

MINUTES OF SIOUX COUNTY BOARD OF SUPERVISORS

MEETING HELD ON JULY 7, 2009

09-07-07 1 The Board of Supervisors of Sioux County, Iowa, met pursuant to adjournment at 9:00 o'clock a.m. with Chairman Mark Sybesma presiding. Members present were Dennis Wright, Al Bloemendaal, Mark Sybesma, John Degen and Arlyn Kleinwolterink.

09-07-07 2 Minutes of the meeting held on June 30, 2009, were submitted and the Chairman declared them approved.

09-07-07 3 Anita K. Van Bruggen, County Recorder presented the Recorder's Quarterly Report. The report was received for information.

09-07-07 4 Coleman McAllister, County Attorney

- The Chairman of the Board signed a letter of recommendation for the appointment of Deb Fischer to the position of Sioux County Clerk of District Court.
- Motion by Degen and supported by Kleinwolterink to sign a resolution approving a land transfer agreement with the city of Hawarden, and a use agreement and an option agreement, stating that if the County no longer has a use for the South Pit Area, the property will revert to the city of Hawarden, and agreeing to permit the city of Hawarden to put some wells on the property. The documents release the County from liability. Roll Call on Vote: Kleinwolterink, Yes; Degen, Yes; Bloemendaal, Yes; Wright, Yes; and Sybesma, Yes. Motion carried, unanimous in favor.

RESOLUTION NO 2009-23

APPROVING AND ENTERING INTO AN OPTION AGREEMENT AND LAND TRANSFER USE AGREEMENT

(South Pit Property)

WHEREAS, Sioux County, acting through the Sioux County Conservation Department, has acquired certain property (the "Hawarden Airport Property") from the City of Hawarden and has already approved by prior resolution an Exchange Agreement entered into by and between Sioux County, Iowa, the City of Hawarden and L.G. Everist, Inc. for the disposal of the Hawarden Airport Property in exchange for Sioux County acquiring title to certain other real property (the "South Pit Property") for development and use by Sioux County as a public recreation area;

WHEREAS, an Option Agreement and a Land Transfer Use Agreement with the City of Hawarden have been negotiated and reduced to writing as part of the exchange agreement and land transfers contemplated therein; and

WHEREAS, the Board of Supervisors has reviewed these documents and found that it is in the best interests of the citizens of Sioux County that they be executed and Sioux County, Iowa be bound by the terms contained therein,

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Sioux County that the proposed Option Agreement and Land Transfer Use Agreement with the City of Hawarden are in the best interests of the citizens of Sioux County and all parties concerned; that the proposed Option Agreement and Land Transfer Use Agreement with the City of Hawarden therein as drafted, advertised, heard, and discussed be adopted. The Chairman of the Board of Supervisors is hereby authorized to execute the Option

Agreement and the Land Transfer Use Agreement with the City of Hawarden and deliver such documents and pay any related costs necessary to follow through with the obligations contained therein. All resolutions or parts thereof in conflict herewith are hereby repealed to the extent of said conflict.

PASSED AND APPROVED this 7th day of July, 2009.

/s/Mark Sybesma
Chairman, Board of Supervisors

ATTEST: /s/Lois Huitink, Sioux County Auditor

- Presented a semi-annual statistical report for the first half of 2009. McAllister reported that drug offenses have been increasing. Law enforcement has been making arrests from routine traffic violation stops. The misuse of prescription drugs has also been increasing.

09-07-07 5 Motion by Kleinwolterink and supported by Bloemendaal to reappoint Mike Hofman as the County's representative to the Western Iowa Tourism Region. Motion carried, unanimous in favor.

09-07-07 6 The Sheriff's Quarterly Report was received for information.

09-07-07 7 Shane Walter, Community Services Director

- Motion by Wright and supported by Bloemendaal to approve a resolution setting requirements for the issuance of fireworks permits. Roll call on Vote: Wright, Yes; Bloemendaal, Yes; Degen, Yes; Kleinwolterink, Yes; and Sybesma, Yes. Motion carried, unanimous in favor.

RESOLUTION 2009-22

ESTABLISHING REQUIRMENTS FOR ISSUANCE OF FIREWORKS PERMITS

WHEREAS: The Board of Supervisors, Sioux County, Iowa, is empowered under the authority of Section 727.2, Code of Iowa, to grant a permit for the display of fireworks, by fair associations, amusement parks, and other organizations or groups of individuals approved by such county board of supervisors when such fireworks display will be handled by a competent operator, and

WHEREAS: the Board of Supervisors, Sioux County, Iowa, has received several requests for fireworks display permits, and

WHEREAS: the Board of Supervisors, Sioux County, Iowa, desires to grant permits only when a competent person will be in charge of the fireworks display to provide for the safety of all concerned.

NOW, THEREFORE BE IT RESOLVED by the Sioux County Board of Supervisors that criteria should be and is HEREBY prescribed for the issuance of permits for the display of fireworks in Sioux County, Iowa.

BE IT FURTHER RESOLVED that the following definitions be used:

Applicant: The person or group who is applying for the permit.

Board: The Sioux County Board of Supervisors.

Fireworks: Any explosive composition or combination of explosive substances, or articles prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and includes blank cartridges, firecrackers, torpedoes, sky rockets, roman candles, or other fireworks of like construction and fireworks containing any explosive or flammable compound, or other device containing any explosive substance. The term "fireworks" shall not include gold star-producing sparkles on wires which contain no magnesium or chlorate or perchlorate, no flitter sparklers in paper tubes that do not exceed one-eighth (1/8) of an inch in diameter, toy snakes which contain no mercury, or caps used in cap pistols.

Operator: A person trained in fireworks safety who will set up and explode the fireworks.

