

**IN THE IOWA DISTRICT COURT  
IN AND FOR  
FREMONT COUNTY**

DANNY JENNINGS; SHELLEY  
JENNINGS; KRISTEN THATCHER;  
STEPHEN THATCHER; IDA VAN  
SCYOC; AND TANDON VAN SCYOC

Petitioners,

v.

FREMONT COUNTY, IOWA; BOARD  
OF SUPERVISORS OF FREMONT  
COUNTY, IOWA; CLINT  
BLACKBURN; CHRIS CLARK; RANDY  
HICKEY; AND DUSTIN SHELDON

Respondents.

Case No. \_\_\_\_\_

**PETITION  
FOR  
DECLARATORY JUDGEMENTS,  
TEMPROARY & PERMANENT  
INJUNCTIONS  
WRITS OF CERTIORARI,  
ORDERS OF MANDAMUS,  
AND  
REMEDIES FOR VIOLATIONS OF THE  
IOWA OPEN MEETINGS ACT  
(Jury Trial Requested)**

COMES NOW the above named Petitioners, by and through the undersigned counsel, and petitions this Court for the relief at law and at equity for the Declaratory Judgments, Temporary and Permanent Injunctions, Writs of Certiorari, Orders of Mandamus, Remedies for Violations of the Iowa Open Meetings Act, and such other legal and equitable relief to which the Petitioners may be entitled at law or in equity, and would show the Court as follows:

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**I. PARTIES**

1. Each Petitioner identified in the caption of this Petition is a resident of Fremont County, and/or owns or leases real property within the “footprint” of the proposed commercial wind turbine project described in this Petition.
2. The Respondents identified in the caption to this Petition are identified below and referred to herein jointly as the “Fremont County Respondents”:
  - a. Fremont County (“County”) is an Iowa county subject to home rule power and authority under Article III, Section 39A of the Iowa Constitution, and may be served under Iowa Rule of Civil Procedure 1.305(9) by service upon the Fremont County Auditor or upon the Chair of the Fremont County Board of Supervisors, each at 506 Filmore Street, Sidney IA 51652.
  - b. The Board of Supervisors of Fremont County (“Board”) is vested to exercise the authority and duties delegated to the County by the Iowa general assembly pursuant to Iowa Code Chapter 331, and may be served under Iowa Rule of Civil Procedure 1.305(13) by service upon the presiding officer, secretary or clerk of the Fremont County Board of Supervisors, each at 506 Filmore Street, Sidney IA 51652.
  - c. Clint Blackburn (“Blackburn”) is a resident of Fremont County and a member of the Fremont County Board of Supervisors and may be served at 506 Filmore



**II. JURISDICTION AND VENUE**

6. This Court has general jurisdiction and original jurisdiction over all actions, proceedings, and remedies, and is empowered to hear all cases in law and equity under Iowa Const. art. V, § 6 and Iowa Code § 602.6101.
7. This Court has jurisdiction to issue orders of mandamus and related injunctions pursuant to Iowa Code Chapter 661.
8. This Court has jurisdiction to issue writs of certiorari and related stays pursuant to Iowa R. Civ. P. 1.1404 & 1.1405.
9. The Court has jurisdiction and authority to issue declaratory judgments under Iowa R. Civ. P. 1.1101.
10. The Court has personal jurisdiction over all Respondents as each is one or more of the following: (i) an Iowa county; (ii) an organization, elected representative, officer, or employee of Fremont County; or (iii) a resident of Fremont County.
11. Venue is proper in Fremont County as all of the material events involved actions by Fremont County and its Board of Supervisors, and occurred in Fremont County.

**III. FACTS COMMON TO ALL CLAIMS**

**A. Overview**

12. All injunctive claims set forth herein are at equity. All statutory and common law claims set forth herein are at law. All declaratory judgment claims are at both law and equity.
13. This case concerns illegal acts and omissions of Respondents to faithfully exercise their duties as members of the Board of Supervisors of Fremont County.
14. As used herein, “Invenergy” means Invenergy, LLC, Shenandoah Hills Wind Project, LLC (“SHW”), Invenergy MET, LLC, Invenergy Services, LLC, Invenergy

Wind Development, LLC, and their affiliates, agents, employees, contractors, and owners.

15. The Petitioners allege the Respondents conduct constituted illegal collusion and an illegal intra- & interstate enterprise formed among Respondents and Invenergy (including each of their representatives, agents, and staff (the “Enterprise”)).
16. The Enterprise engaged in more than one predicate act involving undue influence of public officials and self-dealing among those within the Enterprise.
17. The Respondents were threatened, or were aware of threats made to other Iowa counties, with litigation by Invenergy if the Board did not capitulate to the demands of Invenergy in its attempts to develop a wind energy project in Fremont County.
18. The “threat of litigation” was then used by the Respondents as justification to refuse amendments to ordinances, or to justify failing to require additional information and conduct reasonable fact finding prior to taking action.
19. Respondents knowingly, and intentionally, cooperated with Invenergy for the benefit of the Enterprise.
20. The goal of the Enterprise is to provide Invenergy exclusive access to wind assets available in Fremont County, and the profits therefrom, to be distributed by Invenergy in its discretion, to benefit of members of the Enterprise.

**B. Relevant County Ordinances**

21. In 1968, Fremont County adopted a “comprehensive land use plan for the unincorporated areas of Fremont County” entitled zoning and subdivision ordinances (the “Zoning Ordinance”).
22. A copy of the Zoning Ordinance as it currently appears in the official records of the County is attached as Exhibit A hereto, the terms of which are incorporated herein

by this reference.

