

# **Consent Agenda**

November 7, 2023

MET IN REGULAR SESSION

The Board of Supervisors met in regular session at 10:00 A.M. All members present. Chairman Shea presiding.

PLEDGE OF ALLEGIANCE

1. CONSENT AGENDA

After discussion was held by the Board, a motion was made by Miller, and second by Jorgensen, to approve:

- A. October 31, 2023, Minutes as read.
- B. Jail – Employment of Spencer Pingel and Conner Lange as Detention Officers.
- C. Jail – Employment of Timothy McBride as a Registered Nurse.
- D. October 2023 Vendor Publication Report.

UNANIMOUS VOTE. Motion Carried.

2. SCHEDULED SESSIONS

Motion by Wichman, second by Jorgensen, to moratorium on the Wind and Solar projects.

UNANIMOUS VOTE. Motion Carried.

Motion by Wichman, second by Jorgensen, to approve and authorize Board to sign **Resolution 71-2023** entitled: RESOLUTION FOR A TEMPORARY MORATORIUM ON WIND AND SOLAR ENERGY CONVERSION SYSTEMS WITHIN POTTAWATTAMIE COUNTY, IOWA

**RESOLUTION NO. 71 - 2023**

**RESOLUTION FOR A TEMPORARY MORATORIUM ON WIND AND SOLAR ENERGY CONVERSION SYSTEMS WITHIN POTTAWATTAMIE COUNTY, IOWA.**

**WHEREAS**, the Board of Supervisors of Pottawattamie County, Iowa (the “Board”), contemplates amendments to the existing Pottawattamie County, Iowa, Zoning Ordinance (the “Ordinance”), to include provisions regulating wind and solar energy conversion systems; and

**WHEREAS**, the Board desires to impose a moratorium prohibiting the Director of Planning and Development and the Zoning Board of Adjustment, from accepting or otherwise acting on any application to develop a wind or solar energy conversion system, including a "wind farm" as the Ordinance currently defines, for 365 days from the effective date of this resolution, or until the Board completes its review and amendment of the Ordinance regulating wind and solar energy conversion systems, whichever is earlier.

**NOW THEREFORE, BE IT RESOLVED**, the Board hereby approves this resolution. The moratorium described above shall be effective as of the date below.

**Dated this 7th day of November, 2023.**

**ROLL CALL VOTE**

	AYE	NAY	ABSTAIN	ABSENT
_____ Brian Shea, Chairman	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Scott Belt	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Tim Wichman	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Susan Miller	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
_____ Jeff Jorgensen	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

ATTEST: \_\_\_\_\_

Melvyn Houser, County Auditor

Roll Call Vote: **AYES: Shea, Belt, Wichman, Jorgensen NAYS: Miller Motion Carried.**

Matt Wyant/Director, Planning and Development appeared before the Board to recommend a TIF agreement with Wayne Petersen for a in process housing development RMP 87 LLC; located off McPherson Ave. Board recommends postponing.

Discussion only. No Action Taken

### 3. OTHER BUSINESS

Motion by Belt, second by Jorgensen, to hire a Help Desk Technician II at Step 5 on Grade 522 Pay Scale. UNANIMOUS VOTE. Motion Carried.

Motion by Miller, second by Jorgensen, to approve the job description for Chief Deputy Medical Examiner Investigator/Coordinator position and pay for said position up to a Step 6 on Grade 524 Pay Scale. UNANIMOUS VOTE. Motion Carried.

Motion by Wichman, second by Miller, to approve Board to sign Employment Agreement with Director Chief Medical Examiner Investigator, Cheri Dahlheim, and to approve title change and updated job description.

UNANIMOUS VOTE. Motion Carried.

Motion by Miller, second by Jorgensen, to approve and authorize Board to sign Memorandum of Understanding Between Pottawattamie County and the American Federation of State, County and Municipal Employees (AFSCME), Local 2364-911 Agreement for the employees of the Pottawattamie County Communications Center, effective July 1, 2023, through June 30, 2025.

UNANIMOUS VOTE. Motion Carried.

### 4. COMMITTEE APPOINTMENTS

Board discussed Committee meetings from the past week.  
Discussion only. No action taken.

### 5. RECEIVED/FILED

A. Report(s):

- 1) Recorder Fee Book for October 2023.

B. Out of State Travel Notification(s):

- 1) Public Health – Out of State Travel Notification for Maria Torres.

C. Salary Action(s):

- 1) SWI Juvenile Detention – Employment of Hannah Church, Maya Dominguez, and Tyler Johns as Part-time Youth Corrections Workers.

### 6. PUBLIC COMMENTS

The following individuals appeared before the Board:  
Matthew Spaccapaniccia and Tom Kallman

### 7. ADJOURN

Motion by Miller, second by Wichman, to adjourn meeting.

UNANIMOUS VOTE. Motion Carried.

THE BOARD ADJOURNED SUBJECT TO CALL AT 11:05 A. M

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Brian Shea, Chairman

ATTEST:

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Melvyn Houser, County Auditor

APPROVED: November 14, 2023

PUBLISH: X

# **Scheduled Sessions**

**Marilyn Kennedy/Election Manager, Auditor's  
Office**

**Canvass of City and Schools Election, and  
to authorize Auditor to pay election costs.**

# **Matt Wyant/Director, Planning and Development**

**Public Hearing First Consideration of Ordinance No.  
2023-05 entitled: An ordinance to amend Chapter 8  
“Zoning Ordinance” of the Pottawattamie County, Iowa  
Code; and setting date of Second Consideration.**

## **RECORDER'S COVER SHEET**

Prepared by:

Pottawattamie County Office of Planning and Development  
223 South 6<sup>th</sup> Street, Suite 4  
Council Bluffs, IA 51501-4245  
(712) 328-5792

Return Document to:

Pottawattamie County Office of Planning and Development  
223 South 6<sup>th</sup> Street, Suite 4  
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Document Title:

Pottawattamie County  
Ordinance #2023-05

**POTTAWATTAMIE COUNTY, IOWA**  
**ORDINANCE NO. 2023-05**

**AN ORDINANCE** to amend the following Chapter 8, Pottawattamie County, Iowa Zoning Ordinance:

- General typographical and grammar error corrections.
- Repeal a definition for BOARD: The Board of Adjustment of Pottawattamie County, Iowa and replace with a definition for Adjustment Board: The Board of Adjustment of Pottawattamie County, Iowa.
- Amend by replacing all references to Board with Adjustment Board.
- Amend by replacing all references to Board of Supervisors with County Board.
- Add a definition for CONCENTRATED SOLAR ENERGY SYSTEMS: A solar energy system that generates power by using mirrors or lenses to concentrate a large area of sunlight, or solar thermal energy, unto a small area.
- Add a definition for NON-PARTICIPATING LANDOWNER: Any landowner not under agreement with the owner or operator of a solar energy system or wind energy system.
- Add a definition for PARTICIPATING LANDOWNER: Any landowner under lease, easement or other property agreement(s) with the owner or operator of a solar energy system or wind energy system.
- Add a definition for SOLAR ENERGY SYSTEM, COMMERCIAL (CSES): A solar energy system that generates electricity from solar energy primarily for sale to an electric utility or other third-party commercial or industrial user. CSES shall include but are not limited to solar panels, support structures, inverters/transformers, operations and maintenance buildings, electrical collector systems, energy storage technologies, wiring, communications, roads, substations and other equipment necessary for the generation, storage and delivery of electricity.
- Add a definition for SOLAR ENERGY SYSTEM, NON-COMMERCIAL (SES): A solar energy system that generates electricity from solar energy primarily for use on the same site or the same land use with which the system is associated.
- Repeal a definition for WIND TURBINE GENERATOR, COMMERCIAL AND NON-COMMERCIAL and replace with a definition for WIND TURBINE GENERATOR, COMMERCIAL AND NON-COMMERCIAL (WTG): A system of components including, but not limited to, a foundation, tower, nacelle, generator and blades that together comprise a machine that generates electricity using wind energy.
- Repeal a definition for WIND FARM, COMMERCIAL and replace with a definition for WIND ENERGY SYSTEM, COMMERCIAL (CWES): A wind energy system that generates electricity from wind energy primarily for sale to an electric utility or other third-party commercial or industrial user. CWES shall include but are not limited to WTGs, support structures, inverters/transformers, operations and maintenance buildings, meteorological towers, electrical collector systems, energy storage technologies, wiring, communications, roads, substations and other equipment necessary for the generation, storage and delivery of electricity.
- Repeal a definition for WIND FARM, NON-COMMERCIAL and replace with a definition for WIND ENERGY SYSTEM, NON-COMMERCIAL (WES): A wind



energy system that generates electricity from wind energy primarily for use on the same site or the same land use with which the system is associated.

