

IN THE IOWA DISTRICT COURT FOR CLINTON COUNTY

<p>RICK WHITE, RICHARD J. KROGMANN, KENNETH O’CONNOR, TOM STEVENSON, BRENT BUECH and ELIZABETH BUECH,</p> <p>Plaintiffs,</p> <p>v.</p> <p>BOARD OF SUPERVISORS OF CLINTON COUNTY, IOWA,</p> <p>Defendant,</p>	<p>Case No. _____</p> <p><b>PETITION FOR WRIT OF CERTIORARI</b></p>
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COMES NOW, the Plaintiffs, by and through their attorney, Mitchell Kunert of Nyemaster Goode, P.C., and for their Petition for Writ of Certiorari against the Defendant, Board of Supervisors of Clinton County, Iowa, states to the Court as follows.

**PARTIES & JURISDICTION**

1. Plaintiff Rick White is an individual who resides in Clinton County, Iowa.
2. Plaintiff Richard J. Krogmann is an individual who resides in Clinton County, Iowa.
3. Plaintiff Kenneth O’Connor is an individual who resides in Clinton County, Iowa.
4. Plaintiff Tom Stevenson is an individual who resides in Jackson County, Iowa.
5. Plaintiffs Brent Buech and Elizabeth Buech are individuals and a married couple who reside in Clinton County, Iowa.
6. Defendant Board of Supervisors of Clinton County, Iowa (“Board”) is vested to exercise the authority and duties delegated to Clinton County by the Iowa General Assembly pursuant to Iowa Code Chapter 331.

7. The Plaintiffs are personally interested in the requests for relief contained within this Petition.

8. Jurisdiction and venue for this Petition for Writ of Certiorari are appropriate in this Court pursuant to Iowa Code Chapter 335 and Iowa Rules of Civil Procedure 1.1401, et seq.

9. Venue is proper in Clinton County as all of the material events involved actions by the Board and occurred in Clinton County, Iowa.

**PETITION FOR WRIT OF CERTIORARI**

10. Plaintiffs incorporate Paragraphs 1-9 of this Petition for Writ of Certiorari as though fully set forth herein.

11. This case concerns illegal acts and omissions of the Board to faithfully exercise its duties.

12. The Plaintiffs are Clinton County residents, except for Tom Stevenson, who resides in Jackson County, but who owns real property in Clinton County, who have signed voluntary easements to involve their land in Clinton County Wind, LLC's ("CCW") commercial wind energy project (the "Project") in Clinton County (the "County").

13. CCW began working with interested landowners in the County in late 2019 and early 2020.

14. Since that time, CCW had invested millions of dollars in the County with its comprehensive development initiative to permit a wind project in the County.

15. The County had previously adopted a Commercial Wind Energy Conversion Systems ordinance as section 4.2.16 of the Clinton County, Iowa Zoning Ordinance ("Ordinance").

16. At its December 15, 2025 meeting, by a 2-1 vote, the Board adopted an amendment to the Ordinance (“Amendment”). A copy of the Amendment as it currently appears in the Board’s minutes is attached hereto as Exhibit 1 and incorporated herein by this reference.

17. The Amendment was filed in the office of the Board on December 27, 2025.

18. The Amendment is subject to Iowa Code Chapter 335 entitled “County Zoning.”

19. Iowa Code section 335.5 establishes required procedures and notice requirements for amending the Zoning Ordinance.

20. Iowa Code Chapter 331 (the “Home Rule Statute”) delineates the powers, responsibilities and required procedures for Iowa counties and their Boards of Supervisors and other officers.

21. According to the Amendment, the purpose of the Ordinance is to establish minimum requirements and regulations of an applicant, developer, owner, or operator engaged in the construction, erection, placement, location, maintenance, modification, and operation of large-scale industrial wind energy projects in Clinton County.

22. In enacting the Amendment, the Board failed to consider and disregarded:

- a. The advice of the Clinton County Attorney regarding improper procedures by the Board and the validity of some of the terms of the Amendment;
- b. That the Amendment would prevent any new commercial wind development in the County;
- c. Science-based studies conducted by industry experts in their respective fields provided by CCW to the Board;
- d. Best practices and standards related to some of the terms of the Amendment.

- e. Recommendations and parameters for environmentally-safe wind development from the Federal Aviation Administration (the “FAA”), the U.S. Army Corps of Engineers (the “Corps”), U.S. Fish and Wildlife Service (“USFW”), and the Iowa Department of Natural Resources (the “DNR”);
- f. The adoption of reasonable evidenced-based terms for the Amendment;
- g. Public’s right to comment on the Amendment at the meetings; and
- h. The rights of the Plaintiffs and others who have signed voluntary easements for the Project to use their property for legal purposes.

23. The Amendment provides for setback distances for a commercial wind energy conversion system at a distance of ten (10) miles from the west bank of the Mississippi River and five (5) miles from the north bank of the Wapsipinicon River with no waivers permitted.

24. These setbacks are much farther than required by governmental authorities and leave only the north central portion of the County potentially available for commercial wind development.

25. The Amendment also contains additional setbacks from riparian corridors, wetlands, conservation areas, and eagle nests, which further diminishes the area available for commercial wind development.

26. These setbacks are substantially more restrictive than those recommended by the Corps, the DNR, and the USFW.

27. The Amendment includes a municipality setback of two miles versus the one mile requested by CCW.

28. The Board failed to consider and address how the Amendment’s more restrictive setbacks are reasonable and related to protecting the public welfare and interest.

29. The inclusion of these setbacks in the Amendment are arbitrary and not reasonably related to protecting the public health, safety and welfare, but instead diminish the area in Clinton County available for commercial wind development.

