

Floyd County Board of Supervisors Meeting  
October 28, 2024, 10:00 a.m.

The Floyd County Board of Supervisors met in the EOC/Training 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. Motion carried 3-0.

Public comment: none

Keifer/Jorgensen moved to approve the October 21 and 24, 2024 meeting minutes. Motion carried 3-0.

Keifer/Jorgensen moved to approve the claims presented: County #876-927 and Eng/Secondary Roads #10974-10985. Motion carried 3-0.

AT&T	Phone	51.89	1
CC Press	Notice	960.50	3
CC Press	Services	144.00	1
CC Library	Alloc	8561.83	1
Charles City	Services	20558.65	6
Colwell	TJ-Road	348.40	1
Floyd	TJ-Road	438.25	1
Marble Rock	TJ-Road	938.27	1
Rudd	TJ-Road	1205.69	1
Dan Deery	Vehicle	27018.00	1
DataSpec	Software	449.00	1
Don's	Parts	39.26	1
Exceptional	CCR&R	5193.05	1
Express	Serv Veh	64.95	1
Grandparent	Alloc	3000.00	1
Galls	Equip	162.16	1
Gordon Flesch	Lease	106.00	1
Gr Record	Publ	187.50	1
R Hansen	Rent	200.00	1
IEHA	Membership	80.00	1
IA DNR	Permits	950.00	1
IA DOT	Supplies	1773.71	1
IA Workforce	Unempl	750.38	1
ISU Ext	Serv	1080.00	1
JDF	Supplies	1114.88	2
Karl EV	Parts	12357.93	1
L Kristiansen	Reimb	281.58	1
LEAF	Services	1018.96	1
LSI	Support	6199.62	1
B Mackey	Rent	250.00	1
MR Library	Alloc	3534.22	1
M Marzen	Services	1650.00	1
McKesson	Equip	251.03	1
MidAm Chem	Supply	461.06	1
NEICAC	Fees	3053.42	1
NIACOG	Dues	2000.00	1
NS Library	Alloc	4309.00	1
NS-Rkfd Reg	Notice	236.40	1
N Cedar	Alloc	17971.50	1
NICAO	Screening	909.80	1
Office Depot	Supplies	209.84	1
J Page	Reimb	148.82	1
T Prichard	Reimb	356.75	1
Rapid Print	Supplies	64.30	1
Rkfd Library	Alloc	3877.86	1
Rudd Library	Alloc	3595.61	1
T Schriever	Reimb	173.37	1
Schueth Ace	Hwd	24.29	1
K Starr	Reimb	446.25	1
State ME	Autopsy	6317.00	1
T&C	Equip	90.00	1

Visa	Misc	74.94	1
Visual Edge	Equip	114.69	3

Updates on various boards/commissions/activities since the last meeting: Jorgensen has been communicating Keith Starr, Emergency Medical Services Advisory Council Chair, regarding EMS updates. Keifer attended Veteran Affairs and Cultural Entertainment meetings. Kuhn attended FMC Governance Board and FMC Early Childhood Iowa meetings and met with the Zoning Coordinator regarding setback maps for wind turbines.

Auditor Carr reported on a phone conversation with EMC Insurance representatives regarding a review of insurance coverage for defending the county in potential litigation regarding the amendments to Zoning Ordinance if the proposed amendments are approved as final. Representatives were provided with the Worthwhile Wind vs Worth County ruling and likened the issue to suits filed against cell tower companies 25+ years ago where almost every time the courts ruled in favor of the cell tower companies. Concerns of supervisors acting in “bad faith” would likely be defended as that action wouldn’t be proven until the end of litigation. Coverage may require two or more defense attorneys to defend different positions on a lawsuit, but all would be covered under one deductible. If a board member wanted their own legal counsel, it would be at their own expense. The policy has a \$2,500 deductible regardless of the number of claims filed and a \$1 million liability limit is different if monetary or non-monetary damages are applied. If a wind company is looking for the ordinance to be overturned, but no money other than plaintiff attorney fees, all defense costs would eat away at that limit; if claiming monetary damages, the defense would be above the \$1 million limit. The linebacker policy land use exclusion would be defended as long as it has something to do with zoning or permitting activities. If a claim was considered as a “taking” and it was determined the county deprived a claimant from making money off of the land, defense would be covered but the county would pay for damages. Only if a claim was filed, would EMC review allegations and the policy, and then send a position/reservation letter regarding what would be covered. If a court ruling came down like the Worth County case where the court ruled against the county, EMC would not defend an appeal. If a ruling came down where the court ruled in favor of the county and the wind company appealed, EMC would defend an appeal.