- Add a definition for WIND TURBINE GENERATOR (WTG): A system of components including, but not limited to, a foundation, tower, nacelle, generator and blades that together comprise a machine that generates electricity using wind energy.
- Repeal Subsection 8.040.210 Reserved and replace with Solar Energy Systems
- Repeal Subsection 8.040.230 Wind Turbine Generator and replace with Wind Energy Systems, Commercial
- Repeal Subsection 8.040.240 Non-Commercial Wind Turbine and replace with Wind Energy Systems, Non-Commercial
- Add Section 8.004.085.18 SOLAR ENERGY SYSTEMS, NON-COMMERCIAL (SES), subject to the provisions of Section 8.040.210.
- Add Section 8.004.085.18 WIND ENERGY SYSTEMS, NON-COMMERCIAL (WES), subject to the provisions of Section 8.040.240, except in the A-4, R-1, R-2 and R-3 Districts.
- Delete Section 8.010.020.08 Wind Farms, both commercial and non-commercial subject to the requirements of 8.004.230 and 8.004.240.
- Add Section 8.010.030.21 Wind Energy Systems, Commercial, subject to the requirements of 8.004.230.
- Add Section 8.010.030.22 Solar Energy Systems, Commercial, subject to the requirements of 8.004.210.
- Delete Section 8.012.020.06 Wind Farms, both commercial and non-commercial subject to the requirements of 8.004.230 and 8.004.240.
- Add Section 8.012.030.11 Solar Energy Systems, Commercial, subject to the requirements of 8.004.210.
- Repeal Section 8.014.030.17 Wind Farms, Non-Commercial and replace with Section 8.014.030.17 Wind Energy Systems, Non-Commercial (WES), subject to the requirements of 8.004.240.
- Repeal Section 8.015.030.12 Wind Farms, Non-Commercial and replace with Section 8.015.030.12 Wind Energy Systems, Non-Commercial (WES), subject to the requirements of 8.004.240.
- Add Section 8.015.030.13 Solar Energy Systems, Commercial subject to the requirements of 8.040.210.
- Repeal Section 8.020.030.11 Wind Farms, Non-Commercial and replace with Section 8.020.030.11 Wind Energy Systems, Non-Commercial (WES), subject to the requirements of 8.004.240.
- Add Section 8.035.030.07 Solar Energy Systems, Non-Commercial subject to the requirements of 8.040.210.
- Add Section 8.035.030.08 Wind Energy Systems, Non-Commercial subject to the requirements of 8.040.240.
- Add Section 8.040.030.06 Solar Energy Systems, Non-Commercial subject to the requirements of 8.040.210.
- Add Section 8.040.030.07 Wind Energy Systems, Non-Commercial subject to the requirements of 8.040.240.
- Add Section 8.045.030.04 Solar Energy Systems, Commercial subject to the requirements of 8.040.210.

- Add Section 8.045.040.07 Solar Energy Systems, Non-Commercial subject to the requirements of 8.040.210.
- Add Section 8.045.040.08 Wind Energy Systems, Non-Commercial subject to the requirements of 8.040.240.
- Add Section 8.050.030.09 Solar Energy Systems, Commercial subject to the requirements of 8.040.210.
- Add Section 8.050.040.06 Solar Energy Systems, Non-Commercial subject to the requirements of 8.040.210.
- Add Section 8.050.040.07 Wind Energy Systems, Non-Commercial subject to the requirements of 8.040.240.
- Add Section 8.051.030.06 Solar Energy Systems, Commercial subject to the requirements of 8.040.210.
- Add Section 8.051.040.04 Solar Energy Systems, Non-Commercial subject to the requirements of 8.040.210.
- Add Section 8.051.040.05 Wind Energy Systems, Non-Commercial subject to the requirements of 8.040.240.
- Add Section 8.055.030.08 Solar Energy Systems, Commercial subject to the requirements of 8.040.210.
- Add Section 8.055.040.04 Solar Energy Systems, Non-Commercial subject to the requirements of 8.040.210.
- Add Section 8.055.040.05 Wind Energy Systems, Non-Commercial subject to the requirements of 8.040.240.
- Add Section 8.060.030.19 S D. Solar Energy Systems, Commercial subject to the requirements of 8.040.210.
- Add Section 8.060.040.04 Solar Energy Systems, Non-Commercial subject to the requirements of 8.040.210.
- Add Section 8.050.040.05 Wind Energy Systems, Non-Commercial subject to the requirements of 8.040.240.

**BE IT ORDAINED BY THE COUNTY BOARD OF POTTAWATTAMIE COUNTY,  
IOWA**

**SECTION 1 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding thereto the following new definitions, to be codified as Section 8.002.040 C.075, definition of Concentrated Solar Energy Systems:

8.002.040 C

.075 CONCENTRATED SOLAR ENERGY SYSTEMS: A solar energy system that generates power by using mirrors or lenses to concentrate a large area of sunlight, or solar thermal energy, unto a small area.

**SECTION 2 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding thereto the following new definitions, to be codified as Section 8.002.150 N.040, definition of Non-Participating Landowner:

8.002.150 N

.040 NON-PARTICIPATING LANDOWNER: Any landowner not under agreement with the owner or operator of a solar energy system or wind energy system.

**SECTION 3 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding thereto the following new definitions, to be codified as Section 8.002.170 P.011, definition of Participating Landowner:

8.002.170 P

.011 PARTICIPATING LANDOWNER: Any landowner under lease, easement or other property agreement(s) with the owner or operator of a solar energy system or wind energy system.

**SECTION 4 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding thereto the following new definitions, to be codified as Section 8.002.200 S.061, definition of Solar Energy System, Commercial:

8.002.200 S

.061 SOLAR ENERGY SYSTEM, COMMERCIAL (CSES): A solar energy system that generates electricity from solar energy primarily for sale to an electric utility or other third-party commercial or industrial user. CSES shall include but are not limited to solar panels, support structures, inverters/transformers, operations and maintenance buildings, electrical collector systems, energy storage technologies, wiring, communications, roads, substations and other equipment necessary for the generation, storage and delivery of electricity.

**SECTION 5 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding thereto the following new definitions, to be codified as Section 8.002.200 S.062, definition of Solar Energy System, Non-Commercial:

8.002.200 S

.062 SOLAR ENERGY SYSTEM, NON-COMMERCIAL (SES): A solar energy system that generates electricity from solar energy primarily for use on the same site or the same land use with which the system is associated.

**SECTION 6 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by repealing a definition for Wind Turbine Generator, Commercial and Non-Commercial and replacing it thereto with the following new definitions, to be codified as Section 8.002.240 W.010, definition of Wind Energy System, Commercial:

8.002.240 W

.010 WIND TURBINE GENERATOR, COMMERCIAL AND NON-COMMERCIAL(WTG): A system of components including, but not limited to, a foundation, tower, nacelle, generator and blades that together comprise a machine that generates electricity using wind

energy and connects to the electrical transmission or local distribution grid.

- .01 Blade. An element of a WTG which acts as a part of an airfoil assembly, thereby extracting through rotation, kinetic energy directly from the wind.
- .02 Tower. The support structure, above grade, that supports the nacelle and rotor assembly.
- .03 Foundation. The Tower support structure, above and/or below grade that supports the entire weight of the Wind Turbine Generator.
- .04 Total Height. The height from grade to the highest vertical point of the swept arc. In the case of a WTG with a vertical axis rotor, the height of the blades from grade to the highest vertical point of the WTG.
- .05 Substation. An electrical construction designed to collect and modify electrical energy produced by the WTG.

**SECTION 7 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by repealing a definition for Wind Farm, Commercial and replacing it thereto with the following new definitions, to be codified as Section 8.002.240 W.020, definition of Wind Energy System, Commercial:

8.002.240 W

.020 WIND ENERGY SYSTEM, COMMERCIAL (CWES): A wind energy system that generates electricity from wind energy primarily for sale to an electric utility or other third-party commercial or industrial user. CWES shall include but are not limited to wind turbine generators, support structures, inverters/transformers, operations and maintenance buildings, meteorological towers, electrical collector systems, energy storage technologies, wiring, communications, roads, substations and other equipment necessary for the generation, storage and delivery of electricity.

**SECTION 8 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by repealing a definition for Wind Farm, Commercial and replacing it thereto with the following new definitions, to be codified as Section 8.002.240 W.030, definition of Wind Energy System, Non-Commercial:

8.002.240 W

.030 WIND ENERGY SYSTEM, NON-COMMERCIAL (WES): A wind energy system that generates electricity from wind energy primarily for use on the same site or the same land use with which the system is associated.

