an old existing farm home. The A-2, Agricultural Residential to the northwest on ZC#03-08-20 was to finance a new home on the farm.

There are no previous zoning cases attached to this property. There are no special use permits attached to this property. Nine (9) letters were sent to the property owners and the City of Sherrill was notified.

Comprehensive Plan Policy Chapter 9 Agricultural and Natural Resources page 134 Objective 3.1 and Chapter 8 Housing page 122 Objective 12.7 may apply to this case.

Ms. Henry said there is an existing easement to the property and an entrance permit has been applied for. Mr. Soppe said he heard of concerns regarding the water runoff from the road access. He said they were concerned that the gravel may runoff into the farm fields. Ms. Henry said the engineer would approve the entrance from the road and then would instruct the owners what size of a culvert must be installed at the road. She said the lane going back to the property would be controlled by applying for an Erosion Control permit which is controlled by the Watershed Department. She said if there were issues with runoff then the Watershed Department would get involved and address the issues at that time.

Mr. Breitbach asked what the requirements were for the roadway since the entire roadway easement runs through the adjacent property. Ms. Henry said it is a private lane so there are no requirements for the county besides the erosion control. She said they must keep the roadway from eroding onto neighboring properties and if it became a problem then they would have to contact the Watershed Department to address the problem. Ms. Henry said since this is a single-family home then the county has no control, however, if this was going to be a subdivision the rules would be different.

Speaking to the board was Dave Schneider, Schneider Land Surveying, 906 1st St North, Farley. Mr. Schneider said the lane easement is approximately a 1/2 of a mile and it was an existing access easement that dates to the 1800's and is repeated on deed after deed. Mr. Breitbach asked how wide the easement was and Mr. Schneider said 50' wide. Mr. Schneider said he was contacted by the Oberfoell's and Frommelt's, and he told them to make the surrounding neighbors aware that they planned to use the existing entrance to access the new home prior to starting the rezoning/platting process.

Mr. Schneider said he was contacted by Matt Brimeyer who owns the land to the east of the lane and his father Rick Brimeyer who rents the land to the west of the lane. Mr. Schneider said he had a conversation with the Frommelt's to make them aware that the road had to be constructed correctly to prevent washout with using the correct size of piping to control the water flow. He told Rick Brimeyer that NRCS office would be a great contact because they are continuously calculating water volumes. Mr. Schneider said the building site currently has an old existing foundation and old farm building with a well system that is useless.

Speaking to the board was Matt Brimeyer, 22423 Basswood Lane, Sherrill. Mr. Brimeyer said he said his concern was that there is already 200 acres of water dumping into the ravine and if the culverts were not installed correctly his property would then catch the gravel and dirt into his field. He said there used to be a pond to catch water runoff but that no longer exists. Ms. Henry said they will have to pull an erosion control permit and the water and soil department can advise them on where to place the culverts. Ms. Henry said

in a heavy rain there would never be a guarantee that some erosion would occur, and the Watershed Department could not guarantee it either however, they would do their best to guide them when laying out the access to prevent erosion from happening. Mr. Brimeyer asked if the road access did wash out into his field who's responsible for the cleanup? Ms. Henry said that would be a personal issue between neighbors and the county would not have control over this because it's a private lane.

Ms. Henry told Mr. Brimeyer she could request the Watershed Department to visit the property and advise the Oberfoell's to the best of their ability, to make sure culverts were being installed correctly.

Mr. Breitbach asked if this property was being sold and Ms. Henry said it was a daughter and son-in-law that will be building on the family farm to continue assisting in the farm operation business.

Mr. Breitbach said this case reminded him of a case that was tabled because the homework of the project was not done ahead of time. He said it was a commercial project out by the zoo and they presented it, and the board tabled it for further research and owners found out they could not do what they initially wanted it was cost prohibited. Ms. Henry said this case is different because this is a private lane, and it is not for a business. Mr. Breitbach asked if they should have approval from the Watershed Department first. Ms. Henry said they do not need the approval because it is a private lane however, they will fill out an application and the department would give them advice and they will then follow up with the property owners if there are complaints. Ms. Henry said the owners could start laying gravel for access at anytime because the erosion permit allows for up to 2 acres and the easement already exists. Ms. Henry said the board's only concern is the approval of the rezoning request and not about the erosion concerns because the Zoning Board has no control over it and the Watershed Department would oversee that.

Mr. Schneider said the only control the county would have been for the Engineers Department to make sure the culvert meets their standards within entrance of the public right of way beginning at Circle Ridge Road and beyond that it is a private road and that would be the owners responsibility to maintain. Ms. Henry said the Zoning Board really cannot require an engineered road plan on a private road.

The board agreed that their only responsibility was to make sure the rezoning request fit the area.

Mr. George asked if anyone had additional questions, and no one spoke.

A motion was made by Mr. Soppe, **seconded by Ms. Boyes to approve the rezoning. The motion passed unanimously. Vote: 7-0.**

Plat of Survey of Oberfoell Farm Subdivision – Final Plat

Plat of Survey of Lot 1 and Lot 2 of Oberfoell Farm Subdivision comprised of Lot 2 in the W ½ of the NE ¼ of Section 18, T90N, R2E, Peru Township, Dubuque County, Iowa.

The property is owned by Jeffrey & Laurie Oberfoell and is located .60 miles northeast of the City of Sherrill along Circle Ridge Road with a total of 54.082 acres surveyed. The property is zoned A-1, Agricultural. The purpose of the plat is to allow their daughter and son-in-law to build a new home to assist with the farming operation.

The survey creates 2 lots. Lot 1 has a total of 51.405 acres surveyed and will remain in current ownership and agricultural use. Lot 2 has a total of 2.677 acres surveyed and will be sold to their daughter and son-in-law for their new home.

Lot 1 will use a 50' wide access and utility easement off of Circle Ridge Road. Lot 2 will use an approved residential entrance permit# 23-34 across Lot 1 with a 50' wide access and utility easement off of Circle Ridge Road.

Speaking to the board was Dave Schneider, Schneider Land Surveying, 906 1st St North, Farley. He said this plat is identical to the rezoning plat drawing. Mr. Schneider said this allows for the owners to sell the existing farm lot to their daughter and son-in-law. Mr. Schneider said there is an existing corn crib, shed, and an existing farmhouse foundation that the Sherrill Fire Department burnt down years ago.

Mr. George asked if anyone had any questions, and no one spoke.

A motion was made by Mr. Sigwarth, **seconded by Mr. Soppe to approve the plat. The motion passed unanimously. Vote: 7-0.**

ZC#11-31-22 Chapter 1-Zoning Ordinance Amendments
(Tabled from the December 22, 2022 Board of Supervisors Meeting)

Dubuque County Officials adopted in the early 70's Zoning Ordinances. The first PC Planned Complex was approved in 1970. Since then, there have been seventeen (17) requests to rezone to the PC Planned Complex District, fourteen (14) were approved and three (3) were denied. There have been two (2) requests since 2021 to be rezoned to PC, Planned Complex, before that the last one was in 2008.

The first case in February of 2021 was for the Trappistine Nuns, this was to allow them to expand their operations and to get the property that was zoned R-2, Single Family Residential to be zoned appropriately for the multi uses that they had been operating for years. The case for the Trappistine Nuns was approved under the current ordinance or application process by the Zoning Board and the Dubuque County Board of Supervisors.

The second case in May of 2021 was for the Kendrick Family to be allowed to create a PC, Planned Complex for a development that they had started and which they did not have the proper permits for. The Kendrick's had built a home and had camping sites for family members on the property. When they came to get a septic permit, it was determined that some of the Ag Land was being used as a family recreational area that it did not meet the A-1, Agricultural Zoning District requirements. The property was in violation and the only way to try to solve the problem was to try to request for a rezoning with conditions to a

PC, Planned Complex, otherwise they would have had to remove the home and/or some of the infrastructures that had been built. The application was completed and turned in the same way that it had been by the Trappistine Nuns, and it was then presented to the Zoning Board for review.

In May of 2021 when the Kendrick case was presented to the Zoning Board there was a lot of controversy and conversation about the application process and ordinance for the PC, Planned Complex district. The Kendrick case was being treated differently in their application process than the Trappistine Nuns case had been reviewed and treated 3 months prior. The Zoning Board and some of the Dubuque County Supervisors who had been attending meetings determined at the time that the PC, Planned Complex process and ordinance should be reviewed, and changes considered. Future applicants would have a clear direction of what was expected of the applicants and how they needed to apply.

On May 17, 2022, at the Zoning Board meeting the discussion was started about changing the current PC, Ordinance and adding an application that was just for the PC, Planned Complex. The Zoning Board held its first work session on the ordinance and had discussion on the parts of the ordinance that they felt needed to be changed based on the cases that had been heard in 2021. The Zoning Board directed the zoning staff to work on the document with the changes that they were asking for and present it at a later date.

