

ORDINANCE NO. 22

WIND ENERGY DEVICE ORDINANCE O'BRIEN COUNTY, IOWA

Supervisor Farnsworth introduced the following Ordinance No. 22 on May 25, 2010 and asked that it be placed on file and read for the first time.

Furthermore, Supervisor Waund requested that the second and third readings of Ordinance No. 22 be waived, therefore approving and passing the ordinance. Supervisor J. Haack seconded the motion to adopt the ordinance.

AN ORDINANCE ADDRESSING STANDARDS, CONDITIONS, APPLICATION, REVIEW AND APPROVAL FOR THE CONSTRUCTION AND MAINTENANCE OF WIND ENERGY DEVICES WITHIN O'BRIEN COUNTY, IOWA.

WHEREAS, it is deemed advisable and recommended by the O'Brien County Board of Supervisors to create and enforce an ordinance in O'Brien County addressing the construction and ongoing maintenance of wind energy devices proposed to be erected within O'Brien County.

WHEREAS, the O'Brien County Board of Supervisors wishes to adopt and enforce the following wind energy ordinance to better promote the health, safety, and welfare of the county's residents and businesses.

NOW, THEREFORE, BE IT ORDAINED that the Wind Energy Device Ordinance is hereby adopted within O'Brien County, Iowa and includes the following provisions:

Section 1. Purpose. The purpose of this ordinance is to provide for the regulation of owners/developers engaged in the construction, erection, placement, location and maintenance of wind energy devices in O'Brien County; and to preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of a these structures and associated wind energy systems.

Section 2. Jurisdiction. This ordinance is adopted by the O'Brien County Board of Supervisors governing all lands within the unincorporated areas of O'Brien County, Iowa. This ordinance and its provisions shall not apply to those properties or projects occurring within the incorporated cities of O'Brien County.

Section 3. Definitions.

- a. "*Administrator*" - Any person or firm appointed by O'Brien County Board of Supervisors to oversee the permitting and compliance of the Wind Energy Device Ordinance.
- b. "*Owner/Developer*" - shall mean the individual, firm, business or entity that intends to own and operate the wind energy device in accordance with this ordinance.
- c. "*Rotor diameter*" - means the cross sectional dimension of the circle swept by the rotating blades.
- d. "*Total height*" - means the vertical distance from ground level to the tip of a wind generator blade when the tip is at its highest point.
- e. "*Tower*" - means any monopole, freestanding, or guyed structure that supports a wind energy device not intended for residential or personal use.
- f. "*Wind Energy Device*" - means equipment that converts and then stores or transfers energy from the wind into usable forms of energy not intended for residential or personal use. This equipment includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, wire, inverter, batteries or other component used in the system. The term wind energy device often refers to and includes wind towers, wind turbines, wind generators, windmills or other wind energy conversion systems.

- g. “*Meteorological Tower (or Met Tower)*”- means any meteorological, measuring or surveying equipment or devices erected on or attached to any tower, monopole, or guyed structure to verify the wind and weather resources found within a certain area. Meteorological towers are excluded from permitting on both temporary and permanent structures.

Section 4. Wind Energy Device Requirements.

- a. **Setbacks.** Any wind energy device, wind energy towers or meteorological towers shall be set back a distance equal to one hundred twenty percent (120%) of its total height from any public street, public right of way or overhead utility lines; and 1,200 feet from any human occupied dwelling unless written permission is granted by the property owner or governmental entity with jurisdiction over such street, public right-of-way, utilities or human occupied dwelling. A human occupied dwelling is defined as one capable of being occupied for residential purposes. The measurement between the dwelling and wind energy device is to be taken from the nearest point of the human occupied dwelling to the center of the structure’s base. A greater setback may be required to minimize shadow flicker, nuisance noise, and other possible documented effects to humans living in these dwellings. All of this is to be addressed as part of the application by the owner/developer. Wind energy devices may be placed no closer than 500 feet from any unoccupied non-human dwelling structures. An unoccupied non-human dwelling structure is defined as one not capable of being occupied for residential purposes. The measurement is to be taken from the nearest point of the unoccupied non-human dwelling structures to the center of the wind energy device base.
- b. **Public Lands or Waterways.** It is required that the owner/developer have a preliminary review with the Iowa Department of Natural Resources (IDNR) and the O’Brien County Conservation Board early in the planning stages of all wind energy device projects located in O’Brien County. This review will allow the IDNR and/or County Conservation Board to comment and offer suggestions regarding the siting of wind energy devices near wildlife habitats. The review will also allow IDNR staff or the County Conservation Board to identify sensitive environmental concerns near public lands or waters, and to work with the developer(s) to voluntarily identify alternative siting options that minimize negative impacts to environmentally sensitive areas.
- c. **Density or Spacing.** Wind energy device spacing will vary depending on common industry practice and manufacturer specifications. The owner/developers shall consider the public interest and the natural environment, and maintain the intent and purpose of this ordinance.
- d. **Access.** All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- e. **Electrical Wires.** All electrical wires associated with a wind energy device, other than wires necessary to the operation of the wind energy device itself shall be located underground. Transmission lines or high capacity electrical lines from substations transferring cumulative energy resources from a wind energy project shall not be required to be placed underground.
- f. **Lighting.** Wind energy devices shall not be artificially lighted from the ground. The only lighting permitted is that which is required by the Federal Aviation Administration.
- g. **Appearance, Color, and Finish.** Wind energy devices shall remain painted or finished the color or finish that was originally applied by the manufacturer, unless approved otherwise by the O’Brien County Board of Supervisors.
- h. **Signs.** All signs visible from any public roadway, street or highway other than the manufacturer’s or installer’s identification and appropriate warning signs shall be prohibited. Documentation showing any signage is required with the application.
- i. **Code Compliance.** All wind energy devices shall comply with all applicable State of Iowa construction and electrical codes, and the National Electrical Code.
- j. **Utility notification and interconnection.** Wind energy devices that connect to an electric utility shall comply with all local, State of Iowa and Federal regulations regarding the connection of energy generation facilities.