- 23.** The Zoning Ordinance is subject to Iowa Code Chapter 335 entitled “County Zoning.”
- 24.** Section 6.A. of the Zoning Ordinance prohibits any building, structure or land to be used, occupied, erected, constructed, reconstructed, moved or structurally altered unless in conformity with all of the regulations contained in the Zoning Ordinance applicable to the particular zoning district.
- 25.** Section 6.B. of the Zoning Ordinance prohibits buildings and structures to exceed the height limitations contained in the regulations applicable to the particular zoning district.
- 26.** Section 9.A. of the Zoning Ordinance defines, by category, the principal “permitted uses” of land in the Agricultural District of the County.
  - a.** Electric power generation facilities are not included in Section 9.A. as a permitted use of land in the Agricultural District of the County.
  - b.** Commercial wind energy conversion systems (“C-WECS”) are not included in Section 9.A. as a permitted use of land in the Agricultural District of the County.
- 27.** Section 9.C. of the Zoning Ordinance provides that no building built upon land in the Agricultural District may exceed “two and one-half stories or thirty-five feet (35’) in height, except as provided in Section 14.”
  - a.** Section 14 of the Zoning Ordinance provides a list of specific exceptions to the height limitations.
  - b.** Electric power generation facilities and C-WECS are not included within the specific exceptions to the height limitations contained in Section 14 of the



Zoning Ordinance.

28. Section 14 of the Zoning Ordinance also provides for specified “special uses” of land in the Agricultural District to be approved upon application and completion of the specified process.
29. Section 18 of the Zoning Ordinance establishes specific procedures and processes for amending the Zoning Ordinance.
30. Iowa Code § 335.5 establishes required procedures and notice requirements for amending the Zoning Ordinance.
31. 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.
32. Iowa Code § 331.302(4) establishes binding requirements on the County and its Board for required specificity of amendments, and ordinance publication requirements, for amendments to existing ordinances to be legally and validly adopted.
33. Iowa Code § 331.302(4) provides:

An amendment to an ordinance or to a code of ordinances shall specifically repeal the ordinance or code, or the section, subsection, paragraph or subpart to be amended, and shall set forth the ordinance, code, section, subsection, paragraph or subpart as amended.
34. In 2001, the County adopted Ordinance No. 2001-1 entitled “An Ordinance Amending Ordinance No. 1 ‘Zoning Ordinance for the Unincorporated area of Fremont County, Iowa’ to Provide for a Non-Refundable Fee for all Special Use Permit Applications under Section 14, and to Provide for a Special Permit Application Form and Procedure for Proposed Wireless Telecommunication

Service Provider Sites” (the “Cell Tower Ordinance”).

- a.** A copy of the Cell Tower Ordinance as it currently appears in the official records of the County is attached as Exhibit B hereto, the terms of which are incorporated herein by this reference.
  - b.** The Cell Tower Ordinance specified those specific additions and deletions made to the Zoning Ordinance through use of text to show material added to, and underlined text to show material deleted from, the Zoning Ordinance.
  - c.** The Cell Tower Ordinance specifically amended Section 14 of the Zoning Ordinance regarding special uses, and added a specific height limitation of 320 feet for approved cell towers.
  - d.** The Cell Tower Ordinance specifically set forth the amended sections of the Zoning Ordinance as amended.
  - e.** The process and method for amending the Zoning Ordinance demonstrated in the Cell Tower Ordinance complied with the amendment requirements in Section 14 of the Zoning Ordinance and Iowa Code § 331.302(4).
- 35.** On June 24, 2020, the County adopted Ordinance #2020-1 entitled “An Ordinance Regulating the Construction, Installation and Maintenance of Wind Energy Conversion Systems and Addressing the Standards and Conditions thereof Within Fremont County, Iowa” (the “Wind Ordinance”).
  - a.** The Wind Ordinance became effective on August 12, 2020.
  - b.** A copy of the Wind Ordinance as it currently appears in the official records of the County is attached as Exhibit C hereto, the terms of which are incorporated herein by this reference.

- c.** The Wind Ordinance published by the County on its website, and contained in the County records are identical to Exhibit C.
- d.** The footer of the document attached as Exhibit C indicates that the document should be 22 pages long.
- e.** The document attached as Exhibit C is only 14 pages long.
- f.** The County has failed to publish and make public all of the provisions of the document purporting to be the Wind Ordinance.
- g.** The document attached as Exhibit C does not contain any attachments.
- h.** The document attached as Exhibit C does not contain any form agreements.
- i.** The document attached as Exhibit C does not contain any forms of application for building permits.
- j.** The Wind Ordinance makes no reference to the Zoning Ordinance.
- k.** The Wind Ordinance does not refer to any use or height limitations contained in the Zoning Ordinance.
- l.** The Wind Ordinance does not indicate in any manner that it is an amendment to the Zoning Ordinance, or any section, subsection, or part of the Zoning Ordinance.
- m.** The Wind Ordinance did not follow the requirements of Iowa Code § 331.302(4) to serve as an amendment to the Zoning Ordinance.
- n.** The Wind Ordinance did not follow the requirements of the Zoning Ordinance for approving amendments to the Zoning Ordinance.
- o.** The Wind Ordinance did not follow the pattern established by the County for amending the Zoning Ordinance as reflected in the Cell Tower Ordinance.

- p.** Between the Board’s adoption of the Cell Tower Ordinance in 2001 and the Wind Ordinance in 2020, the County adopted only 12 other ordinances.
  - q.** The form and process for the Cell Tower Ordinance amending the Zoning Ordinance was easily known to the Board when it adopted the Wind Ordinance.
  - r.** The Wind Ordinance did not amend, modify or repeal the permitted uses, special uses, or height restriction contained in the Zoning Ordinance.
- 36.** Iowa Code § 335.24 “Conflict with other regulations.” provides, with context as to the ordinances in this case added, as follows:

If the regulations made under this chapter [Zoning Ordinance] require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation [Wind Ordinance], the regulations made under this chapter [Zoning Ordinance] govern.