A public hearing was held with the Zoning Board on the PC, Planned Complex Amendments on November 15, 2022. The Zoning Board voted in favor 7-0 of the PC, Planned Complex Amendment and Application process at that meeting.

At the Board of Supervisors November 28, 2022, meeting, the Board chose to take no action on the hearing process to the PC, Planned Complex Amendments as there was going to be a change in County Supervisors in January of 2023.

On October 17, 2023, the Zoning Board again started to work on any changes that they felt were necessary to adapt the PC, Planned Complex Amendment into a working ordinance. The Zoning Board at that time voted in favor of adding the document on the agenda for action at the November 21, 2023, meeting.

Speaking to the board was Mr. Henry, Zoning Board Administrator. She presented the board with a PC-Planned Complex Amended Draft dated November 21, 2023. She said the copy (see attached) had included the changes the Zoning Board had requested and asked the board to review the document so it could be moved forward to the Dubuque County Board of Supervisors for review. Mr. Henry asked if anyone had additional questions. She said she knows the board has already reviewed this draft and asked if they wanted to review the entire document again or were they comfortable just moving this forward to the Dubuque County Supervisors. Board members said they were comfortable moving it to the Dubuque County Supervisors.

Ms. Scherrman asked if we received any feedback from the Supervisors asking what additional questions they had. Ms. Henry said the only feedback was from Supervisor Harley Pothoff asking why the acreage was not limited to the 10-acres. Ms. Henry explained to him that the board held discussions on this and decided to allow for less than 10-acre PC, Planned Complexes because there are upcoming requests that already exist

within the county that wish to rezone to the PC, Planned Complexes. Mr. Breitbach commented that this was decided to allow for flexibility to the ordinance.

Ms. Flanagan questioned the case differences between the Trappistine Nuns and the Kendrick Family. Ms. Flanagan said she realized the Trappistine Nuns had operated this way for many years, and she looked at the Kendrick Family case as a new application. Ms. Henry said she was correct, that it wasn't about the case, it was about the application process. She said the Trappistine Nuns were treated under the old application process and ordinance, and it was approved. Ms. Henry said the Kendrick case came through and it was questioned because it was so different. She said it was very unclear because the application process did not follow the old ordinance which raised the issue that the ordinance needed to be changed to fit the application process. Ms. Henry explained to Ms. Flanagan when the board made these changes to the new ordinance a second application process was created to mirror the new ordinance.

Ms. Boyes said the existing ordinance was unclear as to who had to review the ordinance. She said there was too much anonymity within the ordinance. Ms. Henry said the board took out the guess work of the old ordinance to create this new ordinance.

Mr. George asked if anyone had additional questions, and no one spoke.

A motion was made by Ms. Boyes, **seconded by Mr. Sigwarth in favor of the PC, Planned Complex Amendment and Application process. The motion passed unanimously. Vote: 7-0.**

After the vote Ms. Flanagan questioned the wording of **will not** on page 2 of the draft document.

1-15.13.b.6.d & e.

That the general public **will not** be harmed by the proposal because of increased accommodation and aesthetic qualities.

That the Development **will not** impose an undue burden on public services and facilities, such as utilities, fire and police protection.

She asked if "will not" should be used or if the wording should say "shall not intend". Ms. Henry said the Zoning board just voted to recommended it to move forward to the Board of Supervisors however, the board can still recommend a change and Ms. Flanagan's question will be reflected in the meeting minutes so it will be brought to their attention.

Ms. Henry also mentioned that Supervisor Wayne Kennicker was zooming in on the entire meeting. Ms. Boyes said she did not think "will not" should be used, however, she believes "shall not" should be the correct legal term. Ms. Boyes believes what the board heavily discussed was taking the word intent out of the ordinance and making it directive wording so they must prove that they shall not do harm to the neighboring properties or shall not do harm to the environment which would makes the applicant prove that they have had these conversations. Ms. Flanagan said she thought that using these terms could cause legal litigation. Mr. George said he thought any term used could potentially go to legal litigation. However, the boards intent of the ordinance is it "will not" or "shall not" cause harm. Mr. Breitbach said the board discussed removing the existing word "benefit" and replacing it with "will not" or "shall not". Mr. Sigwarth said the previous county attorney reviewed this document and if he had no issues or concerns with the terminology then he has no further concerns. Ms. Henry said again she would pass the concerns onto the Board of

Supervisors and the minutes would reflect her concerns and if the Board of Supervisors would address it during public hearing(s).

5. OLD BUSINESS:

Ms. Henry said ZC#10-28-23 Roger & Mary Jo Zalaznik R-2 Single Family Residential to B-2 Highway Business was approved by the Board of Supervisors.

6. NEW BUSINESS: Discussion on Zoning Code Update-Chapter 5 Renewable Energy Ordinance-A Draft Working Copy dated 11/14/2023 was handed out to the Zoning Board. (attached)

Mr. Raber presented a zoning map to show the different zoning locations throughout Dubuque County. He also provided examples of project flows for Renewable Energy Projects. (attached) Mr. Raber explained the flow sheet in detail.

Ms. Boyes said it would be beneficial to provide each individual project with an instruction plan to explain the steps that they will need to take based on each zoning district. Mr. Breitbach asked if once they applied for the Special Use Permit through the Board of Adjustment if the case would be brought back to the Zoning Board. Ms. Henry said no. The way the process is currently designed it would never have to come back to the Zoning Board for approval. Ms. Henry said that this is not a permit design and changes could be made to it to only go before the Zoning Board. Mr. Breitbach asked what the reason was to take it to the Board of Adjustment rather than the Zoning Board. Mr. Raber said it was typical process throughout the State of Iowa to process Special Use Permits through the Board of Adjustment. He said he has seen some cases throughout the State of Iowa to have a Zoning overlay to direct the request into a different path that would then proceed to the Board of Supervisors for final approval. Mr. Sigwarth made the comment by applying for a Special Use Permit it would not change the zoning. Ms. Henry said if this process is changed to go to the Zoning Board and then to the Board of Supervisors it could then be handled as a Conditional Use Agreement. Ms. Henry said the Board of Adjustment is a final decision board not a recommendation board like the Zoning Board Commission is to the Board of Supervisors. Mr. Soppe asked why the Zoning Board was writing the ordinance if they would not be the ones to enforce the ordinance and make the recommendations to the Board of Supervisors. Ms. Henry said the ordinance must be adopted by the Zoning Board and Board of Supervisors first. Mr. Breitbach expressed his opinion that the Board of Supervisors are elected officials by citizens while the Board of Adjustment is not. He believes the process should go to the Zoning Board and then the Board of Supervisors. Ms. Henry & Mr. Raber said this process is what many counties in Iowa follow, however it does not mean that Dubuque County must follow the same process.

Mr. George asked if the Board of Adjustment were to issue the Special Use Permit would the Special Use Permit be permanent to the land. Ms. Henry said it depends on the conditions of the Special Use Permit. Mr. George asked what the difference was between applying for a Special Use Permit with conditions through the Board of Adjustment and a Conditional Use Agreement through the Zoning Board of Commissions. Ms. Henry said the Board of Adjustment would have the final approval of the Special Use Permit and it would never have to go before the Board of Supervisors. She said if it were to go before the Zoning Board of Commission for a Conditional Use Agreement then they could only recommend it for final approval to the County Board of Supervisors. She said it would be the same process as a rezoning case.

Ms. Flanagan again pointed out that she would like to make sure that legally the verbiage of shall, must, and will not throughout the document are consistent and legally the correct verbiage to be using.

Ms. Boyes asked what is being asked from the board tonight and are there steps being needed from the board to keep moving forward? Mr. Raber said that was a good question. He said this in an important document and it's not the intention to rush this process through. Mr. Raber said the discussion tonight will open the door to further conversation moving forward. He said at last month's meeting it was decided to conduct more public outreach. He said that with the changes that were made last month he forwarded the information to a variety of organizations in hopes of receiving public feedback. For example: stakeholders, utility holders, project developers, individuals with interest in the ordinance and the Dubuque County Supervisors. Mr. Raber said the point of the meeting and the public outreach is to continue to build conversation and feedback to create the ordinance.

Mr. Sigwarth said he agrees with Mr. Breitbach that the Zoning Board would have to print the perfect ordinance which the odds of that are very low, to trust the process because there will be no oversight to the Board of Adjustment because they are a final decision board. Mr. Sigwarth asked how we switch the responsibility of issuing the permits from the Board of Adjustment to the Zoning Commission. Ms. Henry said it a simple process, however it would not happen at tonight's meeting.