Sponsor: The group paying for or otherwise providing for the fireworks display.

BE IT FURTHER RESOLVED that the applicant shall submit an application in writing on the form attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED that no permit be issued until the chief of the fire department having jurisdiction over the site of the fireworks display has approved the location and fire prevention measures.

BE IT FURTHER RESOLVED that no permit be issued unless liability insurance coverage is procured to protect the applicant, sponsor, operator, and the public in an amount to be determined by the Board, but in no event less than \$300,000. Sioux County shall be listed as an additional insured on the liability policy, as evidenced by a Certificate of Insurance filed with the application for each display.

BE IT FURTHER RESOLVED that the applicant and operator be persons of not less than eighteen (18) years of age on the date of the proposed fireworks display.

BE IT FURTHER RESOLVED that the operator must meet the following fireworks safety requirement:

- a) Be certified as a Display Fireworks Operator by the Pyrotechnics Guild International, Inc. Such certification involves formal fireworks safety training, passing a fireworks safety test with an 80% rate of accuracy, and working with a guild member on at least three formal fireworks displays; or
- b) Possess a current, valid fireworks license issued by a state of the United States which requires formal safety training similar to that in a) above; or
- c) Demonstrate an equivalent degree of formal fireworks safety training and experience to the satisfaction of the Board.

BE IT FURTHER RESOLVED that any fireworks that remain unexploded after the display shall be immediately disposed of or removed for storage or disposal in a safe manner by the operator who, upon the conclusion of the display, shall make a complete and thorough search for any unexploded fireworks or fuses thereof which have not exploded or functioned.

BE IT FURTHER RESOLVED that the Sioux County Sheriff or his or her designee may suspend any permit issued pursuant to this resolution should he or she determine that the health, safety, and/or welfare of the public requires the suspension, or should the applicant and/or operator fail to meet or follow the safety qualifications as set out in this resolution.

PASSED AND APPROVED THIS 7th DAY OF July, 2009

/s/ Mark Sybesma, Chairman,
Sioux County Board of Supervisors

Attest: /s/ Lois Huitink
Sioux County Auditor

- Motion by Kleinwolterink and supported by Degen to approve a resolution to amend the Sioux County Zoning Ordinance. Roll Call on Vote: Kleinwolterink, Yes; Degen, Yes; Bloemendaal, Yes; Wright, Yes; and Sybesma, Yes. Motion carried, unanimous in favor.

RESOLUTION 2009 - 24

Amendment to Sioux County Planning and Zoning Ordinance, Articles III, Definitions; V, Ag Dist.; Article 16, Supplemental Dist. Regulations; Article XXII, Nonconformities; and Article XXVII, Special Exceptions.

WHEREAS, the Sioux County Planning and Zoning Commission has recommended amendments to the text of the Sioux County Zoning Ordinance to more clearly establish the parameters for Conditional Uses of land (Special Exceptions), lots of record, excluding abandoned farmsteads from limits on non-farm residential uses in an agricultural district, and adding definitions specific to wind energy conversion systems and communication towers, and

WHEREAS, such recommended amendments will more specifically set forth the requirements for construction of wind energy conversion systems and communication towers, and will more clearly define conditional uses of these and other land uses, types of essential services accessory structures and rural commercial uses which are subject to Zoning Regulation

THEREFORE, it is hereby resolved by the Sioux County Board of Supervisors that the text of the Sioux County Zoning Ordinance shall be amended as follows:

THAT, Article V., Section 5.5 be amended by adding the following text:

Non-Commercial WECS, subject to the following standards:

Tower Height: For property sizes between one-half (½) acre and one (1) acre the tower height shall be limited to 80 ft. For property sizes of one acre or more, there is no limitation on tower height, except as imposed by FAA regulations.

Setback: No part of the wind system structure, including guy wire anchors, may extend closer than ten (10) feet to the property boundaries of the installation site.

Noise: Non-Commercial WECS shall not exceed 60 dBA, as measured at the closest neighboring dwelling. The level, however, may be exceeded during short-term events such as utility outages and/or severe wind storms.

Engineer Certification: Applications for Non-Commercial WECS shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower showing compliance with the applicable regulations and certified by a licensed professional engineer shall also be submitted. This analysis is frequently supplied by the manufacturer.

Compliance with FAA Regulations: Non-Commercial WECS must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.

Compliance with National Electric Code: Applications for Non-Commercial WECS shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. This information is frequently supplied by the manufacturer.

Utility Notification: No Non-Commercial WECS shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

Communication Tower/Facility Co-Location

Antenna co-location on communication towers/facilities constructed prior to August 18, 2008, subject to the zoning permit process outlined in the chapter, Zoning Permits.

AND THAT, Article V., Section 5.3 should be amended by adding the following text:

“In any instance within the agricultural district, single family non-farm residential dwellings shall not exceed a density of one (1) principal residential dwelling per every ¼ section, as defined by the Geological Survey, with one exception: Abandoned Farmsteads, as determined by the Administrator, will not factor into the number of non-farms per quarter section. This requirement shall not apply to agricultural support housing associated with the principal agricultural residential dwelling unit on a farm parcel or lot”.

AND THAT language pertaining to “Lot of Record” should be stricken from the ordinance as follows:

1. Definition #68. Lot of Record (page 10)
2. #1) Lots of Record ... (Page 32, Section 5.3 Permitted Residential Uses)
3. Article 16.2: Lot of Record... in it's entirety (page 73 – heading as well)
4. Article 22; Section 22.3 Non-conforming Lot of Record... in it's entirety (Pages 101 & 102)

AND THAT the following definitions be added to Article III, Section 3.1, Definitions:

Aggregated Project: Aggregated projects are those which are developed and operated in a coordinated fashion, but which have multiple entities separately owning one or more of the individual WECS within the larger project. Associated infrastructure such as power lines and transformers that service the facility may be owned by a separate entity but are also included as part of the aggregated project.