- 37.** Because the Wind Ordinance did not amend the Zoning Ordinance, under Iowa Code § 335.24 the more restrictive terms of the Zoning Ordinance apply over the less restrictive terms contained in the Wind Ordinance.

**C. Wind Ordinance Adoption**

- 38.** The first reading of the proposed Wind Ordinance occurred on May 13, 2020, only two months after the start of the pandemic “lock-down.”
- 39.** The minutes of the May 13, 2020 Board meeting do not reflect the origin of the proposed Wind Ordinance, or the original drafter of the proposed Wind Ordinance.
- 40.** The “second reading” of the proposed Wind Ordinance occurred at the Board Meeting on June 10, 2020.

- a.** The terms and conditions of the proposed Wind Ordinance on June 10, 2020 were not the same as the terms and conditions of the proposed Wind Ordinance discussed at the May 13, 2020 meeting.
  - b.** Representatives of Invenergy were present at the June 10, 2020 meeting.
  - c.** Representatives of Invenergy represented that the project being considered would bring \$52,000,000 to the County.
  - d.** The County has never engaged in its own financial analysis of the proposed project.
  - e.** The County has never engaged an independent financial analysis source to review the financial representations made by Invenergy.
  - f.** The Board relied solely on Invenergy for its financial information related to the Invenergy project plead below.
- 41.** The “third reading” of the proposed Wind Ordinance occurred at the Board Meeting on June 24, 2020.
  - a.** According to the Board minutes, “The board thanked Invenergy for making the suggested changes in the setbacks.”
  - b.** Upon information and belief, Invenergy drafted all, or portions material to the regulations (e.g. setback requirements), of the proposed Wind Ordinance either directly, through its agents, or by providing the Board a proposed ordinance or portions material to the regulations of the ordinance, or by providing the Board all or portions of ordinances Invenergy had drafted in one or more other counties.
  - c.** The terms and conditions of the proposed Wind Ordinance on June 24, 2020 were not the same as the terms and conditions of the proposed Wind

Ordinance discussed at the May 13, 2020 meeting or at the June 10, 2020 meeting

- d.** Invenergy representatives were present at the June 24, 2020 meeting.
  - e.** The minutes reflect that the Invenergy representatives were explaining the terms and conditions of the proposed Wind Ordinance to the public.
  - f.** The proposed Wind Ordinance was adopted on a 3-0 vote of the supervisors.
- 42.** Iowa Code § 331.302(6)(a) requires that “a proposed ordinance or amendment shall be considered and voted on for passage at two meetings of the board prior to the meeting at which it is finally passed, unless this requirement is suspended by a record vote of not less than a majority of the supervisors.”
- 43.** In connection with the adoption of the Wind Ordinance, the requirements of Iowa Code § 331.302(6)(a) were not suspended by a recorded vote of a majority of the Board.
- 44.** The Wind Ordinance as adopted on June 24, 2020 was not read and voted on at two meetings of the Board prior to its adoption.
- 45.** Different versions of a proposed Wind Ordinance were considered at three meetings, not the same version at three meetings.
- 46.** The Board did not take preliminary votes on the proposed ordinance at the May 13, 2020 or June 10, 2020 meetings.
- 47.** In adopting the Wind Ordinance, the County failed to substantially comply with the procedures required by Iowa Code § 331.302(6)(a).
- 48.** Pursuant to Iowa Code § 331.301(5), the Board lacks power and authority to take action when the procedures used fail to substantially comply with procedures established by Iowa statute.

- 49.** The Board was without statutory power to adopt the Wind Ordinance in violation of the requirements of Iowa Code § 331.302(6)(a).
- 50.** The facts surrounding the adoption of the Wind Ordinance in Fremont County substantially differ from the facts surrounding the adoption of the wind turbine regulations in Palo Alto County approved by the Iowa Supreme Court in *Mathis v. Palo Alto Cnty. Bd. of Supervisors*, 927 N.W.2d 191 (Iowa 2019).
- a.** In *Mathis*, Invenergy approached the Palo Alto County planning and zoning administrator inquiring about the county's wind turbine regulation. *Id.* at 193.
  - b.** In this case, the Fremont planning and zoning administrator was not involved.
  - c.** In *Mathis*, the County Planning and Zoning Commission believed more detailed terms addressing wind turbines were needed in Palo Alto County's zoning ordinance. *Id.* at 193-4.
  - d.** In this case, the County Planning and Zoning Commission was not involved in the process, and the Zoning Ordinance was not amended.
  - e.** In *Mathis*, the Palo Alto County Attorney worked the first half of the year drafting a new zoning ordinance.
  - f.** In this case, the County Attorney did not draft the Wind Ordinance, the Wind Ordinance is not a zoning ordinance, and six-months were not devoted to the task.
  - g.** In this case, the County took and accepted a draft, or material portions, of the Wind Ordinance from Invenergy, or its agents.
  - h.** In *Mathis*, the proposed new ordinance was first presented to the Planning

and Zoning Commission for public hearing. *Id.*

- i.** In this case, the County Planning and Zoning Commission never reviewed or held public hearings on the proposed Wind Ordinance.
- j.** In *Mathis*, Invenergy commented upon the original proposal drafted by the County Attorney, and then the County Attorney drafted a modified ordinance incorporating a number, but not all, of the suggestions received from Invenergy. *Id.* This modified version of the zoning ordinance was then read three times and passed. *Id.*
- k.** In this case, the County commented on Invenergy’s draft.
- l.** In this case, a final version of the Wind Ordinance was not read three times.
- m.** In *Mathis*, the ordinance specifically amended the Palo Alto Zoning Ordinance.
- n.** In this case, the Wind Ordinance did not amend the Fremont County Zoning Ordinance.
- o.** Unlike in *Mathis*, and *Montgomery v. Bremer County Board of Supervisors*, 299 N.W.2d 687 (Iowa 1980) cited by *Mathis*, in this case, the Board did “rubber stamp” the requests from Invenergy, and even thanked Invenergy for drafting the setback provisions.