Mr. Breitbach repeated that he has confidence in his ability to look at problems, but he has no confidence in his ability to attack the technical aspect and legal aspect of this ordinance. He said this should not be the responsibility of the Zoning Board. Ms. Henry said they are the recommendation board. Ms. Henry said the county now has Mr. Raber, our Planning and Zoning Development Director that is doing the footwork. Ms. Henry said the board is unaware of the contacts he is making to assist the Zoning board. She said we now have the right person to assist the Zoning Office for the Zoning board to be confident enough to reach a recommendation based off the information the Zoning office will continue to present because the Zoning Office is compiling research to build this ordinance. Ms. Henry said when this information is presented to the board it takes hours and hours of work. She said Mr. Raber and herself are confident that this is good information to build this ordinance. She said the information gathered so far may not be perfect for Dubuque County and there will never be a perfect ordinance that works for every situation. Ms. Henry explained that what is being presented is just a draft to review.

Mr. Raber told the board the system issues the board is discussing is fabulous feedback and he appreciates it. He said the idea behind having the regulations to guide everything from the setbacks to the way they plan to install their systems and use of the road plan and all other things that need to be address is what the goal is from the meetings. Mr. Raber said in the end there will be some type of agreement between Dubuque County, Zoning Office and the Developer and they will always be unique to each specific project. He said the point of the ordinance is not to perfect it but to get the framework that is useful. Mr. Raber said this will be an extensive public process for anyone that comes to apply.

Ms. Boyes left the meeting @ 7:55 p.m.

Mr. Sigwarth said there needs to be a special meeting with the board and the public to discuss the ordinance. Mr. George agrees because of the concerns of this working document he thinks a meeting with all the stakeholders is needed to get their input before it ever gets passed on to the Board of Adjustment or the Board of Supervisors. Mr. Sigwarth said having this feedback would help to blend this document to make it a working ordinance. Mr. Raber said he couldn't agree more. Mr. Raber said internally as a team decided when we receive any form of communication regarding the ordinance, we will pool the information into a central location where we can document contact information, questions, and concerns. This will help make sure that people's voices are heard. Ms. Henry said a sign-up sheet was placed in tonight's meeting if anyone wishes to receive further notifications regarding the ordinance, we have a way of contacting them.

Ms. Flanagan pointed out the inconsistency of the use of titles between property owner/owner/operator that needs to be addressed as well. Mr. Raber said he believes there may be more of those inconsistencies throughout the ordinance. Ms. Henry advised the board to take the document home and really read through it to find issues like this and bring back the information to address it.

Speaking to the board is Craig Recker, 14106 Route 52, Dyersville. Mr. Recker said he has been researching this information for a couple of years and could provide input to the board.

Speaking to the board is Jeff Pape, 314 Floyd Rd, Dyersville. Mr. Pape & Mr. Recker said they had talked to Mr. Raber regarding the Solar Ordinance about 6 months ago in a meeting in Holy Cross. Mr. Pape said the document the board is reviewing today compared to the original document drafted was a vast improvement since spring. He said there were some holes throughout the document that had since been filled in. Mr. Pape said he was concerned about the water quality information because he has been involved with that for years so he would like stronger language however, he also realizes that the DNR will oversee the projects as well so he thinks the language will be fine.

Mr. Pape said there are holes in the draft that need to provide protection regarding damage to tiling on farmland because these projects will dig and puncture the ground. Mr. Breitbach asked for clarification because his first instinct is the owner and operator should already have an agreement in place if something like this were to happen. Mr. Pape said that is true, however, this could affect the 2-3 farms/fields adjacent to the land that are not involved with the agreement.

Mr. Pape said another concern of his is the setback requirements. Mr. Pape said the setback requirements that are adopted could change the aesthetics of the land and property values to the surrounding land forever.

Mr. Pape said a common thing that can and has happened is when the company transfers/sells to another company. He wants to make sure that the ordinance regulations/agreement follow the land if the company should happen to transfer hands. Mr. Sigwarth mentioned that the ordinance does require a surety bond for the dismantling of the project. He said now whether the company sells the bond to the new company or provides us with proof of a new surety bond it will be required. He said the ordinance says its decommissioning and reclamation plan must be renewed every 5 years because of cost

increases. Mr. George said a successor clause would be beneficial to cover transfers or mergers.

Ms. Henry read the current setback requirements that are currently in the draft. She said the setback line should be 50' from the property line and 300' from a dwelling.

Mr. Recker said he is concerned if a solar farm was only built 50' from the property line next to his cattle barn the creates a glare, heat, and blocks airflow because he has agricultural buildings built directly on the property line. Ms. Henry said you may have regulations the DNR makes you follow if you are operating a hog confinement or a large cattle farm but if you came into the zoning office to build a building for agricultural purposes on agricultural land the state does not allow the zoning office to enforce setbacks rules, nor do you have to legally ask for a building permit.

Mr. Raber said most of the land were talking about bumps against other agriculture and there will be no residents or buildings around and sit back in the distance. Mr. Raber said the setback concerns that Mr. Recker & Mr. Pape are talking about will be challenging. Mr. Recker & Mr. Pape are questioning if it's around their agricultural building or residential dwelling, tile issues and stormwater management issues. Mr. Raber said this is the flex that he would like everyone to think about and how we can address these issues. He encouraged everyone to really review the development agreements.

Mr. Pape told the board that they have a very important job developing this ordinance because people are already writing contracts with companies and the energy systems are coming to the Dubuque area soon and fast. Ms. Henry said it's not if it's when these systems start developing in Dubuque County. Mr. George said it is very important to have the input from the pro-solar, pro-agricultural and pro-utility companies before finalizing the ordinance. Mr. Breitbach said he feels the board is as far as they can go without getting the public input they need to move forward.

7. PUBLIC COMMENTS:

8. ADJOURNMENT: A motion was made by Mr. Breitbach., **seconded by Mr. Sigwarth to adjourn the meeting. The motion passed unanimously. Vote: 6-0. The meeting ended at 8:40 p.m.**

BLUE-NEW ADDITIONS TO THE ORDINANCE

RED-DELETED REMOVED STRIKE OR REPLACE

a. Pre-Application Process: The Owner shall submit a pre-application to the Planning & Development Director, County Administrator, Planning Commission, Health Director, Waterford Director, and such other County, City, State or Utility representatives as is deemed desirable.

b. APPLICATION: The owner or owners of the property comprising the Planned Complex on the Zoning Map. The application shall be made to the Zoning Administrator and shall include the following:

- (1) Legal description of the property as it is presently recorded.
- (2) One original copy of the plan of the property showing the existing topography, all buildings and other manmade structures, present uses and recorded lot lines. The plan shall also include an approval from the Soil and Water Department. This plan shall be drawn to a scale of one (1) inch equals two hundred (200) feet with contour intervals of two (2) feet.
- (3) Plot plan of proposed development must meet county site plan rules and show all buildings with exterior dimensions, parking areas with parking stalls delineated and direction of traffic indicated, streets showing direction of traffic flow, points of ingress and egress from public right-of-way, sanitary sewer and water facilities to be provided (if these involve connection to public facilities the connection will be indicated).
- (4) Proposed plan of the area to be included in the planned complex and any public right of way included as a part of the development. The plan will be administered according to the provisions of the county subdivision regulations. The final plan shall be approved in connection with the

1-15.13 "PC" PLANNED COMPLEX DISTRICT

The PC Planned Complex District is intended to encourage flexible and innovative design in the development of appropriate ~~10-acre or larger~~ sites as one integrated project. It would allow residential, commercial and industrial developments or combinations of those uses that are complementary and integrated, all in the same area. This district requires a site plan drawn to scale showing the location of all streets, lots, buildings with exterior dimensions and designated parking areas, sewer and water facilities and uses labeled. ~~A written statement must accompany the site plan explaining how the development meets the purpose and intent of the ordinance, is in accord with the future land use map, benefits the general public and meets the generally accepted principals of good planning. A detailed written statement answering number 6 (a) thru 6 (e) of this ordinance with a site plan explaining how the development will not cause harm to the general public. Any amendments to the plan will be required to follow all regulations and procedures of the original plan. Any amendments to the plan will be required to ask for an amendment to their original plan.~~