Antenna (antenna mounts): Any structure or device used to collect or radiate electromagnetic waves, including both directional antennas, such as panels, microwave dishes and omni-directional antennas, such as whips, but not including satellite earth stations.

Antenna height: The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height. (SEE FIGURE 11)

Co-Location: Locating communications equipment from more than one (1) provider on a single site.

Commercial WECS: A WECS of equal to or greater than [100/40] kW in total name plate generating capacity.

Communication Tower/Facility: A tower or antenna, whether guyed or of monopole or lattice-type design, or equipment and associated facilities constructed to transmit or receive signals for the purpose of providing communication services for commercial use. This definition includes, but is not limited to radio, television, cellular, PCS, telephone and microwave towers.

Conditional Use Permit: A permit issued for a use specified in these regulations identifying specific conditions, limitations or restrictions, and which is subject to review for approval, or denial by the Board of Adjustment (formerly *Special Exception*).

Contiguous: Having a common border or being separated from such common border by an alley, easement, or other publicly dedicated and approved easement and/or roads.

FAA: Federal Aviation Administration.

Fall Zone: The area, defined as the furthest distance from the tower base, in which a guyed tower will collapse in the event of a structural failure. This area is less than the total height of the structure.

FCC: Federal Communications Commission.

Feeder Line: Any power line that carries electrical power from one or more wind turbines or individual transformers associated with individual wind turbines to the point of interconnection with the electric power grid, in the case of interconnection with the high voltage transmission systems the point of interconnection shall be the substation serving the WECS.

Ground Clearance: The distance between the ground and the lowest point or a blade tip of a wind turbine (SEE FIGURE 12)

Guyed Tower: A communications tower that is supported, in whole or in part, by guy wires and ground anchors (SEE FIGURE 11)

Height, Tower: The distance measured from the finished grade to the highest point on the tower or other structure, including the base pad and any antenna, in reference to a tower or other structure. (SEE FIGURE 11)

Lattice Tower: A self-supporting tower with three or four sides, open, steel frame structure used to support communications equipment. (SEE FIGURE 11)

Meteorological Tower: For the purposes of this Ordinance, meteorological towers are those towers which are erected primarily to measure wind speed and directions plus other data relevant to siting WECS.

Monopole Tower (Self-support Tower): A communication tower consisting of a single pole, constructed without guy wires and ground anchors. (SEE FIGURE 12)

Non-Commercial WECS: A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended to primarily reduce on-site consumption of utility power.

Rotor diameter: The diameter of the circle described by the moving rotor blades. (SEE FIGURE 12)

Substations: Any electrical facility designed to convert electricity produced by wind turbines to a voltage greater than 35,000 (35,000 KV) for interconnection with high voltage transmission lines shall be located outside of the road right of way.

Total Height (WECS): The highest point, above ground level, reached by a rotor tip or any other part of the WECS (SEE FIGURE 12)

Tower: Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television towers, microwave towers, common-carrier towers, cellular telephone towers and all communication towers, alternative tower structures, and the like. (SEE FIGURE 11)

Tower (WECS): Vertical structures that support the electrical generator, rotor blades, or meteorological equipment. (SEE FIGURE 12)

Tower Height (WECS): The total height of the WECS exclusive of the rotor blades. (SEE FIGURE 12)

Transmission Line: Those electrical power lines that carry voltages of at least 69,000 volts (69 KV) and are primarily used to carry electric energy over medium to long distances rather than directly interconnecting and supplying electric energy to retail customers.

Wind Energy Conversion System (WECS): An electrical generating facility comprised of one or more wind turbines and accessory facilities, including but not limited to: power lines, transformers, substations and metrological towers that operate by converting the kinetic energy of wind into electrical energy. The energy maybe used on-site or distributed into the electrical grid.

Wind Turbine: A wind turbine is any piece of electrical generating equipment that converts the kinetic energy of blowing wind into electrical energy through the use of airfoils or similar devices to capture the wind. (SEE FIGURE 12)

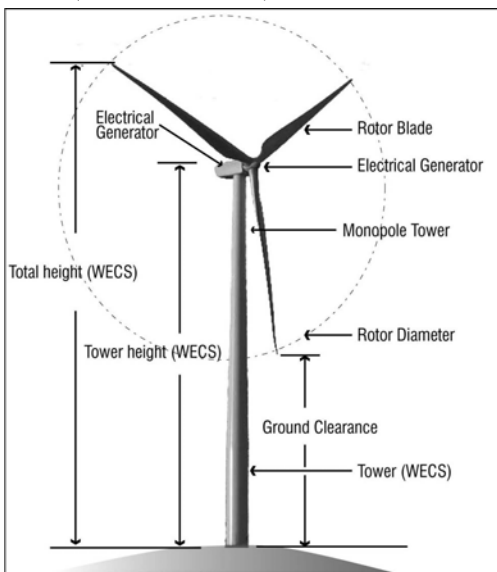


Figure 12 - WIND TURBINE

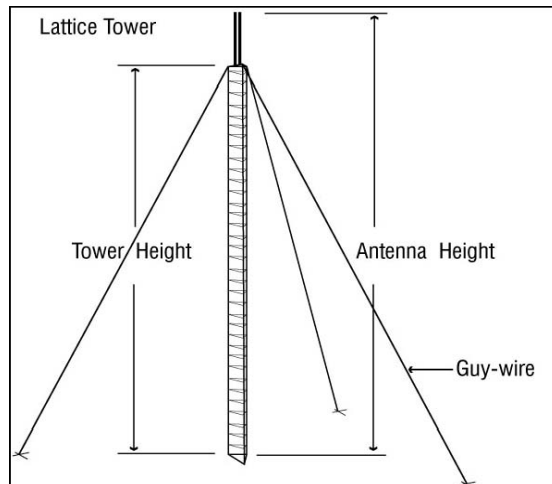


Figure 11 - TOWER

AND THAT the following, "Conditional Uses", replace the current text of Article XXVII, "Special Exceptions":