- k. The Board of Supervisors may require additional information as requested and necessary to review applications on a case by case basis.

Section 5. Application and Permit.

An application for a building permit may be initiated by a property owner or authorized agent by filing an application with the O'Brien County Auditor upon forms prescribed for these purposes and available upon request from the County Auditor or as a download from the County Auditor's website. An abstractor's certificate is required, at the time the application is made, showing the names and last known addresses of the owners of all property within 1,200 feet of each proposed wind turbine location for which the permit is requested.

Application for this building permit will be accompanied by a detailed site plan for the wind energy device. A site plan and other such plans and manufacturer's specifications shall show the dimensions, arrangements, descriptive data, site layout and other information essential to an understanding of the use and construction of the proposed wind energy device. The permit application shall also be accompanied by an application fee of \$300.00.

Site plans shall include the following at a minimum:

- Location and number of the proposed wind energy device(s)
- Access points to roads showing construction details typical of all entrances proposed to be built in the public right-of-way.
- Distance to any inhabited or uninhabited buildings within 1,200 feet
- Distance to the nearest wind energy or other tower structures of similar purpose or size
- Leaseholder or ownership details of the building site
- Dimensions of the building site showing distances to surrounding properties
- Construction details of the structure (including manufacturer and model, tower height, tower type, and rotor diameter)
- Tower foundation blueprints or drawings and tower blueprint or drawing
- Site layout, including location of electrical wires, connection points with electrical grid, and related accessory structures.
- The site plan shall be drawn to scale.
- Documentation of land ownership or legal control of the property
- FAA Permit Application

Section 6. Review and Approval.

A building permit shall not be granted by the Board of Supervisors for a wind energy device unless and until the following procedures have been fulfilled:

- a. Pre-application meeting. Whenever a wind energy device, whether singularly or within a group of multiple wind energy devices, is proposed in the jurisdiction of O'Brien County the owner/developer is required to hold a public informational meeting on the proposed development. Within 90 days prior to submitting an application for a wind energy device, a pre-application meeting is required. A public notice of the meeting shall be published in a newspaper of general circulation within the vicinity of the proposed project site as well as published within the official publication(s) of O'Brien County no less than 10 days and no more than 20 days prior to the meeting. The public notice shall include at a minimum the name of the proposed project, a contact person for the project, the location of the project, the time and place of the meeting and a description of the project activities. The owner/developer is responsible in meeting all of these requirements and shall provide documentation to the county that these requirements have been satisfied prior to making application for a building permit.
- b. Agency notice/review. Prior to submitting an application for a wind energy device, the project owner/developer of such structure shall be responsible for in notifying applicable governmental and community agencies of the planned project and allowing each agency 60 days advance notice to do a preliminary review. Documentation of notification of these agencies, and any reports from the agencies are to be provided to the county when the application is submitted. If any agency does not act within 60 days, the plan may be deemed approved by the agency that failed to act upon proof of notice. It is recommended that any issues be addressed prior to the public hearing. O'Brien County staff will discuss with the applicant or owner/developer and establish and agree to a list of the applicable

following agencies to which O'Brien County will require notice from the owner/developer prior to considering an application for a specific wind energy project.