**SECTION 9 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by repealing a definition for Wind Farm, Commercial and replacing it thereto with the following new definitions, to be codified as Section 8.002.240 W.035, definition of Wind Turbine Generator (WTG):

8.002.240 W

.035 WIND TURBINE GENERATOR (WTG): A system of components including, but not limited to, a foundation, tower, nacelle, generator and blades that together comprise a machine that generates electricity using wind energy.

**SECTION 10a – REPEAL OF CONFLICTING ORDINANCES:** That Section 8.004.210 is hereby repealed in its entirety. Furthermore, all other ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

**SECTION 10b - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding thereto the following new Section, to be codified as Section 8.004.210, as follows:

8.004.210 SOLAR ENERGY SYSTEMS

- .01 PURPOSE: The purpose of this ordinance is to facilitate the construction, installation, and operation of solar energy systems in Pottawattamie County in a manner that promotes economic development, protects property values, and ensures the protection of health, safety, and welfare while also avoiding adverse impacts to important areas such as agricultural lands, conservation lands, and other sensitive lands.
- .02 CONSTRUCTION; CONFLICT: This ordinance does not repeal, abrogate, annul, impair or interfere with any existing ordinance. If this section 8.004.210 conflicts with any other provision of the Pottawattamie County, Iowa, Zoning Ordinance, this section 8.004.210 shall control.
- .03 SOLAR ENERGY SYSTEMS, COMMERCIAL (CSES):
  - A. PURPOSE: This section provides uniform and comprehensive standards for the installation and use of CSES. CSES shall include but are not limited to solar panels, support structures, inverters/transformers, operations and maintenance buildings, electrical collector systems, energy storage technologies, wiring, communications, roads, substations and other equipment necessary for the generation, storage and delivery of electricity. The intent of this section is to protect the public health, safety, and community welfare while allowing development of utility-scale solar energy resources for utility, commercial and industrial purposes.
  - B. CONDITIONAL USE: CSES shall require a conditional use permit within the A-2, A-3, R-1, C-1, C-2, C-3, I-1 and I-2 zoning districts. This use is prohibited in all other zoning districts in the County. Concentrated solar energy systems are prohibited in the County. Where CSES are part of a unified plan or aggregated project, the applicant may submit a single

conditional use permit application and may sign the application in lieu of individual property owner(s). The applicant shall provide reasonable documentation evidencing the property owner(s) authorize the applicant to construct and operate a CSES on the property or to seek a conditional use permit for such purpose.

C. SPECIAL REQUIREMENTS: CSES are subject to the following requirements:

1. HEIGHT: A solar panel shall be no less than two (2) feet off the ground. A solar panel shall not exceed twenty (20) feet in height above grade at maximum tilt of the solar panel.
2. SETBACKS: CSES shall be setback from lot lines as set forth in underlying zoning district. Solar panels within a CSES shall not be located less than three hundred (300) feet from the closest exterior wall of any non-participating dwelling. There shall be no setback to any participating dwelling. There shall be no side or rear yard setback for any lot line where the CSES is located on abutting participating parcels.
3. SUBMITTAL REQUIREMENTS: The applicant shall submit all materials contained in this section at the time of the application for a conditional use permit.
4. PERMITTING PROCESS: The applicant shall go through the following process for conditional use permit approval:
  - a. Applicant shall meet with the Development Director and submit all required documents.
  - b. Development Director will submit all documents to the Pottawattamie County Department Approval Committee. Said Committee shall consist of the County Board and the Development Director along with the department head or the designated employee from the following departments: Conservation, County Engineer/Secondary Roads, and Sheriff. All identified departments must approve with signature that all requirements pertaining to that department are met prior to submission to the Adjustment Board.
  - c. The conditional use permit application shall be presented to the Adjustment Board for a public hearing and decision on the conditional use permit.
  - d. County Board shall consider a decommissioning plan, decommissioning agreement (including financial security), Public Roads Damage Avoidance and Mitigation Plan and related agreement. The CSES may not proceed to construction until the County Board has approved these plans and the Chairperson and the applicant have executed these agreements.
  - e. The use(s) outlined in the application shall be established in accordance with the draft plans considered by the approving authority within five (5) years of approval. "Commencing Construction" is determined by disturbance of soil at project site that is not part of a primary farming operation. Any portion of the development plan not completed within five (5) years of approval by the approving authority shall not be

installed until the development has been reauthorized by the approving authority. Reauthorization shall be subject to the regulations in effect at the time reauthorization is requested.

5. SECURITY; FENCING: Absent contrary direction from the Iowa Utilities Board, the CSES shall be fenced with a minimum eight-foot (8') tall security fence,. "Warning/No Trespassing" signs, as well as contact information for emergency purposes, shall be posted within sight of all points of fence line or no greater than one hundred fifty feet (150') apart. At the discretion of the approving authority, critical electrical and communications equipment may be fenced with the chain-link fence topped with barbed wire when such measures are deemed necessary to ensure public safety.
6. AGRICULTURAL IMPACT MITIGATION PLAN: The applicant shall submit a plan with the conditional use permit application detailing the mitigation strategy to support agricultural use of the land. The plan will be reviewed by the Development Director and shall include, but is not limited to:
  - a. Results of a soil analysis conducted and assessed by a qualified professional to determine topsoil depths, as well as identify any limitations for construction and mitigation that may require special consideration.
  - b. General list of project components and construction timeline.
  - c. Describe best practices and methods to be used during each stage of construction for protecting and preserving topsoil. Practices and methods should address, at minimum, avoidance of removal of topsoil. However, if removal of topsoil is necessary, applicant should plan for segregation, stockpiling, replacement during backfill and respreading, grading minimization, compaction prevention and decompaction of otherwise undisturbed topsoil impact by heavy equipment or storage of materials and wet weather conditions.
  - d. Describe environmental monitoring that will be used during construction to ensure adherence to the best practices contained in the plan. The monitoring should be done by an environmental professional at the expense of the developer. The monitoring results should be submitted to the County through the Planning Department every thirty (30) days during construction.
  - e. Describe the general procedures to be used for identification, avoidance and repair of any underground drainage tile lines located within the project site before, during and after construction.
7. SOIL EROSION AND SEDIMENT CONTROL: The applicant shall conduct all roadwork and other site development work in compliance with Chapter 10.15 of the Pottawattamie County, Iowa, Code (Grading and Excavation), and a national pollutant discharge elimination system (NPDES) permit as required by the Iowa Department of Natural Resources and comply with requirements as detailed by local jurisdictional authorities during the plan submittal.

If subject to NPDES requirements, the applicant must submit the permit to the Development Director for review and comment along with an erosion and sediment control plan before the “Commencement of Construction”, which is determined by disturbance of soil at project site, not considered for a primary farming operation. The plan must include both general “best management practices” for temporary erosion and sediment control (both during and after construction) and permanent drainage and erosion control measures to prevent both damage to local roads/adjacent areas and sediment laden run-off into waterways.

8. VEGETATION MITIGATION PLAN:

- a. A Vegetation Mitigation Plan must be provided to the Planning and Development Department with the conditional use permit application. The Vegetation Mitigation Plan will be reviewed by the Development Director.
- b. Ground under and around the CSES shall be planted with a perennial vegetative ground cover as identified in the Vegetation Mitigation Plan. The ground cover plan shall be developed in accordance with the following standards:
  - i. Avoid removal of topsoil to maximum extent possible during development and decommissioning unless part of a remediation effort.
  - ii. The vegetation shall be planted and maintained, per the Vegetation Mitigation Plan, for the full operational life of the CSES to prevent erosion, manage runoff and build soil. The Vegetation Mitigation Plan must include management methods and schedules for how the vegetation will be managed on an annual basis, with the particular attention given to the establishment period of approximately three (3) years. The Vegetation Mitigation Plan must include provisions for replacement of any required vegetation cover that fails to establish or dies during the life of the project.
  - iii. Plant materials for the ground cover area must not have been treated with systemic insecticides, particularly neonicotinoids.
  - iv. The application and Vegetation Mitigation Plan shall include the proposed seed mix specifications and growth guidelines to follow.
  - v. Seeding zones and their selected seed mixes should be clearly mapped on a site plan.
  - vi. Seed and/or planting mixes and maintenance practices should be consistent with recommendations made by qualified natural resource professionals, such as those from a state department of natural resources, county soil and water conservation services, or natural resource conservation service.
  - vii. Reporting to the County through the Planning Department on ground cover management and maintenance activities shall be on an annual basis for a minimum of



five (5) years after which point reduced frequency can be requested and approved at the discretion of the Development Director.

viii. At the discretion of the Development Director, other practices, such as small-scale farming, beekeeping operations or grazing, may be allowed in the ground cover area as part of the conditional use permit.