Statement of Intent

A. Many land use activities, while not inherently inconsistent with other permitted uses in a particular district, may have significant impacts on the surrounding area. Conditional Use Permits for such uses allow special conditions to be "attached" to the development to address those impacts. The Conditional Use Permit process provides for flexibility in identifying the special conditions without making the Ordinance unreasonably complicated. The objective of the Conditional Use Permit process is to encourage compatibility of the proposed development with the environment, and with existing and future land uses in the area.

1. Issuance of Conditional Use Permit.

A Conditional Use Permit may be issued only after review and approval of the submitted application, including any plans, by the Board of Adjustment. An application and plan shall only be approved upon a determination that the development, if completed as proposed, will comply with the provisions of this Chapter.

A Conditional Use Permit shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use, and shall incorporate by reference the approved application and plan. The permit shall contain any special conditions or requirements lawfully imposed by the Board of Adjustment. The Administrator shall record the permit with the County Recorder and shall provide the applicant with a copy of the recorded permit.

All development shall occur strictly in accordance with such approved application and plan.

Application for Conditional Use Permits

A. The applicant for a Conditional Use Permit must be a person with the legal authority to take action in accordance with the permit. In general, this means that applications should be made by the owners or lessees of the subject property or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits or their agents.

B. The application must be submitted on an approved form and must be complete. An application shall be complete when it contains all of the information that is necessary for the Board of Adjustment to decide whether the development, if completed as proposed, will comply with all of the requirements of this Chapter. Unless the Board of Adjustment informs the applicant at the hearing in what way the application is incomplete, the application shall be presumed to be complete. If incomplete, the Board of Adjustment shall offer the applicant the opportunity to complete the application at a continuation hearing.

C. To minimize planning costs to the developer, avoid misunderstandings or misinterpretations, and to ensure compliance with the requirements of this Chapter, a conceptual review meeting shall be held prior to submittal of the conditional use permit applications.

Standards for Approval

A. The Board of Adjustment shall review the proposed development for conformance to the following development criteria:

1. **Compatibility.** The proposed buildings or use shall be constructed, arranged and operated so as to be compatible with the character of the zoning district and immediate vicinity, and not to interfere with the development and use of adjacent property in accordance with the applicable district regulations. The proposed development shall not be unsightly, obnoxious or offensive in appearance to abutting or nearby properties.

2. **Transition.** The development shall provide for a suitable transition, and if necessary, buffer between the proposed buildings or use and surrounding properties.

3. **Traffic.** The development shall provide for adequate ingress and egress, with particular attention to vehicular and pedestrian safety and convenience, traffic flow and control, and emergency access.

4. **Parking and Loading.** The development shall provide all off-street parking and loading areas as required by this Ordinance, and adequate service entrances and areas. Appropriate screening shall be provided around parking and service areas to minimize visual impacts, glare from headlights, noise, fumes or other detrimental impacts.

5. **Signs and Lighting.** Permitted signage shall be in accordance with the applicable district regulations and shall be compatible with the immediate vicinity. Exterior lighting, if provided, shall be with consideration given to glare, traffic safety and compatibility with property in the immediate vicinity and shall comply with the requirements of Site Lighting.

B. If the Board of Adjustment concludes that all Development Criteria will be met by the development, it shall approve the application and plans unless it concludes, based on the information submitted at the hearing that if completed as proposed there is a strong probability the development will:

1 Not adequately safeguard the health, safety and general welfare of persons residing or working in adjoining or surrounding property, or

2 Impair an adequate supply (including quality) of light and air to surrounding property; or

3 Unduly increase congestion in the roads, or the hazard from fire, flood or similar dangers;

4 Diminish or impair established property values on adjoining or surrounding property; or

5 Not be in accord with the intent, purpose and spirit of this Ordinance or the *Comprehensive Land Use Plan*

C. Burden of Persuasion.

1 The burden of persuasion as to whether the development, if completed as proposed, will comply with the requirements of this Chapter is at all times on the applicant.

2 The burden of presenting evidence to the Board of Adjustment sufficient enough for it to conclude that the application does not comply with the requirements of this Chapter is upon the person or persons recommending such a conclusion, unless the information presented by the applicant warrants such a conclusion.

3 **Environmental Protection.** The development shall be planned and operated in such a manner that will safeguard environmental and visual resources. The development shall not generate excessive noise, vibration, dust, smoke, fumes, odor, glare, groundwater pollution or other undesirable, hazardous or nuisance conditions, including weeds.

Recommendations on Applications

A. Before being presented to the Board of Adjustment, an application for a Conditional Use Permit shall be referred to the Planning and Zoning Commission for recommendation. When presented to the Commission, the application shall be accompanied by a report from the planning staff setting forth findings concerning the application's conformance to this Chapter, and any recommendations for requirements or conditions to be imposed on the proposed development by the Board of Adjustment.

B. The Commission shall consider the application at a public hearing. The public hearing shall be scheduled according to standard agenda procedures.

C. After reviewing the application at a public hearing, the Commission shall report to the Board of Adjustment whether it concurs in whole or in part with the staff's proposed findings and recommendations. To the extent the Commission does not concur, the Commission shall propose its own recommendations and provide supporting reasons.