**D. SHW Application under the Wind Ordinance**

- 51.** On or about March 23, 2022, SHW submitted an application dated February 16, 2022 (with exhibits) proposing a C-WECS project to be built partially in Fremont County (the “Application”).
- 52.** The Application plan included the construction of 33 wind turbines on land in the Agricultural District of Fremont County.



53. A copy of the WECS Application submitted by SHW, without its exhibits, is attached as Exhibit D.
54. Pursuant to Wind Ordinance Section 4.B. the application was submitted to the Fremont County Engineer. The Fremont County Engineer reviewed the Application for two months, determined the Application met the requirements of the Wind Ordinance, and submitted the Application and supporting documents to the Board of Supervisors.
55. The Application was not reviewed by the Fremont County Board of Adjustments.
56. SHW has not submitted a request for a special use authorization under the Zoning Ordinance for any components of the WECS described in the Application.
57. SHW did not submit a request for a variance from the height limitations within the Zoning Ordinance for any components of the WECS described in the Application.
58. Citizens of Fremont County made on the record statements against the approval of the Application at Board meetings held throughout March 2022 through July 2022, including advising the Board of deficiencies in the Application. These deficiencies brought to the Board's attention included, but were not limited to, the following:
  - a. SHW's failure to identify at all, or to accurately locate on its submitted map showing compliance with setback requirements (Exhibit B to the Application), more than ninety occupied properties, and that several of the proposed turbines failed to satisfy the setback requirements from these missing or inaccurately identified site locations of these structures in violation of the Wind Ordinance setback requirements.
  - b. SHW declaring inhabited homes, in good condition, as dilapidated and excluded from the setback map, and declaring dilapidated, unoccupied

homes as occupied on the setback map.

- c.** SHW's failure to comply with the requirement of Wind Ordinance Section 4.A.9 of identify all conservation areas within a two-mile radius of participating property. Conservation areas that were constructed or developed with the use of public funds, including crop reduction program grounds, water sheds (used by migratory birds), known raptor nests, and terraces and tiling used for erosion control which potentially could be damaged by the project were not fully disclosed.
- d.** SHW's failure to include at least a mile of territory immediately north of the Iowa-Missouri border in its submitted site map.
- e.** The failure of SHW to properly complete the site map, and the Board's refusal to require corrections is indicative of SHW's lack of study and effort, and the lack of the Board exercising its proper role and fulfilling its duties to evaluate the facts and representations made in the Application.
- f.** The failure of SHW to comply with the Iowa Department of Natural Resources recommendations for study of habitats of rare, threatened and endangered species (e.g. monarchs, northern long-eared bat, Indiana bat), raptors (such as eagles), and migratory birds that pass through the area.
- g.** The refusal of SHW to submit copies of environmental impact studies and provide only conclusory statements and summaries without supporting data or information as to results of any studies actually undertaken.
- h.** The lack of specific requirements in the Wind Ordinance or in conditions of the Application approval identifying the terms, conditions, and security for funding road repairs and turbine decommissioning.

- i.** The Board stating it was allowing Invenergy to draft road use and decommissioning agreements. The Board stating that the road use and decommissioning agreements were discussed with Invenergy prior to approval of the Application indicates the Board is rubber-stamping Invenergy's demands.
  - j.** The Board lacked independent financial analysis of the project.
  - k.** The Board lacked independent engineering and site selection analysis.
- 59.** The public raised concerns that members of the Board were conflicted given their personal construction, road, ditch, levee, rock hauling, and similar business that could benefit from the plan described in the Application.
- 60.** The public questioned whether the Board reviewed the ordinances it passes or whether the Board simply passes what is provided to them by private interests. The public used the example of the solar ordinance adopted by Fremont County which (i) contained the words "Page County" in the text of the ordinance and (ii) and referred to "wind energy devices" in the solar ordinances violations and penalties provisions.
- 61.** Representatives of Invenergy attended most of the Board meetings during June and July 2022 at which the Application was discussed.
- 62.** On July 13, 2022, the Application was approved by the Board on a 3-0 vote without any required amendments or supplements to address the known deficiencies, no statement of the required terms and conditions of road use or decommissioning agreements, and no specific requirements or conditions to the approval.
- 63.** Representatives of Invenergy, including lawyers from their outside counsel's firm, were present at the July 13, 2022 meeting.

## E. Road Use and Decommissioning Agreements

**64.** Section 7 of the Wind Ordinance provides:

Costs of repair from damage or maintenance of County roads, rights of way, drainage systems, or any other County infrastructure resulting from construction, operation, repair, or removal of a WECS, WED, or MET shall be the responsibility of the Owner/Developer/Operator. A separate agreement which clearly lays out the rights and obligations of the County and the Owner/Developer/operator with respect to the construction, maintenance, and use of County roads in connection with the development of a WECS will be required prior to the start of construction by the Owner/Developer/Operator of any WEDs and related devices and equipment and distribution and collection facilities comprising a WECS or the installation of a MET.