- a. Pre-Application Process: The Owner/Applicant shall schedule a pre-application conference with the Planning & Development Director, Zoning Administrator, Plats Officer, County Engineer, Health Director, Watershed Director, and such other County, City, State, or Utility representative as is deemed desirable.
- b. APPLICATION: The owner or owners of the ~~contiguous~~ property ~~comprising ten (10) acres or more~~ may submit an application to have their land classified "PC" Planned Complex on the Zoning Map. The application shall be made to the Zoning Administrator and shall include the following:
 - (1) Legal description of the property as it is presently recorded.
 - (2) ~~Six (6) copies~~ One original copy of the plan of the property showing the existing topography, all buildings and other manmade structures, present uses and recorded lot lines. The plan shall also include an approval from the Soil and Water Department. This plan shall be drawn to a scale of one (1) inch equals two hundred (200) feet with contour intervals of two (2) feet.
 - (3) Plot plan of proposed development must meet county site plan rules and show all buildings with exterior dimensions, parking areas with parking stalls delineated and direction of traffic indicated, ~~streets showing direction of traffic indicated,~~ streets showing direction of traffic flow, points of ingress and egress from public right-of-ways, sanitary sewer and water facilities to be provided (if these involve connection to public facilities the connection will be indicated).
 - ~~(4) A preliminary plan for any privately operated sanitary sewer facilities or water facilities.~~
 - (4) Proposed plat of the area to be included in the planned complex and any public right of way included as a part of the development. The plat will be administered according to the provisions of the county subdivision regulations. The final plat shall be approved in conjunction with the

planned complex. ~~Existing lots and blocks that are deemed to be unsuitable for the best development of the proposed complex shall be vacated.~~

- (5) The proposed development needs to be reviewed at a preliminary meeting.
- (6) A detailed written statement describing the concept of the proposed development substantiating the following:
 - (a) That the proposed development is in accord with Section 1-3 Purpose and Intent of this Ordinance.
 - (b) That the proposed uses are in accord with the future land use plan.
 - (c) That in consideration of the best interests of the general public the proposed development is more beneficial than the development that could be accomplished under the provisions of any other district.
 - ~~(d) That the general public will actually benefit by the proposal because of increased accommodations and aesthetic qualities.~~
 - (d) That the general public will not be harmed by the proposal because of increased accommodations and aesthetic qualities
 - (e) That the development will not impose an undue burden on public services and facilities, such as utilities, fire and police protection.
 - (f) That the design for the area is in accord with sound and generally accepted principles of architecture, landscape architecture, engineering and related fields.

~~e. REVIEW: Upon receipt of such application the Zoning Administrator shall notify the chairman of the Dubuque County Zoning Commission. Within thirty (30) days of the date of such application, the Commission shall prepare a specific listing of additional information that they deem necessary in preparing an analysis of the proposal. Within 30 days of receipt of such information the Commission will prepare in writing an analysis of the proposal and forward the analysis and application to the Board of Supervisors. The Board of Supervisors shall hold a public hearing prior to taking action on the proposal.~~

g. PERMITS: The Zoning ~~Enforcement Officer~~ Office shall issue permits only for buildings, structures or uses shown on the plan.

h. AMENDMENTS: ~~A proposed amendment to the plan will be subject to all regulations and procedures of an original proposal.~~

A proposed amendment to the plan will require the owner to ask the Zoning Commission for that change to be made to the existing PC, Planned Complex.



DRAFT ZONING NOVEMBER 21, 2023

DUBUQUE COUNTY ZONING
1225 SEIPPEL ROAD, DUBUQUE IA 52002
PHONE: (563) 589-7827 FAX: (563) 589-7868

OFFICE USE ONLY: CASE# ZC _____

APPLICATION FOR PLANNED COMPLEX DISTRICT ZONING OR AMENDMENT

DUBUQUE COUNTY ZONING ORDINANCE

APPLICATION DATE: _____

PROPERTY OWNER(S): _____ PHONE: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

APPLICANT: _____ PHONE: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

SITE ADDRESS: _____ PARCEL #: _____

TOTAL # OF ACRES TO BE REZONED: _____ SQUARE FEET: _____

CURRENT ZONING OF THE PROPERTY: _____

The PC Planned Complex District is intended to encourage flexible and innovative design in the development of appropriate sites as one integrated project. It would allow residential, commercial, and industrial developments or a combination of those uses that are complementary and integrated, all in the same location.

The following documents are necessary for the PC Planned Complex District application. Each item should be attached to this application form on a separate sheet. Incomplete applications will be returned to the applicant for additional information.

1. Legal Description of the property as it is presently recorded.
2. One original copy of the Site Plan drawn to a scale of one (1) inch equals two hundred (200) feet with contour intervals of two (2) feet. The plan should show the following:
 - a. The location of all streets
 - b. Existing Topography
 - c. All buildings and other manmade structures
 - d. Present uses
 - e. Recorded lot lines
3. Provide a plot plan of the proposed development that meets the county site plan rules showing the following:
 - a. All buildings with exterior dimensions
 - b. Parking areas with parking stalls delineated
 - c. Streets showing direction of traffic flow
 - d. Points of ingress and egress from public rights-of-ways
 - e. A Preliminary Plan showing private or public water and sewer facilities shall be provided. (If these involve connection to public facilities, the connection will be indicated.)

4. DRAFT ZONING NOVEMBER 21, 2023

5. A proposed plat of the area to be included in the planned complex. Any public right-of-way included as a part of the development should be indicated. The plat will be administered according to the provisions of the county subdivision regulations. The final plan shall be approved in conjunction with the planned complex.
6. A detailed written statement describing the concept of the proposed development substantiating the following:
 - a. That the proposed development is in accordance with Section 1-3 Purpose and Intent of this Ordinance.
 - b. That the proposed uses are in accord with the future land use plan.
 - c. That, in consideration of the best interests of the general public, the proposed development is more beneficial than the development that could be accomplished under the provisions of any other district.
 - d. That the general public will not be harmed by the proposal because of increased accommodations and aesthetic qualities.
 - e. That the development will not impose undue burden on public services and facilities, such as utilities, fire and police protection.
 - f. That the design for the area is in accord with sound and general accepted principles of architecture, landscape architecture, engineering, and related fields.

CERTIFICATION: I/we, the undersigned, do hereby certify that:

1. The information submitted herein is true and correct to the best of my/our knowledge and upon submittal becomes public record.
2. Fees are not refundable and payment does not guarantee approval.
3. All additional required written and graphic materials are attached.

Property Owner: _____ Date: _____

Property Owner: _____ Date: _____

Applicant: _____ Date: _____

RETURN APPLICATION TO: DUBUQUE COUNTY ZONING, 1225 SEIPPEL RD, DUBUQUE IOWA 52002
HOURS: 8:00 A.M. TO 4:30 P.M.

INCLUDE \$250 APPLICATION FEE, MADE PAYABLE TO: DUBUQUE COUNTY TREASURER

****OFFICE USE ONLY****

FEE: _____ DATE PAID: _____

DATE OF PREVIOUS APPLICATION (IF ANY): _____

PUBLICATION DATE: _____

ZONING BOARD MEETING DATE: _____ DECISION: _____

SUPERVISORS MEETING DATE: _____ DECISION: _____

INITIAL HEALTH DEPARTMENT REVIEW: _____ DATE: _____

ENTRANCE APPLICATION: _____

CHAPTER 5 – Renewable Energy Ordinance

Adopted xxxxxxxxxxxxxxxx

Table of Contents

	Page
<u>Part 1 Introduction</u>	
5-1 <u>Authority</u>	2
5-2 <u>Definitions</u>	2
5-3 <u>Purpose</u>	5
5-4 <u>Applicability</u>	6
<u>Part 2 Zoning and Permits</u>	
5-5 <u>Zoning Requirements</u>	6
<u>Part 3 Design Standards</u>	
5-10 <u>General Requirements</u>	10
<u>Part 4 Decommissioning and Reclamation Plan</u>	
5-20 <u>Decommissioning and Reclamation</u>	17
<u>Part 5 Installation and Construction Certification</u>	
5-25 <u>Installation and Construction Certification</u>	18
<u>Part 6 Maintenance and Operations</u>	
5-30 <u>Maintenance and Operations</u>	18
<u>Part 7 Installation and Construction Certification</u>	
5-40 <u>Effective Date</u>	9
<u>Part 8 Installation and Construction Certification</u>	
5-25 <u>Effective Date</u>	9
<u>Part 9 Wind and Solar Access Easements</u>	
5-45 <u>Wind and Solar Access Easements</u>	21
<u>Part 10 Severability</u>	
5-50 <u>Severability</u>	21
<u>Part 11 Effective Date</u>	
5-55 <u>Effective Date</u>	22

5-60	<u>Part 12 Conflict with Provisions</u>	
	<u>Conflict with Provisions</u>	22