Board of Adjustment Action on Applications

A. In considering whether to approve an application for a Conditional Use Permit, the Board of Adjustment shall proceed according to the following format:

1 The Board of Adjustment shall establish a finding of facts based upon information contained in the application, the staff report, and the Commission recommendation and presented at the Commission or Board of Adjustment hearings.

2 The Board of Adjustment shall consider such reasonable requirements or conditions to the permit as will ensure the development will satisfy the requirements of this Chapter. A vote may be taken on such

conditions before consideration of whether the permit should be approved or denied for any of the reasons set forth below.

3 The Board of Adjustment shall consider whether the application complies with all of the applicable development criteria set forth in the previous section. Separate votes may be taken with respect to each criterion. If the Board of Adjustment concludes that the application fails to meet one or more of the criteria, the application shall be denied.

4 If the Board of Adjustment concludes that all such criteria have been met, the application shall be approved unless it adopts a motion that the application fails to meet any of the approval standards set forth. Separate votes may be taken with respect to each standard.

B. Any such motion regarding compliance or noncompliance of the application to the development criteria or approval standards shall specify the supporting reasons for the motion. It shall be presumed the application complies with all criteria and standards not specifically found to be unsatisfied.

C. Without limiting the foregoing, the Board of Adjustment may attach to a permit a condition limiting the duration of the permit.

D. All conditions or requirements shall be recorded with the permit.

Expiration of Permits

A. A Conditional Use Permit shall expire automatically if:

1 within five (5) years after issuance, substantial action has not been taken to accomplish the purpose of the permit, or

2 after substantial action has been taken and subsequently such work is discontinued for a period of one (1) year, the permit shall immediately expire, or

3 the conditional use has been established and subsequently is discontinued for a period of one (1) year, the permit shall immediately expire.

B. The Board of Adjustment may extend for a period up to one (1) year the date when a permit would otherwise expire pursuant to this section if it concludes that:

1 the permit has not expired, or

2 the permit recipient has proceeded in good faith and with due diligence, or

3 conditions have not changed so substantially as to warrant a new application.

C. Successive extensions may be granted for periods up to one (1) year upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for the original permit. For purposes of this section, the Conditional Use Permit is issued when the Board of Adjustment votes to approve the application and plans.

Substantial action shall include commencement of construction, erection, alteration, demolition, or similar work required for the development authorized by the permit. With respect to phased development, this shall apply only to the first phase.

Effect of Permit on Successors and Assigns.

A. A Conditional Use Permit authorizes the permit holder the use of land or structures in a particular way and subject to certain conditions. As such, it is transferable. However, no person (including successors or assigns of the original permit holder) may make use of the land or structures covered under such permit except in accordance with all terms and requirements of the permit, so long as the permit remains in effect.

Amendments and Modifications.

A. Types of Modifications.

1 **Insignificant Modifications.** Insignificant modifications to the approved permit are permissible upon authorization by the Administrator. A modification is insignificant if it has no discernible impact on neighboring properties, the general public or those intended to use or occupy the proposed development.

2 **Minor Modifications.** Minor modifications to the approved permit are permissible with the approval of the Board of Adjustment, without publication specific to the request. A modification is minor if it has no substantial impact on neighboring properties, the general public or those intended to use or occupy the proposed development.

3 **Major Modifications - New Applications.** All other requests for modifications to the approved permit will be deemed a major modification and processed as a new applications as defined in this Chapter, which requires a hearing before both the Planning & Zoning Commission and the Board of Adjustment. New conditions may be imposed by the Board of Adjustment, but the applicant retains the right to reject such new conditions by withdrawing the request for modifications and proceeding under the terms and conditions of the original permit.

B. Submittal Requirements for Modifications. The permit holder requesting approval of modifications shall submit a written Modification Request on forms provided by the Administrator, including plans and narrative specifically identifying the modifications. The Administrator shall determine whether the proposed modification falls within the categories set forth above.

C. Approval of Modifications. Approval of all modifications must be given in writing.

Supplemental Standards for Conditional Uses

A. When indicated, a conditional use shall be subject to the supplemental standards listed below, in addition to the standards for approval set forth in Section 3 of this chapter.

1. **Communication Towers and Facilities.** Communication towers/facilities existing and/or approved prior to the date of adoption of these standards may continue to be used, however, proposed modifications must be reviewed by the Administrator, and, depending on the nature of the proposed modifications, may be subject to review and approval by the Board of Adjustment. In addition, any proposed modifications to approved and/or existing towers/facilities on towers constructed prior to August 18, 2008, for co-location must submit an Application for Zoning Permit consistent with the requirements of this chapter.

a. **Co-Location.** Prior to applying for a Conditional Use Permit for construction of a new tower/facility, the applicant shall exhaust all alternatives for co-location on existing towers/facilities. As such, the applicant shall submit evidence demonstrating the following:

i. The planned equipment would exceed the structural capacity of the existing or approved antenna support structure, as documented by a qualified professional engineer licensed in the State of Iowa, and the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.

ii. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the antenna support structure as documented by a qualified engineer and the interference cannot be prevented at a reasonable cost.

iii. Existing or approved antenna support structures cannot accommodate the planned equipment at the necessary height as documented by a professional engineer licensed in the State of Iowa.

iv. Fees, costs or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower/facility development are presumed to be unreasonable.

v. No new tower/facility shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Board of Adjustment that no existing tower, structure, or alternative technology can accommodate the applicant's needs. Furthermore, no new tower/facility shall be approved that is not in compliance with standards contained elsewhere in this ordinance.

b. General Approval Standards

i. **Separation.** The following separation requirements shall apply to all proposed communication towers and facilities. 1) **Separation from planned and/or existing residential properties.**

Proposed towers/facilities shall be separated from neighboring properties either planned or utilized for residential purposes as established herein. The minimum separation distance shall be measured from the

center of the foundation of the proposed tower/facility to the nearest portion of a property line of a neighboring tax parcel used or planned for residential purposes. For the purposes of this section, a property shall be considered to be used for a residential purpose, regardless of assessment type, if a dwelling or mobile home exists on the property. A property shall be considered to be planned for residential purposes if it has the *Comprehensive Land Use Plan* designation of Rural Residential Area; if it is within two miles of a city boundary, and that city has established a residential land use classification for the property, or, if a property is zoned Single Family or Multiple Family Residential.