**65.** Section 8 of the Wind Ordinance provides:

Prior to the Owner/Developer/Operator commencing the construction and/or installation of a Wind Energy Conversion System or a Meteorological Tower, the Owner/Developer/Operator shall enter into a decommissioning agreement for the WECS with Fremont County outlining the anticipated means and cost of removing each WED and/or MET, and all associated structure and infrastructure, net of salvage value, at the end of its serviceable life or upon becoming a discontinued use. The Owner/Developer/Operator will obtain a cost estimate to be made by a professional engineer licensed in the State of Iowa. The decommissioning agreement shall also outline proposed financing methods adequate for the decommissioning of the WECS. A WED shall be considered discontinued or abandoned after one year without energy production unless a timely plan is developed and submitted within such one-year period to the County outlining the steps and schedule for returning the WED to active service. All WEDs, METs, and accessory facilities shall be removed to a depth of four (4) feet below grade within one hundred eighty (180) days of becoming a discontinued use.

**66.** On December 28, 2022 the Board approved and signed a road use agreement and a decommissioning agreement with SHW.

- a.** Attached as Exhibit E is a copy of the executed Road Use Agreement (“Road



pay costs of repair from damage or maintenance of County roads, rights of way, drainage systems, or any other County infrastructure resulting from construction, operation, repair, or removal.

- b.** Section 2 of the Road Use Agreement is limited to the period of construction, and fails to require the owner/developer/operator to pay costs arising from damages resulting from the “operation, repair, or removal” after construction as required by Section 7 of the Wind Ordinance.
- c.** Section 2 of the Road Use Agreement only binds the “developer” and does not apply to an owner or operator as required by Section 7 of the Wind Ordinance.
- d.** Section 7 of the Wind Ordinance requires costs for repairing damages to County roads, no matter the location of those roads in the County or the surface type of those road.
- e.** Section 2 of the Road Use Agreement only applies to roads inside of the project area, and then only to those pre-identified. The Road Use does not require repair of paved or unpaved roads in the County outside of the project area. Roads outside of the project area will be utilized to enter the project area for purposes of construction, repair, maintenance and decommissioning, and damage to those roads is not covered by the Road Use Agreement as required by Section 7 of the Wind Ordinance.
- f.** Section 2 contains a list of four types of required maintenance tasks for unpaved roads and three types paved roads subject to the agreement. Section 7 of the Wind Ordinance does not limit the types of repair for which the owner/developer/operator would be responsible. Section 7 of the Wind

Ordinance requires the costs of all repairs to roads, regardless of the tasks necessary to complete those repairs. Section 7 of the Wind Ordinance requires the road use agreement provide for all repairs to damaged roads, not just those repairs that can be accomplished using the limited tasks listed in the Road Use Agreement.

72. Section 4 of the Road Use Agreement is inconsistent with Section 7 of the Wind Ordinance as it does not provide for repairs to be completed related to damage caused by repairs, maintenance or operation after construction.
73. The Road Use Agreement requires no security for performance and contains no provisions granting security interests, or perfection of security interests, in any collateral.
74. In September 2022, Cass County learned road use agreements are ignored when a turbine crane took an unauthorized route and being over-weight demolished a bridge on an unauthorized route, with no care for the people of the county, and the bridge needed to be repaired and local transportation before harvest was hampered. [<https://www.kjan.com/index.php/2022/09/cass-county-sheriffs-office-updates-crane-accident-info-1-other-accident/>]



75. Litigation is ongoing in Minnesota and other areas attempting to obtain wind turbine developers to pay after damaging roads even where road use agreements were in place.
76. Section 1 of the Road Use Agreement states that it applies to the project proposed in the Application approved in July 2022 as well as any future projects approved by the County. Section 7 of the Wind Ordinance contemplates each project be proceeded by execution of a separate agreement addressing road repairs.
77. The Road Use Agreement binds all future boards to the terms of the agreement for all future projects yet to be submitted or approved, when the Wind Ordinance authorizes any future board approving a new application to be authorized to determine the terms of any road use agreement related to that project.
78. The Road Use Agreement has no stated term. The Road Use Agreement provides for the obligations of SHW to cease, but does not provide for the County's grant of use to cease. The County's obligations and duties are in perpetuity under the Road Use Agreement.



79. The Road Use Agreement encumbers County owned real property in perpetuity. Section 5 of the Road Use Agreement contains terms for the transfer of real property upon certain conditions that will exist in perpetuity.
80. The Road Use Agreement violates Iowa Code § 558.58 – Perpetuities.
81. The first recital of the Road Use Agreement states: “WHEREAS, Developer intends the construction of a wind-powered electrical generating facility in **Page County, Iowa . . .**”
- a. The Road Use Agreement is with Fremont County, Iowa and does not govern any roads in Page County.
  - b. The Board did not adequately review the Road Use Agreement prior to its approval and adoption.
  - c. The Board rubber-stamped the Road Use Agreement provided to it by SHW.

### **Decommissioning Agreement**

82. The terms of the Decommissioning Agreement are inconsistent with the Wind Ordinance, and fail to include the provisions and commitments required by Section 8 of the Wind Ordinance.
- a. Section 3 of the Decommissioning Agreement defines “abandonment” by reference to the entire “Project” or “portion of the Project” ceasing to operate for 12 months.
  - b. Section 8 of the Wind Ordinance requires the test for abandonment to be defined with respect to each turbine. Under the Wind Ordinance, one turbine unused for 12 months must be decommissioned, even if the other turbines in that area of the project operate during that 12 month period.
  - c. Sections 4, 5, 9, 13 of the Decommissioning Agreement impose duties only

on SHW.