PART 1 INTRODUCTION

- 5-1 AUTHORITY** The requirements of this Ordinance shall apply to all Renewable Energy Systems proposed after the effective date of this Ordinance. Energy Systems for which a required Dubuque County permit has been properly issued prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance; provided, that any such pre-existing Renewable Energy System, which does not provide energy for a continuous period of twelve (12) months, shall meet the requirements of this Ordinance prior to recommencing production of energy. Also, no modification or alteration to an existing Renewable Energy System shall be allowed without an approved amendment from the Board of Adjustment.
- 5-2 DEFINITIONS** For use in this Ordinance, the following terms or words shall be interpreted or defined as follows:
- 5-2.1 “Accessory Solar Energy Conversion System (ASECS)”** A solar energy conversion system which is incidental and subordinate to a principal use on the same parcel and intended to primarily provide electrical power for use on the site in which the system is located.
- 5-2.2 “Accessory Wind Energy Conversion System (AWECS)”** A wind energy conversion system that is incidental and subordinate to a principal use on the same parcel and intended to primarily provide power for use on the site in which the system is located.
- 5-2.3 “Authorized Factory Representative”** An individual with technical training on wind energy conversion systems (WECS) who has received factory installation instructions and is certified in writing by the manufacturer of the WECS.
- 5-2.4 “Battery Energy Storage Systems (BESS)”** A bank of batteries or capacitors used to store electricity for later use primarily off-site through the electrical grid or export to the wholesale market – sometimes called a battery storage power station. This definition does not include a battery storage system which is incidental and subordinate to a principal use on the same parcel and intended

to primarily provide electrical power for use on the site in which the system is located.

- 5-2.5 “Building-Integrated Solar Energy Conversion Systems”** A solar energy conversion system (SECS) that is an integral part of a principal or accessory building, rather than a separate mechanical device, replacing or substituting for an architectural or structural component of the building. Building integrated systems include but are not limited to photovoltaic or hot water solar energy systems that are contained within roofing materials, windows, skylights, and awnings.
- 5-2.6 “Building Mounted Wind Energy Conversion System”** A WECS which is securely fastened to any portion of a principal building in order to achieve desired elevation, whether attached directly to the principal building or attached to a tower structure which is in turn fastened to the principal building. These systems are prohibited by this section.
- 5-2.7 “Concentrating Solar Power System (CSPS)”** A power generation system that uses mirrors to concentrate the sun's energy to drive traditional steam turbines or engines that create electricity. The thermal energy concentrated in a CSPS plant is sometimes stored and later used to produce electricity.
- 5-2.8 “Free Standing Wind Energy Conversion System”** A WECS which is elevated by means of a monopole tower only and is not located on another supporting structure except that the tower shall have an appropriately constructed concrete base. Guy-wire supported mast, lattice, or other non-monopole style towers shall not meet this definition.
- 5-2.9 “Ground-Mounted Solar Energy Conversion System”** A SECS mounted on a rack or pole that rests or is attached to the ground.
- 5-2.10 “Height, Total Wind Energy Conversion System”** The height above grade of the system, including the generating unit and the highest vertical extension of any blades or rotors.
- 5-2.11 “Horizontal Axis Wind Energy Conversion System”** A WECS that has blades which rotate through a horizontal plane.
- 5-2.12 “Manual and Automatic Controls for a Wind Energy Conversion System”** Controls that give protection to power grids and limit rotation of the blades to below the designed limits of the WECS.
- 5-2.13 “Maximum Tilt”** The maximum angle of a solar panel or collector (i.e., most vertical position) for capturing solar radiation as compared to the horizon line.

- 5-2.14 “Minimum Tilt”** The minimal angle of a solar panel or collector (i.e., most horizontal position) for capturing solar radiation as compared to the horizon line.
- 5-2.15 “Non-Participating Lot(s)”** One or more lots for which there is not a signed lease or easement for development of a principal-use SECS associated with the applicant project.
- 5-2.16 “Off Grid”** An electrical system that is not connected to utility distribution and transmission facilities or to any building or structure that is connected.
- 5-2.17 “Operator”** The entity or individual that operates a WECS, SECS, or BESS.
- 5-2.18 “Owner”** The entity or individual that has ownership over a WECS, SECS, or BESS.
- 5-2.19 “Participating Lot(s)”** One or more lots under a signed lease or easement for development of a utility scale WECS, utility scale SECS, or BESS associated with the applicant project.
- 5-2.20 “Professional Engineer”** An engineer licensed to practice in the State of Iowa.
- 5-2.21 “Prototype and/or Experimental WECS”** An original or homemade, first full scale, new type of functional model.
- 5-2.22 “Roof-Mounted Solar Energy Conversion System”** A SECS mounted on a rack that is fastened to or ballasted on a structure roof.
- 5-2.23 “Rotor”** The portion of the WECS, typically consisting of blades, shafts and hubs that rotate in response to wind and convert the motion into electrical energy. Rotors are often horizontal or vertical.
- 5-2.24 “Shadow Flicker”** The changing of light intensity caused by sunlight through the moving blades of a WECS.
- 5-2.25 “Solar Access”** Unobstructed access to direct sunlight on a lot or building through the entire year, including access across adjacent parcel air rights, for the purpose of capturing direct sunlight to operate a solar energy conversion system.
- 5-2.26 “Solar Carport”** A SECS of any size that is installed on a carport structure that is accessory to a parking area, and which may include electric vehicle

supply equipment or energy storage facilities.

- 5-2.27 “Solar Energy Conversion System (SECS)”** A photovoltaic system or solar thermal system for generating electricity or heat, including all above and below ground equipment or components required for the system to operate properly and to be secured to a building surface or the ground. This includes any necessary operations and maintenance building(s), but does not include any temporary construction offices, substation(s), battery energy storage systems (BESS), or transmission facilities between the SECS and the point of interconnection to the electric grid. This definition does not include any concentrating solar power systems (CSPS).
- 5-2.28 “Solar Mounting Devices”** Racking, frames, or other devices that allow the mounting of a solar panel or solar collector onto a roof surface or the ground
- 5-2.29 “Tower for a Wind Energy Conversion System”** The vertical component of a WECS that elevates the wind turbine generator and attached blades above the ground.
- 5-2.30 “Utility Scale Wind Energy Conversion System (USWECS)”** One or more wind energy conversion systems located together and used for production of electric power to be interconnected into the local utility electrical grid and primarily for consumption by on-grid utility customers located off the property. USWECS are typically the principal use of the parcel on which located but may include a dual use such as vegetable farming. Commonly referred to as a “wind farm.”
- 5-2.31 “Utility Scale Solar Energy Conversion System (USSECS)”** A solar energy conversion system that is used to produce electrical power for the primary purpose of off-site use through the electrical grid or export to the wholesale market. USSECS do not include concentrating solar power systems (CSPS).
- 5-2.32 “Vertical Axis Wind Energy Conversion System”** A WECS that has blades which rotate through a vertical plane.
- 5-2.33 “Wind Energy Conversion System (WECS)”** Any device, such as a wind charger or wind turbine, which converts wind to a form of usable electric energy. d
- 5-3 PURPOSE** To promote the effective and efficient use of wind energy conversion systems (WECS) and solar energy conversion systems (SECS) by regulating and requiring a permit for the siting, design, and installation of conversion systems to protect the public health, safety, and welfare of present

and future residents of Dubuque County. In addition, this ordinance provides a permitting process for these energy systems to ensure compliance with the provisions of the requirements and standards established or referenced herein. The provisions of this ordinance shall not guarantee wind or solar rights or establish access to the wind or sunlight.

- 5-4 APPLICABILITY** It shall be unlawful to construct, erect, install, alter, or locate any Wind Energy Conversion System (WECS) (~~accessory or~~ utility scale), any Solar Energy Conversion System (SECS) (~~accessory or~~ utility scale), and any Battery Energy Storage System (BESS) within unincorporated Dubuque County, without first obtaining approval and a permit from Dubuque County as outlined in this ordinance and in compliance with the provisions of this chapter and the Dubuque County Zoning Ordinance. No permit application for a WECS, SECS, or BESS permit shall be granted without first submitting all required information and obtaining necessary permits, certifications, and documentation.

PART 2

ZONING AND PERMITS

5-5 ZONING REQUIRED

5-5.1 Wind Energy Conversion Systems (WECS)

- A. Zoning Required for Utility Scale Wind Energy Conversion Systems. A Utility Scale Wind Energy Conversion System (USWECS) may be allowed within the A-1 - Agricultural, R-1 – Rural Residential, and R-2 – Single Family Residential Zoning Districts subject to approval of a Permitted Special Use Permit from the Dubuque County Board of Adjustment.

5-5.2 Solar Energy Conversion Systems (SECS)

- A. Zoning Required for Utility Scale Solar Energy Conversion Systems. A Utility Scale Solar Energy Conversion System (USSECS) may be allowed within the A-1 Agricultural, M-1 Industrial, M-2 Heavy Industrial, R-1 – Rural Residential, and R-2 – Single Family Residential Zoning Districts, subject to approval of a Permitted Special Use Permit from the Dubuque County Board of Adjustment.