(a) For towers/facilities of self-supporting monopole or lattice-type construction, the minimum separation distance shall be three hundred (300) feet or one hundred fifty (150%) percent of the height of the tower, whichever is greater.

(b) For guyed towers/facilities the minimum separation distance shall be three hundred (300) feet or one hundred fifty (150%) percent of the height of the tower, whichever is greater, plus one hundred (100%) percent of the length of the longest supporting guy wire.

ii. **Height.** The applicant must demonstrate the proposed height of the tower/facility is the minimum necessary to accommodate the proposal's requirements, as documented by a qualified engineer.

iii. **Required Setbacks.** The center foundation of all towers/facilities are required to be setback in accordance with the following: 1) from any public right-of-way, the following apply:

(a) for towers of monopole and lattice-type construction, a distance equal to one hundred fifty (150%) percent the height of the tower or two hundred (200) feet, whichever is greater; and for towers of guyed-type construction, a distance equal to one hundred fifty (150%) percent the height of the tower plus the length of guyed wire or two hundred (200) feet, whichever is greater.

(b) from any adjoining property zoned or planned residential or existing residential use, the distance of three hundred (300) feet or one hundred fifty (150%) percent of the height of the tower/facility for towers of lattice or monopole construction type; and three hundred (300) or one hundred fifty (150%) percent of the height of the tower/facility plus one hundred (100%) percent of the length of the longest supporting guy wire for towers of guyed type construction as measured the center foundation of the tower/facility to the nearest property line.

(c) from other property lines, a distance equal to at least fifty (50%) percent of the height of the tower/facility.

(d) Guys and accessory buildings must satisfy the minimum zoning district setback requirements for accessory structures within the lease area.

iv. **Fencing and Screening.** 1) **Security Fencing.** Towers/facilities shall be enclosed by fencing not less than six (6) feet in height and shall be equipped with appropriate anti-climbing devices.

2) **Screening.** The lowest six (6) feet of the tower/facility shall be visually screened by trees, large shrubs, solid walls, buildings, solid fencing, and/or any combination thereof, from all public right-of-ways and adjoining zoned, planned, and/or existing residential land uses.

v. **Aesthetics.** Towers/facilities shall meet the following general requirements.

1) **Color.** Towers/facilities shall maintain a galvanized steel finish. If required to be painted by the FAA, such required colored schemes must be submitted to the Board of Adjustment. All mandated FAA requirements must be provided in writing to the Board of Adjustment prior to any action on applications.

2) **Lighting.** Towers/facilities, including antennas, shall not be artificially lighted unless required by the FAA or applicable authority. Unless required as the only option by the FAA, strobe lighting is not permitted. If lighting is required, lighting alternatives and design chosen must cause the least disturbance to the surrounding views. All mandated FAA requirements must be provided in writing to the Board of Adjustment prior to any action on applications.

3) **Signs.** No signs shall be allowed on any tower/facility, other than safety or warning signs. If any signage is required consistent with this standard, such signage must comply with the requirements of Chapter: Signs.

c. The proposed tower/facility must comply with all other applicable local, state or federal regulations.

d. The proposed tower/facility will not unreasonably interfere with the view from any publicly-owned or managed areas or major view corridors.

e. **Removal of Abandoned Towers/Facilities.** The owner of the tower/facility, with written authorization from the property owner, shall file annually a declaration with the Sioux County Planning and Zoning Department as to the continuing operation of every tower/facility installed subject to these regulations. Failure to do so may be construed to mean that the facility is no longer in use and may be

considered abandoned subject to the provisions for removal. The owner of the tower/facility and property owner will be notified that the property is considered to be in a state of abandonment, and such person(s) shall remove the tower/facility, foundational supports, and associated appurtenances within ninety (90) days of receipt of notice from Sioux County at the owner's expense. Adequate removal shall include the restoration of the site to a state in keeping with the character of the surrounding landscape and the elimination of all ground-level paving. Failure to remove such an abandoned tower/facility within said ninety (90) days shall be grounds to issue a Notice of Violation in accordance with the requirements of this Ordinance and undertake enforcement action upon the tower/facility owner and property owner.

i. Any person, firm or corporation not in compliance with these regulations may be deemed guilty of a County infraction.

ii. Documentation must be provided to the Sioux County Planning and Zoning Department with signatures by all property owners with an interest in the tower/facility stating knowledge of the penalties associated with a County infraction, including that all costs for removal of abandoned towers/facilities in accordance with these regulations may be assessed against property under their ownership. Such documentation must be provided on the form supplied by the Sioux County Planning and Zoning Department, and submitted at time of Application for Zoning Permit.

f. **Submittal Requirements.** In addition to the submittal requirements defined for Conditional Use Permit applications, all applications for towers/facilities must submit the following information (as applicable). All plans shall be drawn at a scale of one (1) inch equals fifty (50) feet.

i. A scaled site plan clearly indicating the location, type and height of the proposed tower/facility, existing land uses, adjacent land uses, zoning, County Development Plan designations of the site and for all properties within five hundred (500) feet.

ii. Legal description of the parent parcel and leased parcel (if applicable).

iii. The separation distance between the proposed tower/facility and nearest planned and/or existing residential property.

iv. The separation distance from other existing and approved towers. The applicant shall also identify the type of construction of the existing tower(s) and owner/operators of such facilities.

v. A landscape plan showing specific landscape materials, existing and those proposed, identifying type and size of materials

vi. Written statements from other applicable jurisdictions such as the FAA regarding coloring and potential lighting requirements. In addition, a copy of the FAA's response to the submitted "Notice of Proposed Construction or Alteration" must be submitted.

vii. A statement by the applicant as to whether construction of the tower/facility will accommodate co-location of additional antennas for future users and documentation regarding the standards for co-located established in this Ordinance.

