

Floyd County Board of Supervisors Meeting
October 14, 2024, 9:00 a.m.

The Floyd County Board of Supervisors met in the Board Room of the Floyd County Courthouse with the following in attendance: Supv Mark Kuhn, Supv Dennis Keifer, and Supv Jim Jorgensen.

Jorgensen/Keifer moved to approve the agenda as amended. Motion carried 3-0.

Public comment: Roger Trettin questioned if item #6 was going to be held in closed session; Kuhn responded that it will be in open session.

Keifer/Jorgensen moved to approve the October 7 and 9, 2024 minutes. Motion carried 3-0.

Jorgensen/Keifer moved to approve the claims presented: County #750-806 and Eng/Secondary Roads #10942-10960. The Board discussed a VISA/Wonder Share Technology sales tax charge on software purchased by IT Director Bernie Solomon, past charges made that violated the credit card policy, consideration to amend the policy to allow for future charges, and giving Solomon a warning and/or suspension of his card. Kuhn/Keifer moved to amend the motion to give IT Director Bernie Solomon another warning, pay the claim and, if there are any violations, the next will include a 60-day removal of the credit card. Motion carried 3-0. Kuhn/Jorgensen moved to approve the motion with the amended. Motion carried 3-0.

AgVantage	Fuel	928.40	1
Amazon	Supplies	141.09	4
Bruening	Rock	34683.45	2
REC	Elect	1088.19	2
YesWay	Fuel	1297.32	1
Cartersville	Fuel	932.66	1
CenturyLink	Phone	71.61	1
CC Press	Notice	87.00	1
Charles City	Services	22.00	1
Rockford	Util	139.44	1
Croell	Matl	3850.00	1
D Mowers	Parts	2475.35	1
Fareway	Food	1086.49	1
Farmers New Ag	Chem	4994.59	1
Galls	Equip	266.67	1
Gordon Flesch	Lease	117.37	1
GRP Assoc	Disposal	26.00	1
H&R Lawn	Services	4000.00	1
Healthcare	Software	192.82	1
Heartland Coop	Util	45.19	1
Interstate	Batteries	287.90	1
IA DOT	Fuel/parts	1199.33	1
Jendro	Disposal	460.86	1
Kwik Star	Supplies	252.52	1
Lessin	Parts	612.22	1
Marco	Maint	2150.00	1
McKesson	Equip	77.74	1
MDS Records	Serv	89.33	1
Mediacom	Serv Fee	216.52	1
Mick Gage	Serv	4.75	1
Mid Am	Util	5772.58	4
Mikes C&O	Tires	5060.87	2
Newbauer	Custodial	23.00	1
Next Gen	Update	2167.00	1
Viafield	Fuel	2366.36	1
NS-Rkfd Reg	Notice	916.81	1
Office Exp	Supplies	151.57	1
Omnitel	Phone	764.78	2
Optum360	Library	156.91	1
P Novak Elect	Serv	211.93	1
Ricoh	Services	88.69	1
Solutions	Support	1012.19	1
Hygienic Lab	Tests	480.00	1
Stop-N-Shop	Fuel	238.16	1

T-Mobile	Service	458.91	1
Dept Revenue	Tax	93.75	1
Truck Co	Equip	7453.36	1
Verizon	Serv Fee	646.00	1
Visa	Misc	6710.68	13
Visual Edge	Equip	26.95	1
Wicks Const	Service	43759.23	1
WIN	Services	850.00	1

Updates on various boards/commissions/activities: Keifer attended Emergency Medical Services (EMS) Advisory Council and Main Street Chamber of Commerce meetings. Jorgensen has been following up with Jessy Willadsen, Zoning Administrator, on wind energy topics, had follow up conversation with the EMS levy, and received positive comments on the Conservation department's Eyes in the Night event.