5-5.3 Battery Energy Storage Systems (BESS)

- A. Zoning Required for Battery Energy Storage Systems. A BESS may be allowed within the A-1 Agricultural, M-1 Industrial, M-2 Heavy Industrial, R-1 – Rural Residential, and R-2 – Single Family Residential Zoning

Districts, subject to approval of a Permitted Special Use Permit from the Dubuque County Board of Adjustment.

- B. The provisions of this chapter do not apply to a battery energy storage system that is incidental and subordinate to a principal use on the same parcel and intended to primarily provide electrical power for use on the site in which the system is located.

5-5.4 Community Open House Prior to the submission of an application for a Special Use permit for a Utility Scale Wind Energy Conversion System (USWECS), a Utility Scale Solar Energy Conversion System (USSECS), or a Battery Energy Storage System (BESS), a public community information open house shall be organized and hosted by the project developer and/or applicant. The purpose of the meeting is outreach to provide complete information to the community, area residents and property owners, and area officials about the proposed project in an informal setting. The Community Open House shall not be construed to be a local government meeting or a public hearing. The Community Open House shall be conducted in accordance with the following protocols:

- A. **Notification** The project developer and/or applicant shall notify the County Board of Supervisors, the County Zoning Administrator and all property owners within 1 mile of the proposed Commercial Solar Energy System a minimum of ten (10) days prior to the Community Open House by regular US mail.
- B. **Date And Time Location** The Community Open House shall be held on a weeknight (Monday through Thursday) at an accessible location within 5 miles of where the proposed project is to be located. Suitable locations include a community center or city hall, meeting room or a Dubuque County government facility.
- C. **Content** The Community Open House shall be arranged and hosted by the project developer and/or applicant, or qualified representative and shall at a minimum include a detailed explanation of the proposed project, the site plan, the anticipated construction schedule, landscape and buffer plan, and the decommissioning and site reclamation plan. The project developer and/or applicant shall attend the Community Open House.
- D. **Response To Concerns** The project developer and/or applicant shall solicit and accept all comments, questions, and concerns of attendees at the Community Open House.
- E. **Report** The project developer and/or applicant shall submit a summary report of the Community Open House to the Zoning Administrator no less than 20 days prior to a Board of Adjustment meeting where the proposed project application is considered. The report shall include a list of property owners who were invited, a record of the attendees that provided their name at the Open House, and copies of all written comments received at the Open House or submitted in response to the Open House. The report

shall identify all concerns submitted by attendees and shall include a statement of reasonable, practical mitigation the project developer and/or applicant will undertake to address those concerns and minimize impacts to the area surrounding the proposed project. This report may be used by the Zoning Administrator to establish conditions of approval for the Special Use permit.

The Zoning Administrator shall have the authority to require an additional Community Open House based on the findings, comments, and responses obtained at the initial Open House.

5-5.5 Application and Procedures

A. Accessory Wind Energy Conversion Systems and Accessory Solar Energy Conversion Systems.

1. Permit Application Requirements. Application for approval of a permit to construct an AWECS or ASECS shall be submitted to the Zoning Administrator on a permit application form provided by the Zoning Administrator and must include any additional information determined by the Zoning Administrator as necessary to demonstrate compliance with all applicable codes and requirements, along with the ASECS permit application fee, as established by resolution of the Board of Supervisors.

B. Utility Scale Wind Energy Conversion Systems, Utility Scale Solar Energy Conversion System, and Battery Energy Storage Systems.

1. Permit Application Requirements. Application for approval of a permit to construct an USWECS, USSECS, or BESS shall be submitted to the Zoning Administrator on a permit application form provided by the Zoning Administrator and must include any additional information determined by the Zoning Administrator as necessary to demonstrate compliance with all applicable codes and requirements, along with the permit application fee, as established by resolution of the Board of Supervisors.
2. Permit Procedures. All USWECS, USSECS, or BESS permit applications shall require review and approval by the Dubuque County Board of Adjustment following the standards and procedures for Special Use Permits. No USWECS, USSECS, or BESS Building/Zoning Certificate may be issued until after receiving approval of a Special Use Permit from the Board of Adjustment and the securing of all other permits as may be required by this chapter and elsewhere in the Dubuque County Zoning Ordinance.

- C. Construction Permits. Upon approval of any WECS, SECS, or BESS Special Use Permit the following additional permits must be obtained from the Dubuque County Zoning Office:
1. Building / Zoning Certificate(s)
 2. Entrance permit(s)
 3. Address application(s)
 4. The following documents are required, if applicable
 - a. Site Plan
 - b. Permit for work within Dubuque County right-of-way
 - c. Oversize/Overweight permit (including a plan and agreement to maintain and repair roads impacted by construction activities and traffic)
 - d. Floodplain Development permit
 - e. Erosion and Sediment Control (ESC) permit

5-6 through 5-9 Reserved

**PART 3
DESIGN STANDARDS**

5-10 GENERAL REQUIREMENTS

5-10.1 Wind Energy Conversion Systems (WECS) Design Standards.

A. Setbacks.

1. Accessory WECS (AWECS).
 - a. AWECS shall be set back a minimum distance from the base of the structure to all property lines equal to 1.5 times the height of the tower and rotor as measured from the base to the highest reach of its blade.
 - b. AWECS including anchors shall not be located within a required principal structure setback in any zoning district.
 - c. An AWECS shall not be located in front of any residential building located on the same parcel.
2. Utility Scale WECS (USWECS)
 - a. USWECS shall be located only in the A-1 – Agricultural, R-1 – Rural Residential, and R-2 – Single Family Residential Zoning District and shall be a minimum 1,320-feet from any property lines or residential dwellings, not included in the

WECS application, or any public park and/or recreation property line with the following exceptions:

- i. Any public park or recreational land when approved by the appropriate County, State, or Federal administrative staff, boards, and/or commissions for a demonstrated public purpose.

B. Rotor Size.

1. AWECS on a parcel with residential as its principal use shall not have a blade diameter in excess of 25-feet.
2. AWECS on a parcel with a nonresidential principal use shall not exceed a 50- foot blade diameter.

C. Tower Height

1. AWECS shall meet the following requirements:
 - a. AWECS on an individual parcel up to 3-acres shall not exceed a combined tower/pole and rotor height of 65-feet.
 - b. AWECS on a parcel greater than 3-acres and up to 7-acres shall not exceed a combined tower/pole and rotor height of 80-feet.
 - c. AWECS on a parcel greater than 7-acres shall not exceed a combined tower/pole and rotor height of 100-feet.
2. Utility Scale WECS towers, poles and rotors may exceed the height limitations of the Zoning District in which they are located.

D. Blade clearance. No portion of a horizontal axis WECS blade shall extend within 30- feet off the ground. No portion of a vertical axis WECS shall extend within 10-feet of the ground. No blades may extend over parking areas, driveways, or sidewalks. No blade may extend within 20-feet of the nearest tree, structure, or above ground utility facilities.

E. Building mounted WECS prohibited. WECS mounted on a roof or wall or otherwise attached to a building are prohibited.

F. Tower. Only monopole towers shall be permitted for freestanding WECS. Guy-wire supported mast, lattice, and towers of any other type shall not be considered in compliance with this chapter.

G. Signage. All signs, both temporary and permanent, are prohibited on WECS, except as follows:

1. Manufacturer's identification on the wind turbine cowling.
2. Appropriate warning signs and placards including visible warning sign of "High Voltage" placed at the base of all conversion systems. The sign shall have at a minimum 6-inch letters with 3/4-inch stroke.

H. Color. The color of WECS shall be non-reflective and non-obtrusive.

I. Shadow flicker. No WECS shall be installed and operated so to cause a shadow flicker to fall on or in any existing residential dwelling that is not included as part of the WECS application.

J. Rotor design and overspeed controls. All WECS shall be equipped with

manual and automatic overspeed controls to limit the rotation of blades to a speed below the designed limits. A professional engineer shall certify that the rotor and overspeed control design and fabrication conform to good engineering practices. No changes or alterations from the certified design shall be permitted unless accompanied by a professional engineer's statement of certification.