- d.** Section 8 of the Wind Ordinance requires the obligations to be performed under any decommissioning agreement be imposed on not only the developer, but also any subsequent owner or operator. Section 6 of the Decommissioning Agreement provides that purchasers of the project are bound by the agreement, but Section 6 does not require any purchaser to assume the obligations specifically imposed on only SHW by the terms of Section 6. There is no provision specifically binding any purchaser to perform duties only specifically assigned to SHW. No provision of the Decommissioning Agreement provides that assumption of all obligations of SHW is required of any assignee or acquirer of all or part of the project. SHW may assign the Decommissioning Agreement, but no provision requires the assignee to assume SHW's obligations or permits the County to block any assignment that does not also include an assumption of SHW's obligations.
- e.** Section 8 of the Decommissioning Agreement refers to a Decommissioning Plan attached as Exhibit A to the Decommissioning Agreement. No Decommissioning Plan or Exhibit A is attached to the publically available Decommissioning Agreement. The Decommissioning Agreement was incomplete at the time it was presented to the Board and public, and approved and then executed by the Board. The Decommissioning Agreement was incomplete at the time of approval and execution.
- f.** Section 9 of the Decommissioning Agreement provides that the form of financial assurances (cash, performance bond, surety bond, letter of credit,

corporate guarantee) must be “mutually agreeable between the County and SHW.” This provision fails to implement the requirement of Section 8 of the Wind Ordinance requiring that the financing methods be specifically outlined in the Decommissioning Agreement.

- i. Section 8 of the Wind Ordinance requires “financing methods” to be included in the Decommissioning Agreement.
  - ii. Provisions for “financial assurance” in the Decommissioning Agreement are only for providing some financing after the party obligated to decommission the elements of the WECS breaches or defaults in performance of its obligation to do so.
  - iii. Security for a breach or default is not a plan for financing the actual performance of contractual duties so as to prevent a breach or default from occurring in the first place.
  - iv. The “mutually agreeable” clause in Section 9 of the Decommissioning Agreement creates the ability for SHW to “veto” forms of financial assurances the County may request or require. The financial assurance provisions of Section 9 of the Decommissioning Agreement are illusory promises, and fail to satisfy the requirements of Section 8 of the Wind Ordinance.
  - v. The Decommissioning Agreement fails to include the methods of financing and assurances required by Section 8 of the Wind Ordinance.
- g.** Section 13 of the Decommissioning Agreement provides indemnification only from SHW.

- h.** No provision of the Decommissioning Agreement provides for any assignee to be required to assume the indemnification and liability waivers in favor of the County contained in Section 13 of the Decommissioning Agreement.
  - i.** Section 14 of the Decommissioning Agreement requires only SHW to assure that its contractors, subcontractors, agents, employees and representatives comply with the agreement.
  - j.** Nothing in the Decommissioning Agreement requires SHW to require any assignee to assume all duties and obligations of SHW under the Decommissioning Agreement.
- 83.** SHW intends to transfer all or part of the ownership of the project to an entity that is, or is owned by, a public utility regulated by the Iowa Utilities Board.
- 84.** Section 8 of the Decommissioning Agreement provides that no financial assurance can be required by the County if the project is owned by an entity that is, or is owned by, a regulated public utility.
- 85.** The regulated public utility exception of Section 8 of the Decommissioning Agreement conflicts with, and fails, to implement the requirements of Section 9 of the Wind Ordinance if a public utility acquires the project.
- 86.** The public utility exception in Section 8 of the Decommissioning Agreement is unreasonable, unconscionable and illegal.
  - a.** No provisions of Iowa law vest the Iowa Utilities Board with authority to require entities subject to its regulation to decommission wind turbines owned by it or its subsidiaries.
  - b.** No provision of Iowa law provides the County a remedy before the Iowa Utilities Board in the event a regulated public utility or its subsidiaries

default on their obligations, if any, under the Decommissioning Agreement.

- c. There is no rational basis for an entity, simply because it is affiliated with another entity regulated by the Iowa Utilities Board to be free from the obligation to provide financial assurances to the County for decommissioning obligations.
- d. Any purchase of the project by a regulated utility would leave the County with no collateral and no financing arrangement for decommissioning as required by Section 9 of the Wind Ordinance.

#### **IV. GENERAL LEGAL STANDARDS**

##### **A. Source, Scope and Limits of the County's and Board's Authority**

- 87.** Iowa Constitution, art. III, § 39A, grants Iowa counties home rule power and authority to determine and act in local affairs and government.
- 88.** Iowa Constitution, art. III, § 39A prohibits an Iowa county from taking any action that is inconsistent with the laws of the State of Iowa general assembly.
- 89.** The Iowa general assembly is vested under Iowa Constitution art. III Legislative Department § 1 with sole legislative authority for the State.
- 90.** The Iowa legislature vested county boards of supervisors with legislative authority within those areas of police power specifically delineated by statute. Iowa Code § 33.301(2).
- 91.** The Iowa legislature directed that all duties of a county must be performed by, or under the direction of, the board of supervisors. Iowa Code § 33.301(2).
- 92.** A county, and its board of supervisors, do not have power to take actions inconsistent with the Iowa Constitution or the laws adopted by the general assembly of Iowa. Iowa Const. art. III § 39A; Iowa Code § 331.301(1).