Viii Identification of all other tower/facility sites owned and/or operated by the applicant within Sioux County.

ix. Elevations showing all facades, indicating exterior materials and color of the tower/facility on the proposed site.

x. Copy of the signed lease agreement with the property owner.

xi. Submittal of search rings established for the proposed communication tower an affidavit that the applicant made diligent but unsuccessful effort for permission to install or co-locate the applicant's wireless communications facilities on existing towers or other antenna support structures located within area equal to 100% of search ring.

2. **Commercial C-WECS (C-WECS).** The requirements of this Ordinance shall apply to all C-WECS proposed after the effective date of this Ordinance. C-WECS for which a required 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 C-WECS, 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 C-WECS shall be allowed without full compliance with this Ordinance.

a. **General Requirements for C-WECS**

i. **Color and Finish.** Wind Turbines shall be painted a non-reflective color. Blades may be black in order to facilitate de-icing. Finishes shall be matte or non-reflective. At C-WECS sites, the design of the buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the C-WECS to the natural setting and existing environment.

ii. Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators.

iii. **Tower configuration.** All wind turbines, which are part of a C-WECS, shall be installed with a tubular, monopole type tower. Meteorological towers may be guyed.

Lighting. C-WECS sites shall not be artificially lighted, except to the extent required by the FAA or other applicable authority. Lighting, including lighting intensity and frequency of strobe, shall adhere to but not exceed requirements established by Federal Aviation Administration permits and regulations. Red strobe lights are preferred for night-time illumination to reduce impacts on migrating birds. Red pulsating incandescent lights should be avoided. Exceptions may be made for meteorological towers, where concerns exist relative to aerial spray applicators.

Signage. All signage on site shall comply with the section on signs. The manufacturer's or owner's company name and/or logo may be placed upon the compartment containing the electrical generator, of the WECS. Wind turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the C-WECS sites.

vi. **Feeder Lines.** All communications and feeder lines, equal to or less than 34.5 kV in capacity, installed as part of a C-WECS shall be buried.

vii. **Waste Disposal.** Solid and hazardous wastes, including but not limited to crates, packaging materials, damaged or worn parts, as well as used oils and lubricants, shall be removed from the site in a time period as established by the Sioux County Health Department and disposed of in accordance with all applicable local, state and federal regulations.

viii. **Minimum Ground Clearance.** The blade tip of any Wind Turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet.

ix. **Signal Interference.** The applicant shall minimize and mitigate any interference with electromagnetic communications, such as radio, telephone or television signals caused by any C-WECS.

x. **Federal Aviation Administration.** All C-WECS shall comply with FAA standards and permits.

xi. **Electrical Codes and Standards.** All C-WECS and accessory equipment and facilities shall comply with the National Electrical Code and other applicable standards.

xii. **Setbacks**

1) The following setbacks and separation requirements shall apply to all wind turbines and meteorological towers; provided that the Board of Adjustment upon recommendation by the Commission may reduce the standard setbacks and separation requirements if the intent of this Ordinance would be better served thereby. All other structures shall comply with the applicable setbacks as defined by the base zone district. The minimum separation distance shall be three hundred (300) feet or one hundred fifty (150%) percent of the height of the tower, whichever is greater.

(a) **Structures.** Each wind turbine and meteorological tower shall be set back from the nearest residence, school, hospital, church or public library, a distance no less than the greater of (a) two (2) times its total height or (b) one thousand (1,000) feet, whichever is greater.

(b) **Property Lines.** At no time shall any part of the wind turbine and meteorological tower overhang an adjoining property without securing appropriate easements from adjoining property owners.

(c) **Public Right-of-Way.** Setbacks from public right-of-way, railroads, powerlines and structures shall be a minimum of 1.1 times the height of the tower and rotor.

(d) **Communication and Electrical Lines.** Each wind turbine and meteorological tower shall be set back from the nearest above-ground public electric power line or telephone line a distance no less than 1.1 times its total height, determined from the existing power line or telephone line.

xiii. **Noise.** Audible noise due to C-WECS sites operations shall not exceed sixty (60) dBA for any period of time, when measured at any dwelling, school, hospital, church or public library existing on the date of approval of any conditional use permit from the property line.

1) In the event audible noise due to C-WECS operations contains a steady pure tone, such as a whine, screech, or hum, the standards for audible noise set forth in subparagraph a of this subsection shall be reduced by five (5) dBA.

2) In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is succeeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public

libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.

3) In the event the noise levels resulting from the C-WECS exceed the criteria listed above, a waiver to said levels may be granted by the Board of Adjustment upon recommendation by the Commission provided that the following has been accomplished:

(a) Written consent from the affected property owners has been obtained stating that they are aware of the C-WECS and the noise limitations imposed by this Ordinance, and that consent is granted to allow noise levels to exceed the maximum limits otherwise allowed; and

(b) If the applicant wishes the waiver to apply to succeeding owners of the property, a permanent noise impact easement shall be recorded in the Office of the Sioux County Recorder which describes the burdened properties and which advises all subsequent owners of the burdened property that noise levels in excess of those permitted by this Ordinance may exist on or at the burdened property.

xiv. **Safety.**

1) All wiring between wind turbines and the C-WECS substation shall be underground. If the developer can demonstrate the need for an overhead line and the acceptance of landowners for this line, such option may be approved conditionally by the Board of Adjustment

2) Wind turbines and meteorological towers shall not be climbable up to 15 feet above ground level.