9. **LANDSCAPING BUFFER:** To mitigate potential negative effects and reduce the visual impact of the CSES, a landscaping buffer shall be installed and maintained during the life of the CSES. Determination of screening requirements will be made by the approving authority as part of the review of the conditional use permit and will be based on adjacent or nearby surrounding land uses and topography. Where the approving authority finds that a landscaping buffer is appropriate, landscaping shall be installed within a planting area around the portions of the site specified by the approving authority in accordance with the standards as of this subsection. All applications for which this subsection applies shall submit a plan for review and approval. The landscaping buffer shall use trees, shrubs, grasses and forbs that are native to Iowa or where appropriate may include naturalized and non-invasive species or a combination thereof to provide a vegetation screen in all required areas.
10. **LIGHTING:** If lighting is provided for the CSES, lighting shall be shielded and downcast such that the light does not project directly onto the adjacent parcels.
11. **SOUND:** Sound levels caused by the CSES measured at the closest exterior wall of any non-participating residence shall not exceed fifty (50) decibels (A-weighted).
12. **GLARE; AVIATION PROTECTION.** The CSES shall be designed and located to minimize glare towards any buildings on adjacent properties. Applicant must complete and provide with the application the results of a Solar Glare Hazard Analysis Tool or most recent version adopted by the Federal Aviation Administration (FAA). Applicant must provide evidence of notice and no response and/or non-objection from FAA and Offutt Air Force Base that the CSES will not affect commercial or military flights.
13. **UTILITY CONNECTIONS:** Applicant shall make reasonable efforts to place all collection lines within the CSES underground, depending on appropriate soil conditions, shape and topography of the site, distance to the connection, or other conditions or requirements. High-voltage lines between the CSES and substations may be above ground.
14. **OUTDOOR STORAGE:** Only the outdoor storage of materials, vehicles, and equipment that directly support the operation and maintenance of the CSES shall be allowed.
15. **ENDANGERED SPECIES AND WETLANDS:** Applicant shall consult with the Iowa Department of Natural Resources.
16. **WEED CONTROL:** Applicant must present an acceptable weed/grass control plan for property outside of the fenced area for

- the entire CSES. The CSES operator must maintain the fence and adhere to a weed control plan. The plan must be approved by the Development Director and Conservation Department.
17. WASTE: All solid wastes, whether generated from supplies, equipment parts, packaging, operation, grazed animals, farming operation or maintenance of the CSES, shall be removed from the site and disposed of in an appropriate manner. All hazardous waste shall be removed from the site immediately and disposed of in a manner consistent with all local, state and federal requirements.
  18. MAINTENANCE, REPAIR OR REPLACEMENT OF A FACILITY: Maintenance shall include, but not limited to, painting, structural repairs, and integrity of security measures. Any retrofit, replacement or refurbishment of equipment shall adhere to all applicable local, state and federal requirements.
  19. CLEANING CHEMICALS AND SOLVENTS: During operation of the CSES, all chemicals or solvents used to clean photovoltaic panels shall be low in volatile organic compounds and the operator shall use recyclable or biodegradable products to the extent possible. Any on-site storage of chemicals or solvents shall be referenced on the site plan.
  20. STORM WATER MANAGEMENT. Prior to receiving a building permit, for the purposes of pollutant removal, storm water and runoff management, flood reduction and associated impacts, the applicant shall provide a detailed storm water management plan in compliance with Chapter 10.15 of the Pottawattamie County, Iowa, Code (Grading and Excavation).
  21. ADMINISTRATION AND ENFORCEMENT: Development Director and any necessary personnel may enter any property for which a conditional 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, and code. Failure to provide access shall be deemed a violation of this ordinance.
- D. SAFETY: All CSES shall provide the following at all locked entrances:
1. A visible "High Voltage" warning sign.
  2. Name(s) and phone number(s) for the electric utility provider(s).
  3. Name(s) and phone number(s) for the site operator(s).
  4. The facility's 911 address and GPS coordinates.
  5. The site operator will coordinate with the local fire department and Emergency Management to provide training on an annual basis for the first five (5) years the CSES is complete and in operation. Said training will commence within six (6) months prior to the completion of the CSES. After that, offered on an annual basis for the life of the project. All emergency responding agencies will sign off that said training was completed or offered.
- E. REPOWERING: At the discretion of the Development Director, proposals to replace more than twenty-five percent (25%) of the panels in a CSES within a twelve (12) month period may be required to submit a plan for

review and approval with all associated costs assigned to the applicant and/or the property owner(s).

- F. **ROADS:** The applicant, owners and their contractors shall avoid damaging public roads to the greatest practicable extent and shall be responsible for repair of damage to public roads. A Public Roads Damage Avoidance and Mitigation Plan shall be in accordance with the following standards and approved by the County Board before the applicant commences construction:
1. **IDENTIFICATION OF POTENTIAL ROADS USAGE:** The applicant shall identify, in consultation with the County Engineer, all state and local public roads to be used within the County to transport equipment, parts and material for construction, operation or maintenance of the CSES and related components.
  2. **DOCUMENTATION OF ROAD CONDITIONS:** Prior to construction, decommissioning or implementation of a repowering plan, the County Engineer or a third-party consultant selected by the County Engineer shall document the current conditions of the roads identified for use with physical and video documentation. The County Engineer or a third-party consultant selected by the County Engineer shall document road conditions again thirty (30) days after the CSES construction, decommissioning or implementation of a repowering plan is complete, or as weather permits. The requirements of this Subsection shall be at the sole cost of the applicant or owner of the CSES.
  3. **ROAD PREPARATION AND DAMAGE:** The applicant or owner of the CSES shall promptly cause the completion of any necessary road preparation, maintenance or repair associated with CSES construction, operation, maintenance, decommissioning or implantation of a repowering plan, as identified by the County Engineer or a third-party consultant selected by the County Engineer. All road preparation, maintenance and repair shall be at the sole cost of the applicant or owner of the CSES and to reasonable satisfaction of the County Engineer based on the applicable standards and codes.
  4. **FINANCIAL SURETY:** Applicant shall demonstrate appropriate financial assurance to ensure road preparation, maintenance and repair. At the direction of the County Board, the applicant or the owner of the CSES may also be required to provide a financial surety instrument or bond at the time of permitting consideration.
- G. **DECOMMISSIONING AND RECLAMATION PLAN:** The applicant shall submit a decommissioning and reclamation plan to the Development Director with the conditional use permit application. The Development Director shall review the plan for completeness and refer it to the Adjustment Board for review in conjunction with the conditional use permit and the County Board for final consideration and approval prior to the applicant commencing construction. The plan shall include:

1. A description of the life of the CSES; the anticipated manner which the project will be decommissioned, including plans to recycle components; the anticipated site restoration actions; the estimated decommissioning costs in current dollars; and the method for ensuring that funds will be available for decommissioning and restoration.
2. Estimates for the total cost for decommissioning at the current value at site as determined by a licensed engineer. Decommissioning cost estimates shall take salvage and resale value into account.
3. A description of the means to remove the CSES and restore the land to its previous use upon the end of its life, as stated in the conditional use permit or this ordinance.
4. Provisions to remove structures, debris and associated equipment on the surface and to a level of not less than six (6) feet below the surface, and the timeline/sequence in which removal is expected to occur.
5. Provisions to restore the soil, vegetation, and disturbed earth, which shall be graded and reseeded and/or the property may be returned to agricultural use. Avoidance of topsoil is preferred. The plan shall include environmental monitoring at the cost of the developer to be used in returning the project area back to agricultural use. Environmental monitoring shall include best practices to address at minimum invasive species prevention, erosion, sediment control and debris removal.
6. A provision that the terms of the decommissioning plan shall be binding upon the owner or operator of the CSES and any of their successors, assigns or heirs, and that the landowner has granted permission for access and easements of the property for decommissioning.
7. **FINANCIAL SURETY:** No later than the tenth (10th) year following the date the applicant or CSES owner completes construction, as evidenced by a certificate of completion, the applicant of CSES owner shall provide a financial surety instrument to cover the cost of decommissioning in accordance with the following:
  - a. Decommissioning funds or financial surety shall be in an amount equal to the net cost for decommissioning the site, plus a ten percent (10%) contingency.
  - b. The financial surety shall be maintained in the form of cash, certificate of deposit, performance bond, escrow account, surety bond, letter of credit, corporate guarantee or other form of financial assurance acceptable to the County Board. Any document evidencing the maintenance of the financial surety shall include provisions for releasing the funds to the County in the event decommissioning is not completed in a timely manner.
  - c. Financial surety shall be maintained for the remaining life of the CSES.