- K. Electrical compliance. All electrical compartments, storage facilities, wire conduit and interconnections with utility companies shall conform to State electrical codes.
- L. Experimental or prototype WECS. Written evidence identifying the proposed use of an experimental or prototype WECS shall be submitted to the County by a professional engineer and/or factory representative. Experimental or prototype WECS are not permitted closer than 300-feet from all property lines.
- M. Tower, Poles, and Anchor points. All towers, poles, and anchor points must be unclimbable by design or protected by anti-climbing devices such as:
 - 1. Fences with locking portals at least 6-feet high.
 - 2. Anti-climbing devices 12-feet from base of pole
 - 3.
- N. Noise Levels. The noise level measured at the property line of the property on which the WECS has been installed shall not exceed 55 decibels or cause a noise disturbance. In no event shall the WECS create a nuisance.
- O. Lighting. Lighting of towers is only allowed when required by the FAA. The lighting method allowed shall be an FAA approved dual lighting system.
- P. Stormwater Management. Depending on the scale and footprint of a proposed USWECS project, a stormwater management prevention plan may be required in accordance with the site plan regulations of Dubuque County. All site work shall further comply with the National Pollution Discharge Elimination System (NPDES) permit as required by the Iowa Department of Natural Resources (IDNR), including Section 404 of the Clean Water Act (CWA) related to impacts on wetlands and Waters of the United States (WUS).
- Q. Emergency Access. Hard surface access for emergency service equipment shall be provided and maintained to all USWECS towers and buildings.

5-10.2 Solar Energy Conversion Systems (SECS) Design Standards.

- A. Accessory Solar Energy Conversion Systems Design Standards. All ASECS shall meet the following standards and conditions:
 - 1. Setback. Solar energy conversion systems must meet the accessory structure setback for the zoning district and principal land use associated with the lot on which the system is located, except as allowed below.
 - a. Roof-mounted solar energy conversion systems. The

collector surface and mounting devices for roof-mounted solar energy conversion systems shall not extend beyond the exterior perimeter of the building on which the system is mounted or built, unless the collector and mounting system has been explicitly engineered to safely extend beyond the edge, and setback standards are not violated. Exterior piping for solar hot water systems shall be allowed to extend beyond the perimeter of the building on a side-yard exposure. Solar collectors mounted on the sides of buildings and serving as awnings are considered building-integrated systems and are regulated as awnings.

- b. Ground-mounted solar energy conversion systems. Ground-mounted solar energy conversion systems shall comply with the setback and placement standards in place for accessory structures for the zoning district in which they are located.
2. Height. ASECS must meet the following height requirements:
- a. Building-mounted or roof-mounted solar energy conversion systems shall not exceed the maximum allowed height in any zoning district. For purposes for height measurement, solar energy conversion systems other than building-integrated systems shall be given an equivalent exception to height standards as building-mounted mechanical devices or equipment.
 - b. Ground-mounted or pole-mounted solar energy conversion systems shall not exceed 15-feet in height when oriented at maximum tilt.
 - c. Solar carports in non-residential districts shall not exceed 20-feet in height.
3. Visibility. Solar energy conversion systems shall be designed to minimize visual impacts from the public street right-of-way.
- a. Building Integrated Photovoltaic Systems. Building integrated photovoltaic solar energy conversion systems shall be allowed regardless of whether the system is visible from the public right-of-way, provided the building component in which the system is integrated meets all required setback, land use or performance standards for the district in which the building is located.
 - b. Aesthetic restrictions. Roof-mounted, building integrated, or ground-mounted solar energy conversion systems should not be restricted for aesthetic reasons if the system is not visible from the closest edge of any public right-of-way other than an alley, or if the system meets the following standards.
 - i. Roof-mounted systems on pitched roofs that are

- visible from the nearest edge of the front right-of-way shall have the same finished pitch as the roof and be no more than ten inches above the roof.
 - ii. Roof-mount systems on flat roofs that are visible from the nearest edge of the front right-of-way shall not be more than 5 feet above the finished roof and are exempt from any rooftop equipment or mechanical system screening.
 - c. Glare Minimization. All solar energy conversion systems using a reflector to enhance solar production shall minimize glare from the reflector affecting adjacent or nearby properties. All solar energy conversion systems must not interfere with traffic, including air traffic, or create a safety hazard.
 - 4. Lot Coverage. Ground-mounted systems total collector area shall not exceed the lot coverage standards for the zoning district in which it is located. For the purposes of this section, lot coverage shall include all paved and gravel surfaced areas, building footprints, and an area equal to 30% of the total surface area of the top side of all solar panels.
 - 5. Noise Levels. The noise level measured at the property line of the property on which the WECS has been installed shall not exceed 55 decibels or cause a noise disturbance. In no event shall the WECS create a nuisance.
- B. Utility Scale Solar Energy Conversion Systems (USSECS) Design Standards.
- 1. Height. USSECS panels or collectors and related solar mounting devices shall not exceed 20-feet in height when panel or collector is oriented at maximum tilt.
 - 2. Setbacks. USSECS, including all accessory structures and equipment, shall be setback a minimum of 50-feet from all property lines and road right-of-way lines and 300-feet from any residential dwelling that is not on a participating lot. No setback is required between participating lots.
 - 3. Visibility. Solar energy conversion systems (SECS) shall be designed to minimize visual impacts from the public street right-of-way and adjoining property. All solar energy conversion systems using a reflector to enhance solar production shall minimize glare from the reflector affecting adjacent or nearby properties, except for those that are participating lots.
 - 4. Roof-Mounted USSECS. Roof-mounted USSECS shall meet the design standards as described for ASECS in section 5-10.2A.
 - 5. Landscape Buffering. All systems shall comply with the zoning buffers for the zoning district in which located. At the discretion of

the Board of Adjustment, additional landscape buffers may be required along any of the project boundaries of the USSECS to buffer adjoining residential land use and public views.

6. Ground Cover and Landscaping. All area not hard surfaced shall be planted and maintained with a perennial ground cover. Ground around and under solar arrays and in project site buffer areas shall be planted and maintained in perennial vegetated ground cover, and meet the following standards:
 - a. Topsoil shall not be permanently removed during development, unless part of the remediation effort.
 - b. Soils shall be planted and maintained in short stature perennial vegetation capable of enhancing soil health and supporting pollinators. Blooming shrubs may be used in buffer areas as appropriate for visual screening.
 - c. Seed mixes and maintenance practices should be consistent with recommendations made by qualified natural resource professionals such as those from the Department of Natural Resources, County Soil and Water Conservation Service or Natural Resource Conservation Service.
 - d. Landowner, farmer, tenant and adjoining landowner notification must be conducted per the terms of an easement or land use agreement, or as otherwise required by the specific Candidate Conservation Agreement or Habitat Conservation Plan under the Endangered Species Act.
7. Stormwater Management. For the purposes of pollutant removal, stormwater rate and runoff management, flood reduction and associated impacts, the applicant must meet and be in compliance with the Dubuque County Erosion and Sediment Control and Stormwater Ordinance.
8. Lot Coverage. The total amount of impervious surfacing shall not exceed 20% of the site area. For the purpose of this chapter, impervious surfacing includes paved or gravel roads, parking areas, equipment pads, building footprints, and other similar non-vegetated areas. Ground-mounted panel or collector systems shall not be included in this impervious surface calculation if the soil under the panel or collector is maintained in vegetation and not compacted.
9. Emergency Access. Paved access for emergency service equipment shall be provided and maintained to all structures and buildings.
10. All solar energy conversion system components shall be accessible for required routine maintenance without trespassing on adjoining property or disassembling any major portion of the structure or building.
11. All solar energy conversion system components must be obtained

from manufacturers who regularly engage in production of solar energy apparatus. The design and drawings of any system or apparatus shall be completed and sealed by a licensed design professional.

5-10.3 Battery Energy Storage Systems (BESS) Design Standards

- A. Height. BESS equipment, buildings, and related structures shall not exceed 50-feet in height.
- B. Setbacks. BESS equipment, including all accessory structures, shall be setback a minimum of 100-feet from all property lines and road right-of-way lines. No setback is required between participating lots.
- C. Landscape Buffering. All BESS equipment shall comply with the zoning buffers for the zoning district in which it is located. At the discretion of the Board of Adjustment, a landscape buffer may be required along any of the project boundaries of the BESS to buffer adjoining residential land use and public views.
- D. Ground Cover and Landscaping. All area not hard surfaced shall be planted and maintained with a perennial ground cover.
- E. Stormwater Management. For the purposes of pollutant removal, stormwater rate and runoff management, flood reduction and associated impacts, the applicant must meet and be in compliance with the Dubuque County Erosion and Sediment Control and Stormwater Ordinance.
- F. Lot Coverage. The total amount of impervious surfacing shall not exceed 25% of the site area. For the purpose of this chapter, impervious surfacing includes paved or gravel roads, parking areas, equipment pads, building footprints, and other similar non-vegetated areas.
- G. Emergency Access. Paved access for emergency service equipment shall be provided and maintained to all BESS equipment and related structures.
- H. Emergency Response Plan. A plan for local emergency services on the procedures to respond to a fire or other event on site, the process of clean-up and recovery, and the development of regular training to be provided by the owner/operator of the facility.
- I. Noise Levels. The noise level measured at the property line of the property on which the BESS has been installed shall not exceed 55 decibels or cause a noise disturbance. In no event shall the BESS create a nuisance.