3) All access doors to wind turbines and meteorological towers and electrical equipment shall be locked when not being serviced. (Ordinance No. 184)

4) Appropriate warning signage shall be placed on Wind Turbine towers, electrical equipment, and C-WECS entrances.

5) For all C-WECS, the manufacturer's engineer or another qualified engineer shall certify that the turbine, foundation and tower design of the C-WECS is within accepted professional standards, given local soil and climate conditions.

6) For all guyed towers, visible and reflective objects, such as plastic sleeves, reflectors or tape, shall be placed on the guy wire anchor points and along the outer and innermost guy wires up to a height of eight (8) feet above the ground. Visible fencing shall be installed around anchor points of guy wires. The property owner must sign a notarized acknowledgement and consent form allowing construction of the turbine and guyed wires without fencing as required in this Ordinance to be presented to the Commission and Board of Adjustment.

b. **Discontinuation and De-commissioning.** A C-WECS shall be considered a discontinued use after one (1) year without energy production, unless a plan is developed and submitted to the Administrator outlining the steps and schedule for returning the C-WECS to service. All C-WECS and accessory facilities shall be removed to four (4) feet below ground level within one hundred eighty (180) days of the discontinuation of use. Each C-WECS shall have a De-commissioning plan outlining the anticipated means and cost of removing C-WECS at the end of their serviceable life or upon becoming a discontinued use. The cost estimates shall be made by a professional engineer licensed in the State of Iowa. The plan shall also identify the financial resources be available to pay for the decommissioning and removal of the C-WECS and accessory facilities. The County reserves the right to verify that adequate decommissioning terms are contained in the landowner easement.

c. **Avoidance and Mitigation of Damages to Public Infrastructure.**

i. **Roads.** Applicants shall identify all roads to be used for the purpose of transporting C-WECS, substation parts, cement, and/or equipment for construction, operation or maintenance of the C-WECS and obtain applicable weight and size permits from the impacted road authority(ies) prior to construction.

ii. **Existing Road Conditions.** Applicant shall conduct a pre-construction survey, in coordination with the impacted local road authority(ies) to determine existing road conditions. The survey shall include photographs and a written agreement to document the condition of the public facility. The applicant is responsible for on-going road maintenance and dust control measures identified by the Sioux County Engineer during all phases of construction.

iii. **Drainage System.** The Applicant shall be responsible for immediate repair of damage to public drainage systems stemming from construction, operation or maintenance of the C-WECS.

iv. **Required Financial Security.** The applicant shall be responsible for restoring or paying damages as agreed to by the applicable road authority(ies) sufficient to restore the road(s) and bridges to preconstruction conditions. Financial security in a manner approved by the Sioux County Attorney's Office

shall be submitted covering 130% the costs of all required improvements. This requirement may be waived by the Board of Adjustment by recommendation from the Sioux County Engineer.

d. **Submittal Requirements.** In addition to the submittal requirements defined for Conditional Use Permit applications, all applications for C-WECS must submit the following information (as applicable).

- i. The names of project applicant
- ii. The name of the project owner
- iii. The legal description and address of the project.
- iv. A description of the project including: Number, type, name plate generating capacity, tower height, rotor diameter, and total height of all wind turbines and means of interconnecting with the electrical grid.
- v. Site layout, including the location of property lines, wind turbines, electrical wires, interconnection points with the electrical grid, and all related accessory structures. The site layout shall include distances and be drawn to scale.
- vi. Engineer's certification(s) as required in these supplemental standards.
- vii. Documentation of land ownership or legal control of the property
- viii. The latitude and longitude of individual wind turbines.
- ix. A USGS topographical map, or map with similar data, of the property and surrounding area, including any other C-WECS within 10 rotor diameters of the proposed C-WECS.
- x. Existing Resources Inventory.
- xi. An acoustical analysis
- xii. FAA Permit Application
- xiii. Location of all known communications towers/facilities within two miles of proposed C-WECS.
- xiv. Decommissioning Plan
- xv. Description of potential impacts on nearby all C-WECS and Non C-WECS and wind resources on adjacent properties.
- xvi. Identification of significant migratory patterns and nesting areas for birds within two (2) miles. Supplemental Standards for C-WECS adopted with this Ordinance.

Resolved this 7th day of July, 2009

/s/Mark Sybesma, Chairman
Sioux County Board of Supervisors

ATTEST: /s/ Lois Huitink
Sioux County Auditor

- Distributed the June MH/DD Expenditure Report for FY 2009. A surplus of \$310,520.75 was realized in the last fiscal year.

09-07-07 8 Committee Reports: Nothing to report.

09-07-07 9 Doug Julius, County Engineer

- Motion by Degen and supported by Wright to approve and authorize the Chairman to sign the following permit agreement:
 - Southern Sioux Water – Cross abandoned roadway ½ mile north of the intersection of Beech and 500th Street in Logan Township Section 28.Motion carried, unanimous in favor.
- Reviewed ongoing construction projects.

09-07-07 10 Claims as submitted by the County Auditor were approved.

09-07-07 11 The Chairman adjourned the meeting at 10:07 a.m. until Tuesday, July 21, 2009,
at 9:00 a.m.

Mark Sybesma, Chairman
Sioux County Board of Supervisors

ATTEST: _____
Lois Huitink
Sioux County Auditor