County Attorney Todd Prichard reviewed his comments on Wednesday's 8-page ruling on Worthwhile Wind LLC versus Worth County Board of Supervisors, stating the court ruled against Worth County, a loss for the county, found that the ordinance and rules were written with the purpose to frustrate wind development which was in bad faith, and that the developer had a vested interest even though they did not have a permit. The judge considered the amount of investment and activities the developer made in the county. The court assessed the costs against the county and ordered the developer was entitled to move forward with the project with the ordinance that was in place prior to their moratorium. Prichard is unsure if the case will be appealed within 30 days.

Prichard advised Floyd County to look closely at the Worth County case. Whether pro or anti wind, he does not believe anyone wants to be in the position of the court resetting the clock prior to when Floyd County's moratorium was put in place. Prichard's legal opinion based on his observation of actions of our board is that Floyd County would very likely have a similar or identical outcome of potential litigation as Worth County and strongly recommends the board amend the ordinance to provide reasonable regulations and avoid the cost of a long-term court battle that the county will most likely lose. The highly probable outcome of a loss in court will leave the county vulnerable to inadequate wind regulations.

Keifer questioned the similarities of what might happen in Floyd County to what happened in Worth County and questioned the legal definition of vested rights. Prichard responded that a vested interest from a developer's standpoint would be when an entity puts substantial time, energy, and resource efforts in a project under a certain regime of regulations; the court found Worthwhile Wind had a vested interest and Worth County's changing of the regulations crossed a line.

Jorgensen questioned the timeline of structures, other than meteorological towers, being built in Worth County compared to the timeline in Floyd County. Prichard referred to the court case of work Worthwhile Wind had completed or obligated costing \$2.9 million by April 12, 2021, prior to their moratorium being put in place; Prichard does not know the specifics of the timeline of costs for the Marble Ridge project.

Keifer mentioned the judge eluded that the county has a lot of latitude in establishing ordinances. Prichard responded the law starts from a position that an ordinance is valid and if challenged, the burden is on the challenger to show why it is not valid which was the case in Worth County. The judge basically nullified the ordinance and found bad faith in the board zoning out activity by setting the bar so high for an arbitrary reason which has no real relationship to public safety or some legitimate purpose of government regulation. Floyd County's current ordinance covers small scale and large scale wind energy systems with limited setbacks, most classifications allow permits for turbines, and there is no restriction from city limits.

Keifer suggested non-participating county residents affected by turbines and don't want them could accuse the Board of acting in bad faith for not protecting them. Prichard responded that Iowa law needs to be followed, referenced legislative policy decisions to support wind, and explained the process for assessments. The law says local regulations have to be tailored to address a legitimate purpose, the most obvious being public safety.

Keifer questioned determining reasonable setbacks, such as Madison County being 1.5 miles and Floyd County's proposal of 2,500 feet. Prichard cannot speak to other counties but factors to consider, such as safety, may be different because of terrain or karst topography, but there needs to be a relationship between fact, logic through engineering, and what has been proven safe, not something arbitrary or put in place to frustrate a project.

Jorgensen referred to Iowa Code 331.301 that speaks to safety of residents and well-being and questioned who balances that. Prichard responded that the Board does but you have to check with voters and courts who are

going to look at what is reasonable, industry experts, and safety records. In Worth County, they went too far and it cost them, they gambled and lost. Keifer said hypothetically Worth County could appeal and they could win.

Keifer questioned Invenergy representatives on what kind of community engagement they had before signing easements. Merlin Bartz, Invenergy's county relations representative, stated he came on board in February 2023, tried to engage with the supervisors, but prior to that there were conversations with land agents and individual landowners. Later, they provided a public presentation to the Board, and hopes to have met the standard to be engaged as much as possible with the community and supervisors.

Jorgensen requested Prichard speak on the insurance process. Prichard understands insurance may cover attorney fees but is not sure if insurance would cover bad faith. Kuhn mentioned the county has errors and omissions insurance and is waiting to hear back from our carrier on coverage.

Kuhn asked Keifer and Jorgensen if they have a response to the county attorney's opinion and recommendation to amend the ordinance now that there is case law. Jorgensen responded that the information is still under consideration. Keifer responded he is not convinced how similar the two cases may be if a case happens in Floyd County and needs to give it some more thought.