93. Neither the Iowa Constitution nor the statutory enactments of the Iowa general assembly provide authority for a county, or its board of supervisors, to sub-delegate the county's legislative powers to any other person or entity.
94. In exercising its delegated duties and legislative powers, the County and the Board must "substantially comply with procedures established by state law for exercising a county power." Iowa Code § 331.301(5).
95. An action of a board is illegal and unenforceable if "the board has not acted in accordance with a statute; if its decision was not supported by substantial evidence; or if its actions were unreasonable, arbitrary, or capricious." *Perkins v. Bd. of Supervisors*, 636 N.W.2d 58, 64 (Iowa 2001)(quoting *Northland v. Worth County Compensation Bd.*, 323 N.W.2d 251, 253 (Iowa 1982)).
96. The County and Board are required to comply with, and not take action inconsistent with, the provisions of Iowa statutes, including without limitation Iowa Code Chapter 331 ("Home Rule Statute") and Iowa Code Chapter 21 ("Open Meetings Act").
97. The Board is bound by its duly adopted ordinances and resolutions unless and until such ordinance or resolution is repealed or amended by the Board after complying with all statutory and county requirements for the adoption of an amendment or repeal of such ordinance.
98. Actions by the Board in contravention of the Home Rule Statute, Open Meetings Act, or any other Iowa statute, are *ultra vires* and illegal under the provisions of Iowa Code § 331.301(1).
99. Actions by the Board in conflict or contravention of the Board's prior acts, ordinances or resolutions, are *ultra vires* and illegal under the provisions of Iowa

Code § 331.301(1).

- 100.** The Board is devoid of authority, power and jurisdiction to take any action, or adopt any ordinance or resolution, that does not substantially comply with the Iowa Constitution or the statutes adopted by the Iowa general assembly.
- 101.** In adopting ordinances, resolutions, and motions the Board was required under the Home Rule Statute and Open Meetings Act to provide Petitioners notice and opportunity to be heard, and to deliberate policy-making decisions in open meetings.
- 102.** The entire Board is required to determine if any member is acting with a conflict of interest as to the matter upon which action was being taken.
- 103.** Only the courts may adjudicate whether the Board acted consistent with its power, authority and procedures as delegated by statute.
- 104.** Only the courts may adjudicate whether the Board has violated the rights of the citizens of Fremont County to be subject to only those laws and rules adopted in conformance with the constitution and laws of the State of Iowa.
- 105.** Only the courts may determine whether the Board complied with the statutory procedural requirements of the Iowa Code.
- 106.** Only the courts may determine whether the Board and County officers and employees took actions outside of their authority granted by the State of Iowa.

#### **B. Mandamus**

- 107.** An action of mandamus may be brought in equity to obtain an order commanding a county board of supervisors or person to do, or not to do, an act, the performance or omission of which the law enjoins as a duty arising from an office, trust or station.

Iowa Code § 661.1.

### **C. Certiorari**

**108.** A writ of certiorari lies where a county board of supervisors acts in a quasi-judicial nature and exceeds its jurisdiction or otherwise acts illegally. *State Public Defender v. Iowa District Court*, 594 N.W.2d 34, 36 (Iowa 1999); *Hoefler v. Sioux City Cmty. Sch. Dist.*, 375 N.W.2d 222, 224 (Iowa 1985); Iowa R. Civ. P. 1.1401.

### **D. Open Meetings Act**

**109.** The Iowa Open Meetings Act, Iowa Code Ch. 21 establishes requirements for all County policy-making business to be performed in properly noticed open meetings, unless closed sessions are expressly permitted by law and the required procedures for holding and recording such closed sessions are followed. Iowa Code § 21.3(1). Unless a specific closed-meeting exception applies, “all actions and discussions at meetings of governmental bodies, whether formal or informal, shall be conducted in open session.” *Id.*

**110.** Any aggrieved person, taxpayer to, or citizen of, the state of Iowa may seek judicial enforcement of the requirements of the Open Meetings Act. Iowa Code § 21.6(1).

**111.** Once a party seeking judicial enforcement of the Open Meetings Act demonstrates that the body in question is subject to the requirements of the Open Meetings Act and has held a closed session, the burden going forward is on the body and its members to demonstrate compliance with the Open Meetings Act. Iowa Code § 21.6(2).

**112.** The Board is a “governmental body” subject to the requirements of the Open Meetings Act.

**113.** Upon finding a violation of the Open Meetings Act, the court shall (i) assess each member of the body violating the Act damages in the amount statutorily defined



payable to the County through the court (subject to partial defenses to the obligation to pay damages defined by statute, but there are no statutory defenses to the underlying violation of the Open Meetings Act), (ii) order payment of all costs and attorney fees to the party successfully establishing a violation, and (iii) void any action taken in violation if the suit for enforcement is brought within six months of the violation and the policy of the Open Meetings Act outweighs the public interest in sustaining the validity of the action taken in closed session. Iowa Code § 21.6(3).

114. The Open Meetings Act further authorizes the court to issue a mandatory injunction punishable by civil contempt ordering the members of the offending governmental body to refrain for one year from future violations. *Id.*
115. Throughout this Petition, when used in reference to the Open Meetings Act, the term “meeting” shall mean “Meeting” defined in Iowa Code § 21.2 as interpreted by the Iowa Supreme Court to date. See e.g., Hutchison v. Shull, 878 N.W.2d 221 (Iowa 2016).

**CLAIM 1: Declaratory Judgment – Zoning Ordinance Prohibits Construction of WECS in the Agricultural District**

116. Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.
117. Under the Zoning Ordinance, wind energy conversion systems, and the components of such systems (turbines, substation, meteorological towers, etc.) are not a permitted use of land in the Agricultural District of the County.
118. To the extent WECS may be determined to be a special use, no application under the Zoning Ordinance for a special use permit to construct WECS has been received or approved by the County.

119. Under the Zoning Ordinance, the height limitations for permitted, non-agricultural structures in the Agricultural District of the County is 2.5 stories (35 feet) or less.
120. The WECS proposed in the Application exceed 500 feet in height.
121. The Wind Ordinance did not amend the Zoning Ordinance Agricultural District permitted uses or height limitations because the Wind Ordinance was not adopted (i) in conformance with the requirements in the Zoning Ordinance for amending the Zoning Ordinance, and (ii) in compliance with the requirements of Iowa Code § 331.302(4).
122. The Board never complied with the requirements of Iowa Code § 335.5(4)(d) requiring distribution of any amended zoning ordinance to the organizations specified therein.
123. Even if the Wind Ordinance was a valid act of the Board, it did not specifically and legally amend the Zoning Ordinance. Therefore, pursuant to Iowa Code § 335.24 the more restrictive use and height limitations of the Zoning Ordinance govern over the terms of the Wind Ordinance.
124. Petitioners request declaratory judgment that, regardless of the legality of the adoption of the Wind Ordinance, the construction of WECS in the Agricultural District of the County remains prohibited by the Zoning Ordinance.