- Federal Aviation Administration
 - U.S. Fish and Wildlife
 - U.S. Department of Agriculture (Local NRCS)
 - Environmental Protection Agency
 - Federal Communications Commission
 - Iowa Department of Transportation
 - Iowa Department of Natural Resources
 - Iowa Utilities Board
 - Office of State Archaeologist
 - O'Brien County Engineer's Office
 - O'Brien County Conservation Board
- c. Within 60 days of receiving the official permit application for a wind energy device, the Board of Supervisors shall schedule a public hearing regarding the building permit request. Notice shall be given to the public no less than 10 days and no more than 20 days prior to the public hearing by publication in the official newspaper(s) of O'Brien County as well as publication in a newspaper within the general vicinity of the proposed project site.
- d. Prior to the public hearing, notice shall be given by ordinary mail to all adjacent property owners and all property owners located within 1,200 feet of each proposed wind energy device for which the permit is requested.
- e. The Board of Supervisors shall determine that it is empowered under this ordinance to grant the building permit;
- f. The Board of Supervisors may prescribe additional appropriate conditions and safeguards in conformity with this ordinance and other ordinances of the county;
- g. A building permit fee of \$1,000 per wind energy device must be received and acknowledged prior to approval of said application by the Board of Supervisors.
- h. A concurring vote in the affirmative of the majority of present members of the Board of Supervisors grants approval of the building permit. Approval of the building permit for a wind energy device shall be valid for a period no longer than two (2) years from the date of such permit, unless construction has commenced or the Board of Supervisors specifically grants a longer period of time for the building permit.
- i. The approval and issuance of a building permit for the construction or installation of a wind energy device under this ordinance shall not relieve any permittee, applicant or owner from compliance with all legal requirements, nor relieve the permittee, applicant or owner of any liability for damage or loss resulting from the placement, construction or maintenance of such wind energy device. O'Brien County assumes no liability whatsoever by virtue of the issuance of a wind energy device building permit.

Section 7. Mitigation of Damages.

In the event there are any damages that occur during construction or maintenance of a wind energy device, the owner/developer shall be fully responsible to mitigate and correct any damages to public or private infrastructure.

- a. Drainage system. The owner/developer of the wind energy device shall remedy any adverse effect on any duly established drainage tile caused by construction or repair of such project.
- b. Roads. Costs of repair from damage or maintenance to county roads, rights-of-way, or any county infrastructure resulting from the construction or repair of wind energy devices shall be the responsibility of the owner/developer of such project. A separate roads agreement which clearly lays out the rights and obligations of the County and the owner/developer with respect to the construction, maintenance and use of roads in connection with the development project will be required prior to permit approval.

- c. Electronic interference. Any electronic devices that existed in the vicinity of wind energy devices prior to the permit application of which are experiencing substantiated interference shall be remedied by the owner/developer of the wind energy device.

Section 8. Discontinuance or Abandonment.

Each application for a wind energy device shall have a decommissioning plan outlining the anticipated means and proposed financing methods adequate to remove such structure(s) upon becoming a discontinued use. Prior to permit approval, a separate decommissioning agreement is required which clearly lays out the rights and obligations of the County and the owner/developer with respect to the management and potential removal of the project or wind energy devices at the end of their lifetime.

Section 9. Penalty.

It shall be unlawful for any person to construct, install, or operate a wind energy device that is not in compliance with this ordinance. Any such wind energy device installed prior to the adoption of this ordinance is exempt. The Administrator or other representative of O'Brien County may enter any property for which a permit has been issued under this ordinance to conduct an inspection to determine whether the conditions stated in the permit have been met.

Any person who fails to comply with any provision of this ordinance shall be deemed a county infraction and punishable by a civil penalty of not less than \$100 but not to exceed \$750.00 plus court costs for the first offense and not less than \$100 but not to exceed \$1,000.00 plus court costs for each repeat offense. O'Brien County may seek all relief prescribed by State law for county infractions. The O'Brien County Auditor and the O'Brien County Attorney and his or her assistants are the officers authorized to enforce this ordinance by issuance of civil citations for county infractions. Each wind energy device determined to be in violation will be considered a separate infraction. Each day that a violation occurs or continues to exist constitutes a separate offense.

INTERPRETATION OF REGULATIONS.

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements. Where this ordinance imposes a greater restriction than is imposed or required by other provisions of law, other rules, regulations, or ordinances, the provisions of this ordinance shall govern. This ordinance is not intended to abrogate or annul any easement, covenant or other private agreement provided that where any provision of this ordinance is more restrictive or imposes a higher standard or requirement than such easement, covenant or other private agreement, the provision of this ordinance shall govern.

REPEAL AND SAVINGS CLAUSE.

Effective on the effective date of this ordinance, all ordinances or parts of ordinances previously adopted by O'Brien County which are in conflict with the provisions of this ordinance, or amendments thereto, are hereby repealed. The repeal of said ordinance shall not have the effect to release or relinquish any penalty, forfeiture or liability incurred under said ordinance or any part thereof, and such ordinance and all parts thereof shall be treated as still remaining in force for the purpose of instituting or sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability.

VALIDITY AND SEVERABILITY CLAUSE.

Should any section, provision or any part of this ordinance, or amendments thereto, be declared by a court of competent jurisdiction to be invalid or unconstitutional, such ruling shall not affect the validity of the ordinance as a whole or provision or part thereof not specifically included in said ruling.

EFFECTIVE DATE.

This ordinance shall be in full force and effect from and after its adoption and publication as required by law and as provided for in the Code of Iowa or amendments thereto.

ADOPTION.

Passed and approved this 25th day of May, 2010.

Chairperson, O'Brien County Board of Supervisors

Attest:

O'Brien County Auditor

I hereby certify that on the following dates the foregoing was published as Ordinance No. 22 in O'Brien County, Iowa.

NW Iowa Review

Sheldon Mail-Sun

Hartley Sentinel