Kuhn stated he believes Keifer and Jorgensen have acted capriciously throughout the process, citing 1) two board meeting where neither would provide a second to a motion to allow discussion on the Zoning Commission's proposed ordinance, 2) the intent to obtain an independent study on karst topography but then did not offer amendments prepared by NIACOG Planner John Robbins, 3) Keifer's quote in a Charles City Press interview after the October 9 meeting regarding their goal to get through the third reading quickly and not wanting their amendments to slow the process down, and 4) another newspaper quote by Keifer regarding his conversation with Iowa State Association of Counties attorney with respect to withdrawing amendments prepared by Robbins which could be future amendments in the ordinance and if the wind companies decide to leave, the county would not need to take any action. Kuhn and Keifer disagreed on Keifer's intent to draft an ordinance that prohibits the wind companies from developing in the county.

Kuhn questioned why the two supervisors would want to speed up the October 9 meeting even after hearing of the Worth County ruling prior to the meeting, if the residents of the county want to be sued, and if having the wind energy companies building wherever they want to is a good idea. Jorgensen responded that being sued for any purpose is not a good idea, does not believe we have all the knowledge needed to decide if we are comparable to Worth County, and questioned if the Prichard's advice is out of scope of his forte. Keifer commented he does not have an outside attorney, is not making a decision today on Prichard's recommendation, and assumptions are made that we will lose a lawsuit as we could win.

Auditor Carr questioned why Keifer and Jorgensen would want to push the ordinance through so fast rather than waiting 30 days to see if there is an appeal in the Worth County case, what changed between the September 23 meeting when the Board adopted the resolution to extend the moratorium because of needing more time to work with NIACOG on preparing the large scale wind energy and battery storage system ordinance and the October 9 meeting where Jorgensen mentioned there is new technology but didn't offer any reason to stop rather than move forward with the ordinance. Keifer mentioned he sees no similarities to Worth County's case and Floyd County's situation, Carr's comments seem like a scare tactic and questioned if the moratorium could be extended for a year or two. Jorgensen said if they chose not to pass the ordinance the moratorium would need to be extended, does not feel passing the ordinance now would be considered quickly because it has been a lengthy process, and the new technology is being used in Europe, but he is not aware of developers here.

Samantha Norris, BrownWinick Law attorney for Marble Ridge LLC, stated the company is present in good faith and hopeful for a reasonable ordinance that is balanced and in line with the goals of the Board's original resolution. Unfortunately, the proposed ordinance has been amended in such a way that it would end any further wind projects in the county. Norris reiterates that Marble Ridge continues to be very willing to work with the Board and stakeholders on an ordinance that balances the interest identified in Res #42-23. Norris urges the Board to consider entering into a development agreement to negotiate with a project developer as an option but are very willing to have an open dialogue so that an appropriately balanced ordinance can be achieved.

Roger Trettin commented that the letter from Norris is a scare tactic. Proponents of the turbines are down to the wire and are trying to lengthen the process, wear people down and use scare tactics. A lot of people are against turbines for reasons such as health and safety and how they destroy the beauty of the landscape.

Norris followed up with earlier discussion on activities and dollars spent on the Marble Ridge project which was provided in a letter prior to September 16.

The Board noted the hiring of Nicole Hamm as a Dispatcher, effective October 9 at \$25.91 per hour.

The Board noted the hiring of Kim Schrage as a part time Administrative Assistant for Public Health/Home Health Care, effective October 14, working 7.5 to 15 hours per week at \$27.96 per hour.

Future agenda items: hiring an attorney regarding an opinion on the zoning ordinance, setting a date/time for canvass of the General Election, and a review of board activities and possible Opens Meeting Law violation.

Jorgensen/Keifer moved to adjourn. Motion carried 3-0.

ATTEST:

Gloria A. Carr
Floyd County Auditor

Mark A. Kuhn, Chair
Floyd County Board of Supervisors