- d. Every five (5) years, the CSES owner or operator shall retain an independent licensed engineer to re-estimate the total cost of decommissioning and attest that the value of the financial surety instrument is appropriate. This report shall be filed with the Planning and Development department and the Auditor. The decommissioning surety shall match the re-estimated cost of decommissioning plus a ten percent (10%) contingency. Within ninety (90) days of filing the re-estimation report with the County through the Planning Department, the CSES owner or operator shall cause the fund balance of the financial surety instrument to be adjusted, if applicable.
  - e. **RELEASE OF FINANCIAL SURETY:** Financial surety shall only be released by the County Board by the recommendation from the Development Director, after inspection that all conditions of the decommissioning plan have been met.
- H. **INDEMNIFICATION AND LIABILITY:** The applicant, owner and/or operator of the CSES shall defend, indemnify, and hold harmless the County and its officials from and against any and all claims, demands, losses, suits, causes of action, damages, injuries, costs, expenses, and liabilities whatsoever, including attorneys' fees, without limitation, arising out of acts or omissions of the applicant, owner, and/or operator associated with the construction and/or operations of the CSES.
- I. **CESSATION OF OPERATIONS:** Any CSES that has not been in operation and producing electricity for at least one hundred and eighty (180) consecutive days, unless caused by a natural catastrophic event, shall be decommissioned. The Development Director shall notify the owner to decommission and remove the CSES. Within two hundred and seventy (270) days thereafter, the owner shall either submit evidence showing that the CSES has been operating and producing electricity or that it has been fully decommissioned in compliance with this Ordinance. If the owner fails to or refuses to remove the CSES, the violation shall be referred to the County Attorney. In the case of a natural catastrophic event, a detailed restoration plan to return to operational status must be provided to the Development Director.
- J. **VIOLATIONS & PENALTIES:** Violations and penalties of this section are set forth in Chapter 1.75 of the Pottawattamie County, Iowa, Code (Violations and Penalties).
- K. **RELATED RULES AND REGULATIONS:** Each CSES shall comply with all applicable local, state and federal requirements.
- L. **SEVERABILITY:** The provisions of this ordinance are severable, and the invalidity of any section, subdivision, paragraph, or other part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.
- M. **CONDITIONAL USE PERMIT FEE(S) FOR CSES:** The conditional use permit application fee(s) will be approved and adopted by resolution of the

County Board and shall be set forth in Chapter 1.50 of the Pottawattamie County, Iowa, Code (Schedule of Fees).

.04 SOLAR ENERGY SYSTEMS, NON COMMERCIAL (SES):

- A. PURPOSE: This section provides uniform and comprehensive standards for the installation and the use of SES for on-site home, farm and small commercial use that are used primarily to reduce on-site consumption of utility power. The intent of this section is to protect the public health, safety and community welfare without unduly restricting the development of SES.
- B. ACCESSORY USE: SES shall be considered an accessory use to a permitted principal or conditional use in any zoning district.
- C. SPECIAL REQUIREMENTS: SES shall be subject to the requirements included in this section:
  - 1. GROUND MOUNTED SES HEIGHT: Shall not be greater than fifteen (15) feet at maximum tilt of the solar panel(s).
  - 2. STRUCTURE MOUNTED SES HEIGHT: Shall not be greater than the allowable height of any structure within the zoning district in which the SES is to be installed.
  - 3. SETBACKS: The ground mounted SES shall maintain perimeter setbacks including side and rear yard setbacks of ten (10) feet measured at full horizontal tilt and ten (10) feet from any other building or structure on the same lot. No solar panels within the SES may be located in the required front yard setback unless at least fifty (50) feet back from the edge of the county road right-of-way or at least eighty (80) feet back from the edge of state or federal road right-of-way.
  - 4. BUILDING CODES: All county, state and federal construction codes shall be followed.
  - 5. USE: SES shall provide electricity for on-site use by the owner. This does not prohibit an owner from making excess power available for net metering.
- D. BUILDING PERMIT: Before a building permit is issued, the following shall be submitted to the Development Director for review:
  - 1. Site Plan Showing:
    - a. Address, email address, and phone number of the property owner;
    - b. Parcel lines;
    - c. All existing structures with heights clearly marked;
    - d. Sanitary infrastructure (i.e., septic field);
    - e. Setback measurements;
    - f. Easements present on the property, including those for utilities;
    - g. Septic field tile location;
    - h. Floodplain location, if applicable;
    - i. Topography lines (2-foot contours);
    - j. Location of all solar panels and associated equipment; and
    - k. Location of the electrical disconnect for the SES.

2. Evidence that the local electric utility has been informed of the customer's intent to install a customer-owned SES.
3. Evidence that the site plan has been submitted to the local fire protection district.
4. Evidence that all contact information for site has been provided to Emergency Management.
5. After a review and acceptance of site plan and required information, a building permit authorizing construction shall be issued.

**SECTION 11a – REPEAL OF CONFLICTING ORDINANCES:** That Section 8.004.230 is hereby repealed in its entirety. Furthermore, all other ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

**SECTION 11b - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding thereto the following new Section, to be codified as Section 8.004.230, as follows:

#### **8.004.230 WIND ENERGY SYSTEMS, COMMERCIAL (CWES)**

- .01 **PURPOSE:** This ordinance provides uniform and comprehensive standards for the installation and use of CWES. CWES shall include but are not limited to WTGs, support structures, inverters/transformers, operations and maintenance buildings, meteorological towers, electrical collector systems, energy storage technologies, wiring, communications, roads, substations and other equipment necessary for the generation, storage and delivery of electricity. The intent of these regulations is to protect the public health, safety, and community welfare while allowing development of utility-scale wind energy resources for utility, commercial and industrial purposes.
- .02 **CONSTRUCTION; CONFLICT:** This section does not repeal, abrogate, annul, impair or interfere with any existing ordinance. If this section 8.004.230 conflicts with any other provision of the Pottawattamie County, Iowa, Zoning Ordinance, this section 8.004.230 shall control.
- .03 **CONDITIONAL USE:** CWES shall require a conditional use permit within the A-2 zoning districts. This use is prohibited in all other zoning districts in the County. Where CWES are part of a unified plan or aggregated project, the applicant may submit a single conditional use permit application and may sign the application in lieu of individual property owner(s). The applicant shall provide reasonable documentation evidencing the property owner(s) authorize the applicant to construct and operate a CWES on the property or to seek a conditional use permit for such purpose.
- .04 **SETBACKS:** WTGs in a CWES shall not be located less than one half (1/2) mile to the closest exterior wall of any non-participating dwelling as measured from the center of the WTG base. CWES may be setback less one half (1/2) mile from any participating dwelling or any dwelling for which the property

owner signs a waiver agreeing to reduce the setback distance; provided, however, in no event shall a CWES be located less than one and one-tenth (1.1) times the total height to any dwelling. In no event shall a CWES be located less than fifteen hundred (1,500) feet to any lot line or public right-of-way; provided, however, there shall be no side or rear yard setback for any lot line where the CWES is located on abutting participating parcels.

.05 SPECIAL REQUIREMENTS: CWES are subject to the following requirements:

A. SUBMITTAL REQUIREMENTS: The applicant shall submit all materials contained in this section at the time of the application for a conditional use permit.

B. PERMITTING PROCESS: The applicant shall go through the following process for conditional use permit approval:

1. Applicant shall meet with the Development Director and submit all required documents.
2. Development Director will submit all documents to the Pottawattamie County Department Approval Committee. Said Committee shall consist of the County Board and the Development Director along with the department head or the designated employee from the following departments: Conservation, County Engineer/Secondary Roads, and Sheriff's Department. All identified departments must approve with signature that all requirements pertaining to that department are met prior to submission to the Adjustment Board.
3. The conditional use permit application will be presented to the Adjustment Board for a public hearing and decision on the conditional use permit.
4. County Board shall consider a decommissioning plan, decommissioning agreement (including financial security), Public Roads Damage Avoidance and Mitigation Plan and related agreement. The CWES may not proceed to construction until the County Board has approved these plans and the Chairperson and the applicant have executed these agreements.
5. The use(s) outlined in the application shall be established in accordance with the draft plans considered by the approving authority within five (5) years of approval. "Commencing Construction" is determined by disturbance of soil at project site that is not part of a primary farming operation. Any portion of the development plan not completed within five (5) years of approval by the approving authority shall not be installed until the development has been reauthorized by the approving authority. Reauthorization



shall be subject to the regulations in effect at the time reauthorization is requested.