5-11 through 5-19 Reserved

PART 4
DECOMMISSIONING AND RECLAMATION PLAN

5-20 Decommissioning and Reclamation.

- 5-20.1 Plan Required** All USWECS, USSECS, and BESS permit applications shall include a decommissioning and reclamation plan that includes the following:
- A. The anticipated start and completion dates and manner in which the project will be decommissioned, including a description of which above-grade and below-grade improvements will be removed, retained (e.g., access drive, fencing), or restored for viable reuse of the property, including equipment disposal plan that complies with state code and administrative rules.
 - B. The projected decommissioning costs for removal and disposal of the USWECS, USSECS, or BESS (net of salvage value in current dollars) and restoration of the site and soil for agricultural use, certified by an Iowa licensed engineer.
 - C. The method of ensuring that funds will be available for site decommissioning and restoration of the site (e.g., surety bond, cash deposit).
- 5-20.2 Plan Review and approval** The Decommissioning and Reclamation Plan shall be reviewed by the Board of Adjustment as part of the Special Use Permit application and included as a condition of approval of any permit.
- 5-20.3 Agreement** The decommissioning and reclamation plan will be provided in the form of an executed agreement, recorded against the property, and binding upon the owner/operator and any of their successors, assigns, or heirs.
- 5-20.4 Regular Review Required**
- A. Every 5-years from the date of approval of the permit until its expiration, the owner/operator of a USWECS, USSECS, and BESS approved under this chapter shall cause a review be completed of the decommissioning and reclamation plan and the amount of the performance guarantee required based on inflation, salvage value, and current removal costs. A written report of this review, certified by an Iowa licensed engineer, shall be provided to the Zoning Administrator within the above timeline.
 - B. Based on the findings of the report, the Zoning Administrator may require additional surety be provided or may allow a reduction in the required amount of surety. Failure to provide, within a reasonable time, the additional surety as may be required by the Zoning Administrator shall be considered a violation of the permit approval and said permit may be revoked by Dubuque County.
 - C. Failure to provide this report within the above timeline shall be considered

a violation of the permit approval and said permit may be revoked by Dubuque County.

- D. At the request of the owner/operator, an amendment to the decommissioning and reclamation plan agreement may be presented to the Board of Adjustment for their review and consideration.

5-21 through 5-24 Reserved

PART 5
INSTALLATION AND CONSTRUCTION CERTIFICATION

5-25 Installation and Construction Certification

- 5-25.1** All approved WECS, SECS, and BESS projects shall commence installation as specified in the WECS, SECS, and BESS Permit, and in accordance with this ordinance, within one year of approval or the Building / Zoning Certificate expires. Expired Certificates require a new application. A new application and fee must be resubmitted.
- 5-25.2** A professional engineer shall certify that the construction and installation of the USWECS, USSECS, or BESS meets or exceeds the manufacturer's construction and installation standards, prior to the property owner and/or applicant receiving a Special Use Permit for the USWECS, USSECS, or BESS.

5-26 through 5-29 Reserved

PART 6
MAINTENANCE AND OPERATION

5-30 Maintenance and Operation

- 5-30.1** The project Owner and/or Operator is responsible for maintaining, repairing, and keeping WECS, SECS, or BESS in good working order.
- A. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures.
- B. Waste disposal of solid and/or hazardous materials shall occur in accordance to County, State and Federal requirements. No worn parts, used oils or lubricants, crates or other items shall be located on the WECS, SECS, or BESS property or project area. Construction and other bulk

- materials and replacement parts and components shall not be stored outside on the WECS, SECS, or BESS property or project area.
- C. The WECS, SECS, or BESS shall not cause interference with microwave transmissions, residential television interference, radio reception or other communication equipment.
 - D. Access for emergency service equipment shall be maintained.
 - E. The Zoning/Building Official and any other necessary personnel may enter the property with guided access from the project owner or their representative for which a Special Use Permit or Building Permit has been issued under this ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met as specified by statute, ordinance, or code. Failure to provide access shall be deemed a violation of this ordinance.

5-31 through 5-34 Reserved

PART 7
REMOVAL, REVOCATION, AND ABANDONMENT

5-35 Removal, Revocation, and Abandonment

- 5-35.1** The WECS, SECS, or BESS shall be removed if not operated for a period of time greater than 12-months or fails to be operable for 12-consecutive months or if it is determined by Dubuque County that a WECS, SECS, or BESS is not in compliance with provisions of this ordinance and the WECS, SECS, or BESS Permit.
- A. As a condition of Special Use Permit approval for all WECS, SECS, or BESS the project Owner and/or Operator shall sign a “Consent to Removal” form supplied by the Zoning Administrator. The “Consent to Removal” will state that the owner shall remove the WECS, SECS, or BESS or allow Dubuque County to remove and assess the property for the cost to remove the WECS, SECS, or BESS. Upon noncompliance the County shall send a notice to the property owner and/or WECS, SECS, or BESS owner by certified mail identifying the options to correct the violations. If the corrective actions are not taken within 30- days of certified mailing date a final notice will be sent to the owner in the same manner and be given 15-additional days to properly correct the violations. If the violations are not corrected, the WECS, SECS, or BESS will be removed by Dubuque County and the property will be assessed for the cost of removal and disposal.
 - B. As a condition of approval of any USWECS, USSECS, and BESS permit, the project Owner and/or Operator shall provide sufficient surety to cover

the cost of the removal and disposal of said USWECS, USSECS, and BESS facility. The final amount and form of the surety shall be determined by the Zoning Administrator.

- 5-35.2** A WECS, SECS, or BESS Permit may be revoked any time the WECS, SECS, or BESS does not comply with the rules and regulations set forth in this ordinance or WECS, SECS, or BESS Permit. The revocation of the WECS, SECS, or BESS Permit requires the WECS, SECS, or BESS to be physically removed within ninety (90) days.
- 5-35.3** At such time that a WECS, SECS, or BESS is abandoned or discontinued, the property owner and or WECS, SECS, or BESS owner will notify the Dubuque County Zoning Administrator by certified U.S. mail of the proposed date of abandonment or discontinuation of operations and remove the tower within 90-days.
- 5-35.4** Upon revocation, abandonment, or discontinuation of WECS, SECS, or BESS or failure to operate, maintain and keep in good working order, the project Owner and/or Operator shall physically remove the WECS, SECS, or BESS according to the provisions of this ordinance, conditions added to the WECS, SECS, or BESS Special Use Permit and/or the “Consent to Removal”. “Physically remove” shall include, but not be limited to:
- A. Removal of the WECS, SECS, or BESS including any turbines, towers, poles, panels, collectors, mounting devices, electrical equipment, access roads and drives, parking areas, equipment pads, buildings, structures, above ground foundations, and overhead utility lines related to the operation of the WECS, SECS, or BESS.
 - B. Restoration of the location of the WECS, SECS, or BESS to its natural condition, except that any landscaping, grading, or below-grade foundation may remain.

5-36 through 5-39 Reserved

PART 8

RELEASE OF LIABILITY

5-40 Release of Liability

- 5-40.1** Dubuque County shall be fully released of any liability associated with any WECS, SECS, or BESS built in unincorporated Dubuque County.

5=41 through 5-44 Reserved

**PART 9
WIND AND SOLAR ACCESS EASEMENTS**

5-45 Wind and Solar Access Easements

5-45.1 The grant of any permit under this chapter does not constitute the granting of an easement by Dubuque County. The WECS owner/operator shall have the sole responsibility to acquire any covenants, easements, or similar documentation to assure and/or protect access to sufficient wind as may or may not be necessary to operate the WECS. Similarly, the owner/operator of any SECS shall have the sole responsibility to acquire any covenants, easements, or similar documentation to assure and/or protect access to sufficient sunlight as may or may not be necessary to operate the system.

5-46 through 5-49 Reserved

**PART 10
SEVERABILITY**

5-50 SEVERABILITY. If any section, provision, or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the regulations as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

5-51 through 5-54 Reserved

**PART 11
EFFECTIVE DATE**

5-55 EFFECTIVE DATE. This ordinance shall take effect upon its publication as required by law.

5-56 through 5-59 Reserved

PART 12

CONFLICT WITH PROVISIONS

- 5-60** **CONFLICT WITH PROVISIONS.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.



Dubuque County Zoning Board

Example of Project flow for Renewable Energy Projects