30. The Amendment also includes the following provisions, which are arbitrary and capricious, and therefore, illegal:

- a. Operation and Maintenance Plan. Despite reasonable requests to do so, the Board did not revise the Amendment to allow for confidential information to be redacted from Operation and Maintenance Plans. Otherwise, projects would be forced to disclose this confidential information to the County. The Board's failure to provide this option is not based on any rational reason and is arbitrary and capricious.
- b. Participating and Non-Participating Setbacks. Despite requests to lower the distance of the setbacks to reasonable lengths, the Board refused to change the setback lengths in the Amendment to reasonable lengths. The current setback lengths are not based on any rational reason and are arbitrary and capricious.
- c. Sound Limit. Initially, the Amendment contained a sound limit of 40 dBA, which is unreasonably low. Requests were made to increase that number to 50 dBA, which is standard in the industry. The Board refused to do so and instead, increased that number to 47 dBA in the Amendment. The 50 dBA sound limit is standard in the industry, has been adopted by multiple other counties, and appropriately balances noise concerns with potential wind development. The Board's decision to increase the sound limited only to 47 dBA was not based on any rational reason and is arbitrary and capricious.

- d. Shadow Flicker Limit. Requests were made to set that limit at no more 30 hours per year and no more than 30 minutes per day at human occupied structures, both of which are standard in the industry. Instead, the Board decided to set that limit at no more than 30 hours per year and no more than 30 minutes per day at non-participating dwellings, schools, hospitals, churches, or public libraries, even if such structures are not human-occupied.
- e. Catastrophic Events. Requests were made to revise the Amendment to allow the 10% decommissioning funds to be used by the Applicant/Developer/Owner/Operator be used for a catastrophic event instead of requiring additional funds be provided. For no rational reason, the Board refused to revise the Amendment regarding these funds. As such, the Board's refusal to revise the Amendment is arbitrary and capricious.

31. Iowa law also requires an amendment to an ordinance to be considered and voted on for passage at two meetings prior to the meeting at which the ordinance amendment is passed unless votes are waived by the Board.

32. A public hearing on the Amendment was held on November 24, 2025, in which concerns were presented about the terms of the Amendment.

33. Those concerns fell on the Board's deaf ears.

34. The Board also did not give the public adequate opportunity to comment at the meetings in which the Amendment was discussed.

35. At the December 8, 2025 first reading of the Amendment, one of the Board's Supervisors and acting chair, cut off the discussion of the terms of the proposed Amendment and possible changes to those terms.

36. At the December 10, 2025 Board meeting, the entire proposed Amendment was not read into the record and had it been, the attendees would have been informed that certain language approved at the December 8 meeting had not been added to the Amendment.

37. The Board was well aware of the importance of the Amendment to the citizens of Clinton County and CWW, but rather than thoroughly consider and present the Amendment, the Board rushed through the process despite taking a vote on the Amendment at that meeting.

38. The Board is obligated to be deliberative and thoughtful in its considerations and decisions that impact Clinton County and the Board failed to fulfill that obligation.

39. The Board also acted contrary to Iowa law, which provides that its Iowa's policy of encouraging wind development and other renewable power generation.

40. When enacting this law, the General Assembly intended to encourage the development of rural power to meet local electricity needs and to provide economic benefits to Iowa citizens.

41. Rather than encourage wind development projects in Clinton County, the Amendment improperly and illegally prevents such projects.

42. As drafted, the Amendment essentially prohibits and prevents any wind development project in the County.

43. The Board acted illegally and its enactment of the Amendment was unreasonable, arbitrary and capricious.

44. The Board relied on non-scientific and arbitrary terms provided by wind energy opponents.

45. The adoption of the Amendment by the Board violates the requirements of uniformity and adherence to a comprehensive plan of Iowa Code sections 335.4 and 335.5.

46. The Board's adoption of the Amendment is not supported by substantial evidence and/or is unreasonable, arbitrary or capricious, and, as such, is illegal.

47. The Amendment is inconsistent with the spirit and design of the zoning statutes.

48. The actions of the Board may not stand.

49. The Amendment also constitutes a taking of private property by the government without just compensation in violation of both the Iowa and federal constitutions.

50. One of the founding principles in the United State is the right to own real estate, including the right to possess, use, transfer, exclude others, and to control one's property.

51. Control of property includes the right to use your property for any legal purpose.

52. All of the landowner easements that were entered into by the Plaintiffs for the Project were entered into voluntarily.

53. When a government action is substantially out of proportion to the purpose and importance of the regulatory regime, a taking occurs.

54. The Amendment denies the Plaintiffs reliable revenue from their land.

55. By enacting the arbitrary and capricious Amendment, the Board has engaged in the taking of private property in violation of both the federal and Iowa constitutions.

WHEREFORE, the Plaintiffs Rick White, Richard J. Krogmann, Kenneth O'Connor, Tom Stevenson, Brent Buech and Elizabeth Buech pray a Writ of Certiorari be issued by the Court and order the return of said Writ and following the return of said Writ, declare that Defendant Board of Supervisors of Clinton County, Iowa acted illegally by enacting the Amendment and declare that the Amendment placed up on the record is illegal and void, and for such other and further relief as the Court deems just and equitable under the circumstances



/s/ Mitchell R. Kunert

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**ATTORNEYS FOR PLAINTIFFS**

**VERIFICATION**

I, Richard J. Krogmann, have been duly authorized by the other individual Plaintiffs in this matter to verify this Petition for Writ of Certiorari on behalf of all of the Plaintiffs and, therefore, I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct.

Richard J Krogmann  Date: 2026.01.26  
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Richard J. Krogmann, on behalf of myself  
and the other Plaintiffs