- C. SECURITY; FENCING: CWES shall be equipped with anti-climbing devices or be of a mono-tower type with locking doors. Tower climbing apparatus shall be at least ten (10) feet above ground level. At the discretion of the approving authority, critical electrical and communications equipment may be fenced with the chain-link fence topped with barbed wire when such measures are deemed necessary to ensure public safety.
- D. AGRICULTURAL IMPACT MITIGATION PLAN: The applicant shall submit a plan with the conditional use permit application detailing the mitigation strategy to support agricultural use of the land. The plan will be reviewed by the Development Director and shall include, but is not limited to:
1. Results of a soil analysis conducted and assessed by a qualified professional to determine topsoil depths, as well as identify any limitations for construction and mitigation that may require special consideration.
  2. General list of project components and construction timeline.
  3. Describe best practices and methods to be used during each stage of construction for protecting and preserving topsoil. Practices and methods should address, at minimum, avoidance of removal of topsoil. However, if removal of topsoil is necessary, applicant should plan for segregation, stockpiling, replacement during backfill and respreading, grading minimization, compaction prevention and decompaction of otherwise undisturbed topsoil impact by heavy equipment or storage of materials and wet weather conditions.
  4. Describe environmental monitoring that will be used during construction to ensure adherence to the best practices contained in the plan. The monitoring should be done by an environmental professional at the expense of the developer. The monitoring results should be submitted to the County through the Planning Department every thirty (30) days during construction.
  5. Describe the general procedures to be used for identification, avoidance and repair of any underground drainage tile lines located within the project site before, during and after construction.
- E. SOIL EROSION AND SEDIMENT CONTROL: The applicant shall conduct all roadwork and other site development work in compliance with Chapter 10.15 of the Pottawattamie County, Iowa, Code (Grading and Excavation), and a national pollutant discharge elimination system (NPDES) permit as required by the Iowa Department of Natural Resources and comply with requirements

as detailed by local jurisdictional authorities during the plan submittal. If subject to NPDES requirements, the applicant must submit the permit to the Development Director for review and comment along with an erosion and sediment control plan before the "Commencement of Construction", which is determined by disturbance of soil at project site, not considered for a primary farming operation. The plan must include both general "best management practices" for temporary erosion and sediment control (both during and after construction) and permanent drainage and erosion control measures to prevent both damage to local roads/adjacent areas and sediment laden runoff into waterways.

- F. LIGHTING: Lighting shall be shielded such that the light does not project directly onto the adjacent parcels to the extent the FAA allows. If permitted by the FAA, all CWES shall utilize an aircraft detection lighting system (ADLS).
  
- G. DESIGN: CWES color and finish shall be white, gray or another non-obtrusive, non-reflective finish. There shall be no advertising, logo, or other symbols painted on the WTG other than those required by the FAA or other governing body. Each WTG shall have a name plate which is clearly legible from the public right-of-way and contains contact information of the operator of the CWES.
  
- H. SOUND: Sound levels caused by the CWES measured at least 25 feet from the closest exterior wall of any non-participating dwelling shall not exceed fifty (50) decibels (A-weighted Leq, one hour). Each application shall include a professional third-party pre-construction sound study which includes all property within at least one (1) mile of each WTG and must be able to demonstrate compliance with the noise standards in this section.
  
- I. SHADOW FLICKER: For any WTG which is within half mile of any non-participating dwelling, applicant shall provide shadow flicker modeling data showing the expected effect of shadow flicker on non-participating properties. Shadow flicker shall not fall upon any non-participating dwelling, or other building which is by humans, for more than a total of 30 hours per any calendar year.
  
- J. UTILITY CONNECTIONS: Applicant shall make reasonable efforts to place all collection lines within the CWES underground, depending on appropriate soil conditions, shape and topography of the site, distance to the connection, or other conditions or requirements. High-voltage lines between the CWES and substations may be above ground.

- K. **OUTDOOR STORAGE:** Only the outdoor storage of materials, vehicles, and equipment that directly support the operation and maintenance of the CWES shall be allowed.
- L. **ENDANGERED SPECIES AND WETLANDS:** Applicant shall consult with the Iowa Department of Natural Resources.
- M. **WEED CONTROL:** Applicant must present an acceptable weed/grass control plan for property outside of the fenced area for the entire CWES. The CWES operator must maintain the fence and adhere to a weed control plan. The plan must be approved by the Development Director, and Conservation Department.
- N. **WASTE:** All solid wastes, whether generated from supplies, equipment parts, packaging, operation, grazed animals, farming operation or maintenance of the CWES, shall be removed from the site and disposed of in an appropriate manner. All hazardous waste shall be removed from the site immediately and disposed of in a manner consistent with all local, state and federal requirements.
- O. **MAINTENANCE, REPAIR OR REPLACEMENT OF A FACILITY:**  
Maintenance shall include, but not limited to, painting, structural repairs, and integrity of security measures. Any retrofit, replacement or refurbishment of equipment shall adhere to all applicable local, state and federal requirements.
- P. **STORM WATER MANAGEMENT.** Prior to receiving a building permit, for the purposes of pollutant removal, storm water and runoff management, flood reduction and associated impacts, the applicant shall provide a detailed storm water management plan in compliance with Chapter 10.15 of the Pottawattamie County, Iowa, Code (Grading and Excavation).
- Q. **AVIATION PROTECTION.** Wind turbine generators shall meet all FAA requirements, including but not limited to, lighting and radar interference issues. Applicant must provide evidence of notice and no response and/or non-objection from FAA and Offutt Air Force Base that the CWES will not affect commercial or military flights.
- R. **ADMINISTRATION AND ENFORCEMENT:** Development Director and any necessary personnel may enter any property for which a conditional 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, and code. Failure to provide access shall be deemed a violation of this ordinance.

.06 SAFETY: All CWES shall provide the following at all locked entrances:

- A. A visible "High Voltage" warning sign.
- B. Name(s) and phone number(s) for the electric utility provider(s).
- C. Name(s) and phone number(s) for the site operator(s).
- D. The facility's 911 address and GPS coordinates.
- E. The site operator will coordinate with the local fire department and Emergency Management to provide training on an annual basis for the first five (5) years the CWES is complete and in operation. Said training will commence within six (6) months prior to the completion of the CWES. After that, offered on an annual basis for the life of the project. All emergency responding agencies will sign off that said training was completed or offered.

.07 REPOWERING: At the discretion of the Development Director, proposals to replace more than twenty-five percent (25%) of the WTGs in a CWES within a twelve (12) month period may be required to submit a plan for review and approval with all associated costs assigned to the applicant and/or the property owner(s). Replacement for this purpose shall mean installing new blades of the same size, generator and nacelle. Any one of those items individually shall not constitute replacement in this context.

.08 ROADS: The applicant, owners and their contractors shall avoid damaging public roads to the greatest practicable extent and shall be responsible for repair of damage to public roads. A Public Roads Damage Avoidance and Mitigation Plan shall be in accordance with the following standards and approved by the County Board before the applicant commences construction:

- A. IDENTIFICATION OF POTENTIAL ROADS USAGE: The applicant shall identify, in consultation with the County Engineer, all state and local public roads to be used within the County to transport equipment, parts and material for construction, operation or maintenance of the CWES and related components.
- B. DOCUMENTATION OF ROAD CONDITIONS: Prior to construction, decommissioning or implementation of a repowering plan, the County Engineer or a third-party consultant selected by the County Engineer shall document the current conditions of the roads identified for use with physical and video documentation. The County Engineer or a third-party consultant selected by the County Engineer shall document road conditions again thirty (30) days after the CSES construction, decommissioning or implementation of

a repowering plan is complete, or as weather permits. The requirements of this Subsection shall be at the sole cost of the applicant or owner of the CSES.

C. ROAD PREPARATION AND DAMAGE: The applicant or owner of the CSES shall promptly cause the completion of any necessary road preparation, maintenance or repair associated with CSES construction, operation, maintenance, decommissioning or implantation of a repowering plan, as identified by the County Engineer or a third-party consultant selected by the County Engineer. All road preparation, maintenance and repair shall be at the sole cost of the applicant or owner of the CSES and to reasonable satisfaction of the County Engineer based on the applicable standards and codes.