County Attorney Todd Prichard mentioned he spoke with some attorneys representing the Worth County case, who estimated damages based on Madison County’s case, could be extreme. Prichard suggested the county’s \$1 million coverage is a fraction of what Madison County’s damages might be and significantly less than what could be on the table at Worth County. Kuhn recollected from the conversation with EMC that landowner’s claims could be very damaging. Carr will seek clarification on whether the \$1 million damages would be treated per claim or as a total.

Isaac Lamppa, Invenergy representative, reminded the Board of an e-mail sent last week that they would voluntarily accept additional restrictions with a development agreement and would be willing to negotiate. All three supervisors have reviewed the information from Lamppa’s e-mail.

Thomas Reavely, Whitfield & Eddy attorney hired to review and provide a written opinion of how the ruling of the Worthwhile Wind LLC vs Worth County Board of Supervisors may impact Floyd County if the Board of Supervisors approves the current proposed amendment, does not have a written opinion but felt it was best to speak with the board in closed session. Reavely can address the Worth County case but mentioned each case is fact-dependent, such as the case in Madison County where he was involved as an interested party in the pleadings. Kuhn mentioned he stands by Prichard’s opinion that litigation was likely but not imminent with respect to the letter from Samantha Norris, Invenergy’s legal counsel, not meeting the criteria of Iowa Code 21.5(1)(c) to go into closed session and Reavely does not represent the county as legal counsel to go into closed session. Reavely disagreed based on a landowner threat to sue as reasonable to consider a private conversation with the board but agreed he does not represent the county. Reavely mentioned he will have a written opinion to the board tomorrow morning because he thought it was in the board’s best interest to not hand out his opinion at today’s meeting.

Attorneys Prichard and Reavely excused themselves from the meeting to discuss issues in private.

Jim Davis mentioned he is for windfarms, involved 20 years ago when Mid-American Energy came to this community to make a profit and be good neighbors, and believes the county’s ordinance needs to be updated. Davis read the Order section of the Worth County ruling and stated it would be hard pressed for the county to not take practical advice from our attorney.

Norris reiterated that Lamppa’s notion of a development agreement was provided in good faith to show willingness to work with the county as what was done in the undertaking with the Zoning Commission. Norris disputes Reavely’s take on her letter as litigation is imminent and want to work with the county on a resolution.

Jorgensen agreed with Reavely that that imminent is a possibility with a private landowner and warrants a closed session. Keifer mentioned Reavely didn't have a lot of time to review information and Keifer respects his desire to go into closed session. Kuhn reviewed Reavely's experience on how he has been involved in past cases that should be brought forward. The Board will wait on attorneys to return to the meeting for further discussion.

Jacob Page, County Engineer, reviewed a pledge to submit with a Safety Action Plan for SS4A Grant whereby 97 counties would hire a consultant to assist with strategies outlined in Iowa's 5-year strategic highway safety plan and the overall vision of zero fatalities on Iowa's public roadways. All counties have been requested to sign a pledge committing to safety to provide with the application. Keifer/Jorgensen moved to sign the County's Pledge for the Safety Action Plan SS4A grant application. Motion carried 3-0.

Page informed the Board of two tile blowout repairs located on each side of Shadow Ave in Drainage District #16 and reported that Secondary Roads employees should be able to repair the tile. Keifer/Jorgensen moved to have Secondary Roads fix the two blowouts in Drainage District #16. Motion carried 3-0.

Jorgensen/Keifer moved to appoint Jay Jung to the Magistrate Appointing Commission to fill the vacated term ending December 31, 2026. Motion carried 3-0.

The Board noted the retirement of Laurie Kristiansen, Floyd-Mitchell-Chickasaw Early Childhood Iowa Director effective December 31 and the resignation of Chelsey Wood, Assistant to the County Attorney and County Auditor, effective November 7.

Future agenda items: maps of the 1,000 foot setback waiver and current ordinance setbacks for tomorrow's meeting regarding zoning ordinance amendments.