D. FINANCIAL SURETY: Applicant shall demonstrate appropriate financial assurance to ensure road preparation, maintenance and repair. At the direction of the County Board, the applicant or the owner of the CSES may also be required to provide a financial surety instrument or bond at the time of permitting consideration.

.09 DECOMMISSIONING AND RECLAMATION PLAN: The applicant shall submit a decommissioning and reclamation plan to the Development Director with the conditional use permit application. The Development Director shall review the plan for completeness and refer it to the Adjustment Board for review in conjunction with the conditional use permit and the County Board for final consideration and approval prior to the applicant commencing construction. The plan shall include:

- A. A description of the life of the CWES; the anticipated manner which the project will be decommissioned, including plans to recycle components; the anticipated site restoration actions; the estimated decommissioning costs in current dollars; and the method for ensuring that funds will be available for decommissioning and restoration.
- B. Estimates for the total cost for decommissioning at the current value at site as determined by a licensed engineer. Decommissioning cost estimates shall take salvage and resale value into account.
- C. A description of the means to remove the CWES and restore the land to its previous use upon the end of its life, as stated in the conditional use permit or this ordinance.
- D. Provisions to remove structures, debris and associated equipment on the surface and to a level of not less than six (6) feet below the surface, and the timeline/sequence in which removal is expected to occur.
- E. Provisions to restore the soil, vegetation, and disturbed earth, which shall be graded and reseeded and/or the property may be returned to agricultural use. Avoidance of topsoil is preferred. The plan shall include environmental

monitoring at the cost of the developer to be used in returning the project area back to agricultural use. Environmental monitoring shall include best practices to address at minimum invasive species prevention, erosion, sediment control and debris removal.

- F. A provision that the terms of the decommissioning plan shall be binding upon the owner or operator of the CWES and any of their successors, assigns or heirs, and that the landowner has granted permission for access and easements of the property for decommissioning.
- G. FINANCIAL SURETY: No later than the tenth (10th) year following the date the applicant or CSES owner completes construction, as evidenced by a certificate of completion, the applicant or CSES owner shall provide a financial surety instrument to cover the cost of decommissioning in accordance with the following:
1. Decommissioning funds or financial surety shall be in an amount equal to the net cost for decommissioning the site, plus a ten percent (10%) contingency.
  2. The financial surety shall be maintained in the form of cash, certificate of deposit, performance bond, escrow account, surety bond, letter of credit, corporate guarantee or other form of financial assurance acceptable to the County Board. Any document evidencing the maintenance of the financial surety shall include provisions for releasing the funds to the County in the event decommissioning is not completed in a timely manner.
  3. Financial surety shall be maintained for the remaining life of the CWES.
  4. Every five (5) years, the CWES owner or operator shall retain an independent licensed engineer to re-estimate the total cost of decommissioning and attest that the value of the financial surety instrument is appropriate. This report shall be filed with the Planning and Development department and the Auditor. The decommissioning surety shall match the re-estimated cost of decommissioning plus a ten percent (10%) contingency. Within ninety (90) days of filing the re-estimation report with the County through the Planning Department, the CWES owner or operator shall cause the fund balance of the financial surety instrument to be adjusted, if applicable.
  5. RELEASE OF FINANCIAL SURETY: Financial surety shall only be released by the County Board by the recommendation from the Development Director, after inspection that all conditions of the decommissioning plan have been met.
- .10 INDEMNIFICATION AND LIABILITY: The applicant, owner and/or operator of the CWES shall defend, indemnify, and hold harmless the County and its officials from and against any and all claims, demands, losses, suits, causes

of action, damages, injuries, costs, expenses, and liabilities whatsoever, including attorneys' fees, without limitation, arising out of acts or omissions of the applicant, owner, and/or operator associated with the construction and/or operations of the CWES.

- .11 CESSATION OF OPERATIONS: Any CWES that has not been in operation and producing electricity for at least one hundred and eighty (180) consecutive days, unless caused by a natural catastrophic event, shall be decommissioned. The Development Director shall notify the owner to decommission and remove the CWES. Within two hundred and seventy (270) days thereafter, the owner shall either submit evidence showing that the CWES has been operating and producing electricity or that it has been fully decommissioned in compliance with this Ordinance. If the owner fails to or refuses to remove the CWES, the violation shall be referred to the County Attorney. In the case of a natural catastrophic event, a detailed restoration plan to return to operational status must be provided to the Development Director.
- .12 VIOLATIONS & PENALTIES: Violations and penalties of this Section are set forth in Chapter 1.75 of the Pottawattamie County, Iowa, Code (Violations and Penalties).
- .13 RELATED RULES AND REGULATIONS: Each CWES shall comply with all applicable local, state and federal requirements.
- .14 SEVERABILITY: The provisions of this ordinance are severable, and the invalidity of any section, subdivision, paragraph, or other part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.
- .15 CONDITIONAL USE PERMIT FEE(S) FOR CWES: The conditional use permit application fee(s) will be approved and adopted by resolution of the County Board and shall be set forth in Chapter 1.50 of the Pottawattamie County, Iowa, Code (Schedule of Fees).

**SECTION 12a – REPEAL OF CONFLICTING ORDINANCES:** That Section 8.004.240 is hereby repealed in its entirety. Furthermore, all other ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

**SECTION 12b - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding thereto the following new Section, to be codified as Section 8.004.240, as follows:

## **8.004.240 WIND ENERGY SYSTEMS, NON-COMMERCIAL (WES)**

- .01 **PURPOSE:** This section provides uniform and comprehensive standards for the installation and the use of WES for on-site home, farm and small commercial use that are used primarily to reduce on-site consumption of utility power. The intent of this section is to protect the public health, safety and community welfare without unduly restricting the development of WES.
- .02 **CONSTRUCTION; CONFLICT:** This section does not repeal, abrogate, annul, impair or interfere with any existing ordinance. If this section 8.004.240 conflicts with any other provision of the Pottawattamie County, Iowa, Zoning Ordinance, this section 8.004.240 shall control.
- .03 **ACCESSORY USE:** WES shall be considered an accessory use to a permitted principal or conditional use in any zoning district.
- .04 **SETBACKS:** WES shall not be located closer than a distance equal to one and one-tenth (1.1) times the total height to a dwelling, a property line, or a utility easement. Such distance shall be defined relative to the nearest surface of the WES as measured at grade.
- .05 **SPECIAL REQUIREMENTS:** WES shall be subject to the requirements included in this section:
  - E. **MINIMUM LOT SIZE:** WES shall not be placed on a parcel of land or lot which is less than one (1) acre in size.
  - F. **NO INTERFERENCE:**
    - 6. WES shall not cause interference to the radio and television reception on adjoining property and in the event of any such interference the WES owner shall remedy such interference.
    - 7. WES shall not cause interference with emergency communication transmissions of the County. Applicant shall request documentation from the County Sheriff to verify the same and submit said documentation with any building permit application. Any cost associated therewith shall be at the applicant's expense.
- .06 **BUILDING CODES:** All county, state and federal construction codes shall be followed.
- .07 **USE:** WES shall provide electricity for on-site use by the owner. This does not prohibit an owner from making excess power available for net metering.
- .08 **BUILDING PERMIT:** Before a building permit is issued, the following shall be submitted to the Development Director for review Reference.
  - A. **Site Plan Showing:**



1. Address, email address, and phone number of the property owner;
  2. Parcel lines;
  3. All existing structures with heights clearly marked;
  4. Sanitary infrastructure (i.e., septic field);
  5. Setback measurements;
  6. Easements present on the property, including those for utilities;
  7. Septic field tile location;
  8. Floodplain location, if applicable;
  9. Topography lines (2-foot contours);
  10. Location of all WTGs and associated equipment; and
  11. Location of the electrical disconnect for the WES.
- B. Evidence that the local electric utility has been informed of the customer's intent to install a customer-owned WES.
- C. Evidence that the site plan has been submitted to the local fire protection district.
- D. Evidence that all contact information for site has been provided to Emergency Management.
- E. After a review and acceptance of site plan and required information, a building permit authorizing construction shall be issued.

**SECTION 13 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by deleting Wind Farms, both commercial and non commercial, subject to the requirements of 8.004.230 and 8.004.240 Principal Use in the A-2 (Agricultural Production) District:

8.010.020 PRINCIPAL USES: The following *principal uses* shall be permitted in a Class A-2 District:

- .08 Wind Farms, both commercial and non-commercial, subject to the requirements of 8.004.230 and 8.004.240

**SECTION 14 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding Wind Energy Systems, Commercial, subject to the requirements of 8.004.230 and Solar Energy Systems, Commercial, subject to the requirements of 8.004.210 as Conditional Uses in the A-2 (Agricultural Production) District:

8.010.030 CONDITIONAL USES: The following conditional uses shall be permitted in a Class A-2 District, when authorized in accordance with the requirements of Chapter 8.096:

- .21 Wind Energy Systems, Commercial, subject to the requirements of 8.004.230.

- .22 Solar Energy Systems, Commercial, subject to the requirements of 8.004.210.

**SECTION 15 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by deleting Wind Farms, both commercial and non commercial, subject to the requirements of 8.004.230 and 8.004.240 Principal Use in the A-3 (Riverfront and Agricultural Production) District:

8.012.020 PRINCIPAL USES: The following *principal uses* shall be permitted in a Class A-3 District:

- .06 Wind Farms, both commercial and non-commercial, subject to the requirements of 8.004.230 and 8.004.240

**SECTION 16 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by Solar Energy Systems, Commercial, subject to the requirements of 8.004.210 as Conditional Uses in the A-3 (Riverfront and Agricultural Production) District:

8.012.030 CONDITIONAL USES: The following conditional uses shall be permitted in a Class A-3 District, when authorized in accordance with the requirements of Chapter 8.096:

- .11 Solar Energy Systems, Commercial, subject to the requirements of 8.004.210.

**SECTION 17 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by repealing Wind Farms, Non-commercial, subject to the requirements of 8.004.240 as Conditional Uses in the A-4 (Loess Hills) District and replacing it with Wind Energy Systems, Non-Commercial subject to the requirements of 8.004.230 as Conditional Uses in the A-4 (Loess Hills) District:

8.014.030 CONDITIONAL USES: The following conditional uses shall be permitted in a Class A-4 District, when authorized in accordance with the requirements of Chapter 8.096:

- .17 Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.230.

**SECTION 18 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by repealing Wind Farms, Non-commercial, subject to the requirements of 8.004.240 as Conditional Uses in the R-1 (Agricultural-Urban Transitional) District and replacing it with Wind Energy Systems, Non-Commercial subject to the requirements of 8.004.230 as Conditional Uses in the R-1 (Agricultural-Urban Transitional) District:

8.015.030 CONDITIONAL USES: The following conditional uses shall be permitted in a Class R-1 District, when authorized in accordance with the requirements of Chapter 8.096:

- .12 Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.230.

**SECTION 19 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding Solar Energy Systems, Commercial, subject to the requirements of 8.004.210 as Conditional Uses in the R-1 (Agricultural-Urban Transitional) District:

8.015.030 CONDITIONAL USES: The following conditional uses shall be permitted in a Class R-1 District, when authorized in accordance with the requirements of Chapter 8.096:

- .13 Solar Energy Systems, Commercial, subject to the requirements of 8.004.210.

**SECTION 20 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by repealing Wind Farms, Non-commercial, subject to the requirements of 8.004.240 as Conditional Uses in the R-2 (Urban Transitional) District and replacing it with Wind Energy Systems, Non-Commercial subject to the requirements of 8.004.230 as Conditional Uses in the R-2 (Urban Transitional) District:

8.020.030 CONDITIONAL USES: The following conditional uses shall be permitted in a Class R-2 District, when authorized in accordance with the requirements of Chapter 8.096:

- .11 Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.230.

**SECTION 21 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding Solar Energy Systems, Non-Commercial, subject to the requirements of 8.004.210 and Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.230 as Accessory Uses in the R-5 (Planned Residential) District:

8.035.030 ACCESSORY USES: The following accessory uses shall be permitted in a Class R-5 District:

- .07 Solar Energy Systems, Non-Commercial, subject to the requirements of 8.004.210.
- .08 Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.240.

**SECTION 22 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding Solar Energy Systems, Non-Commercial, subject to the requirements of 8.004.210 and Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.230 as Accessory Uses in the R-6 (Mobile Home Park Residential) District:

8.040.030 ACCESSORY USES: The following accessory uses shall be permitted in a Class R-6 District:

.06 Solar Energy Systems, Non-Commercial, subject to the requirements of 8.004.210.

.07 Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.240.

**SECTION 23 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding Solar Energy Systems, Commercial, subject to the requirements of 8.004.210 as Conditional Uses in the C-1 (Highway Commercial) District:

8.045.030 CONDITIONAL USES: The following conditional uses shall be permitted in a C-1 District, when authorized in accordance with the requirements of Chapter 8.096:

.06 Solar Energy Systems, Commercial, subject to the requirements of 8.004.210.

**SECTION 24 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding Solar Energy Systems, Non-Commercial, subject to the requirements of 8.004.210 and Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.230 as Accessory Uses in the C-1 (Highway Commercial) District:

8.045.040 ACCESSORY USES: The following accessory uses shall be permitted in a Class C-1 District:

.06 Solar Energy Systems, Non-Commercial, subject to the requirements of 8.004.210.

.07 Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.240.

**SECTION 25 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding Solar Energy Systems, Commercial, subject to the requirements of 8.004.210 as Conditional Uses in the C-2 (General Commercial) District:

8.050.030 CONDITIONAL USES: The following conditional uses shall be permitted in a C-2 District, when authorized in accordance with the requirements of Chapter 8.096:

.06 Solar Energy Systems, Commercial, subject to the requirements of 8.004.210.

**SECTION 26 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding Solar Energy Systems, Non-Commercial, subject to the requirements of 8.004.210 and Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.230 as Accessory Uses in the C-2 (General Commercial) District:

8.050.040 ACCESSORY USES: The following accessory uses shall be permitted in a Class C-2 District:

- .06 Solar Energy Systems, Non-Commercial, subject to the requirements of 8.004.210.
- .07 Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.240.

**SECTION 27 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding Solar Energy Systems, Commercial, subject to the requirements of 8.004.210 as Conditional Uses in the C-3 (Commercial Recreational) District:

8.051.030 CONDITIONAL USES: The following conditional uses shall be permitted in a C-3 District, when authorized in accordance with the requirements of Chapter 8.096:

- .08 Solar Energy Systems, Commercial, subject to the requirements of 8.004.210.

**SECTION 28 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding Solar Energy Systems, Non-Commercial, subject to the requirements of 8.004.210 and Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.230 as Accessory Uses in the C-3 (Commercial Recreational) District:

8.051.040 ACCESSORY USES: The following accessory uses shall be permitted in a Class C-2 District:

- .04 Solar Energy Systems, Non-Commercial, subject to the requirements of 8.004.210.
- .05 Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.240.

**SECTION 29 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding Solar Energy Systems, Commercial, subject to the requirements of 8.004.210 as Conditional Uses in the I-1 (Limited Industrial) District:

8.055.030 CONDITIONAL USES: The following conditional uses shall be permitted in I-1 District, when authorized in accordance with the requirements of Chapter 8.096:

- .08 Solar Energy Systems, Commercial, subject to the requirements of 8.004.210.

**SECTION 30 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding Solar Energy Systems, Non-Commercial, subject to the requirements of 8.004.210 and Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.230 as Accessory Uses in the I-1 (Limited Industrial) District:

8.055.040 ACCESSORY USES: The following accessory uses shall be permitted in a Class I-1 District:

- .04 Solar Energy Systems, Non-Commercial, subject to the requirements of 8.004.210.
- .05 Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.240.

**SECTION 31 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding Solar Energy Systems, Commercial, subject to the requirements of 8.004.210 as Conditional Uses in the I-2 (General Industrial) District:

8.060.030 CONDITIONAL USES: The following conditional uses shall be permitted in a I-2 District, when authorized in accordance with the requirements of Chapter 8.096:

- .19 S
  - D. Solar Energy Systems, Commercial, subject to the requirements of 8.004.210.

**SECTION 32 - AMENDMENTS:** That the Pottawattamie County, Iowa, Code, be and the same is hereby amended by adding Solar Energy Systems, Non-Commercial, subject to the requirements of 8.004.210 and Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.230 as Accessory Uses in the I-2 (General Industrial) District:

8.060.040 ACCESSORY USES: The following accessory uses shall be permitted in a Class I-2 District:

- .04 Solar Energy Systems, Non-Commercial, subject to the requirements of 8.004.210.
- .05 Wind Energy Systems, Non-Commercial, subject to the requirements of 8.004.240.

**SECTION 33 - SEVERABILITY:** That should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not



**Other Business**



**Jana Lemrick/Director, Human  
Resources and Steve  
Winchell/Captain, Jail**

**Discussion and/or decision on pay for the Certified  
Medication Aide candidate.**

# Committee Appointments

Update from Board members on Committee meetings from the past week.

**Received/Filed**

# Public Comments

# **Study Session**

**Closed Session**