Prichard and Reavely returned to the meeting.

Kuhn questioned Reavely's involvement in Iowa cases representing opposition to wind energy to which Reavely added other cases not mentioned. Reavely state that he belongs to over 30 environmental groups, is considered a very active environmentalist, thinks wind power is essential, has traveled all over the world to observe wind systems, is not anti-wind, but is against where they are placed and provided examples of clients who have been impacted by turbine flickering, shadowing, noise, and livestock reproductive problems. Carr questioned if Reavely would be prohibited from representing clients who filed suit against the county; Reavely responded since the county is a client, it would prohibit representation due to a conflict.

Reavely's written opinion will reference that these types of cases are fact-driven and expressed concerns of having all the facts for Floyd County. The facts in Worth County are different than Madison County and both are different than Floyd County. In Judge Weiland's opinion in the Worth County case, it states that the parties got together on two or three occasions to see if they could come to a resolution. With doing trial work for 54 years, Reavely always likes to sit down to see if there is a compromise for resolution and his recommendation to Floyd County would be to table action tomorrow to see what the wind companies have to say and if it fits in with anything the county can be comfortable with. If the county is not comfortable with it, then you end up like Worth County and go to court. Reavely does not care if the board passes or table action tomorrow night, but he believes there are options. A written opinion will be provided by 9 a.m. tomorrow.

Kuhn challenged why Floyd County should consider Reavely's opinion based on a remand ruling in the Madison County court case regarding MidAmerican Energy's 52 turbine project where Reavely represented the Madison County Coalition for Scenic Preservation and lost the case where the court annulled the coalition's writ and on appeal, the court affirmed the district court's decision and confirmed the board of adjustment's authority to grant the conditional use to allow the turbines. Reavely responded that case was a different set of facts and an attorney doesn't win every case. Kuhn feels there are lots of instances where Reavely shows up in counties, makes statements of being an environmentalist with a host of reasons and does not believe he can provide a fair and unbiased opinion. Kuhn asked if Reavely is sure that Worth County will win an appeal and whether he will guarantee and indemnify Floyd County if we are found liable in the Marble Ridge lawsuit. Reavely responded he will not guarantee the county or an outcome in an appeals court.

Kuhn followed up with a question to Prichard regarding if going into closed session was appropriate based on a landowner's comment at the third reading of the ordinance that he may sue the county. Prichard responded that he would not take that as imminent at this time and believes there are opportunities, such as what Reavely mentioned, to delay action and negotiate. Prichard believes if the board passes the ordinance in its current form, then it would be imminent.

Brent Parker questioned why we are not taking the county attorney's advice and paying another attorney; Kuhn responded that the decision of the two supervisors, a majority of the board, was to hire an attorney for an opinion. Parker mentioned he has a wind turbine on his property, has never had an issue, doesn't understand the problems, and has talked with people who live beside turbines who have had no problems. Julie Parker questioned why people are having to go to their basement to live, they lived next to their turbine, nothing ever affected the animals, and wondered what underlying circumstances there are.

Candi Brandau-Larson questioned the difference in hiring an outside attorney for the pipeline and hiring an attorney for this situation. Kuhn responded that Ahlers & Cooney was hired to draft an ordinance for hazardous pipelines, not for a second opinion, and the July 24, 2023 meeting minutes reflect suspending the pipeline ordinance because of a lawsuit in Shelby County for reasons the situations are not the same.

Cala McGregor questioned if she could receive the information from Invenergy received last Thursday and requested maps on the website. Carr suggested McGregor contact the Zoning Department for the maps; Prichard mentioned there are some maps on the website.

Prichard commented that this matter is complicated, the board and the public need to know that there are real pitfalls that other counties have fallen into or avoided and there are substantiate differences. A good attorney will always ask other outside attorneys on a case because things are subject to interpretation on what a court may rule. The Worth County case ought to give us pause, he is surprised with some of the findings, but not surprised of the bad faith finding. Reavely is giving good advice to not rush into this. It's obvious the public wants to categorize pro-wind or anti-wind, but rather we should be considering to be pro-Floyd County.

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

ATTEST:

Gloria A. Carr  
Floyd County Auditor

Mark A. Kuhn, Chair  
Floyd County Board of Supervisors