**CLAIM 2: Temporary and Permanent Injunctive Relief – Prohibit Issuance of WECS Building Permits for Structures in Violation of the Zoning Ordinance**

125. Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.
126. The County has approved SHW's Application and entered Road Use and Decommissioning Agreements.

- 127.** The County is imminently going to issue permits for the constructions of WECS of 500+ feet in height in the Agricultural District in violation of the Zoning Ordinance.
- 128.** Whether by mandamus, certiorari, general equitable authority, common law, or as authorized by statute (each such remedy being specifically plead in the alternative), Petitioners request that the Court issue both temporary and permanent injunctive relief:
- a.** Prohibiting the Respondents from issuing any building permits for the construction of WECS in violation of the use and height restrictions of the Zoning Ordinance; and
  - b.** Granting such other relief that the court may determine necessary to implement its declaratory judgments and legal findings.

**CLAIM 3: Declaratory Judgment – Illegality and Invalidity of Road Use and Decommissioning Agreements**

- 129.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.
- 130.** As plead above, the Road Use Agreement conflicts with, and fails to implement, all of the terms required by the Wind Ordinance.
- 131.** As plead above, the Decommissioning Agreement conflicts with, and fails to implement, all of the terms required by the Wind Ordinance.
- 132.** Petitioners request declaratory judgment that the acts of the Board to approve and enter the Road Use Agreement and Decommissioning Agreements were illegal, and therefore invalid, acts of the Board because the terms of such agreements are inconsistent with the terms of the County’s Wind Ordinance.
- 133.** The terms of the Road Use Agreement and Decommissioning Agreement are so one-

sided in favor of SHW that they shock the conscience, and no reasonable county would offer or accept the terms of the Road Use Agreement or Decommissioning Agreement.

- 134.** Petitioners request a declaratory judgment that the Road Use Agreement and Decommissioning Agreement are illegal, in contravention of applicable law, unconscionable, invalid, and unenforceable.

**CLAIM 4: Temporary and Permanent Injunctive Relief – Invalidate Road Use and Decommissioning Agreements & Prohibit Actions in Furtherance Thereof**

- 135.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.

- 136.** Whether by mandamus, certiorari, general equitable authority, common law, or as authorized by statute, including violation of the Open Meetings Act (each such remedy being specifically plead in the alternative), Petitioners request that the Court issue both temporary and permanent injunctive relief:

- a.** Declaring the Road Use Agreement and Decommissioning Agreement as illegal, invalid, void, unenforceable, and enjoining any actions by either party thereto in furtherance of those agreement;
- b.** Enjoining the County from issuing any permits to construct WECS because under the terms of Wind Ordinance Sections 7 and Section 8, construction of WECS may not commence or be authorized until a Road Use Agreement and Decommissioning Agreement containing the Wind Ordinance’s required terms and conditions are approved and entered; and
- c.** Granting such other relief that the court may determine necessary to implement its declaratory judgments and legal findings.

**CLAIM 5: Declaratory Judgment - Adoption of the Wind Ordinance was an Illegal Act of the Board - Failure to Consider the Comprehensive Zoning Plan**

- 137.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.
- 138.** In adopting the Wind Ordinance the Board failed its duty to consider the County's comprehensive zoning structure and plan (the Zoning Ordinance) in violation of Iowa Code §§ 351.1, 352.5, & 414.3.
- 139.** The Board's adoption of the Wind Ordinance without consideration of the County's comprehensive zoning structure and plan (the Zoning Ordinance) invalidates the adoption of the Wind Ordinance as it was an illegal act of the Board. *Webb v. Gitner* 468 N.W.2d 838, 840 (Iowa Ct. App. 1991)
- 140.** Indicia the Board's lack of consideration of the Zoning Ordinance in the adoption of the Wind Ordinance include:
- a.** The failure of the Wind Ordinance to reference the Zoning Ordinance;
  - b.** The failure of the Board to follow the same specific amendment procedures used in connection with its adoption of the Cell Tower Ordinance as an amendment to the Zoning Ordinance;
  - c.** The Board minutes during the three readings of the Wind Ordinance do not reflect any discussion or consideration of the Zoning Ordinance.
  - d.** The general repealer provision in Section 13 of the Wind Ordinance demonstrates no consideration was given to possibly conflicting ordinances, including the Zoning Ordinance, as it does not address with specificity, or give notice to the public, of any changes made to the Zoning Ordinance.

- e. The Board never complied with the requirements of Iowa Code § 335.5(4)(d) requiring distribution of any amended zoning ordinance to the organizations specified therein.

**141.** Petitioners request a declaratory judgment that the adoption of the Wind Ordinance was an illegal and invalid legislative act of the Board due to its failure to consider the Zoning Ordinance.

**CLAIM 6: Temporary and Permanent Injunctive Relief – Invalidate Wind Ordinance as an Illegal Act of the Board - Failure to Consider the Comprehensive Zoning Plan**

**142.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.

**143.** Because the adoption of the Wind Ordinance was an illegal and invalid legislative act because the Board failed to consider the Zoning Ordinance at the time of adoption, whether by mandamus, certiorari, general equitable authority, common law, or as authorized by statute, Petitioners request that the Court issue both temporary and permanent injunctive relief:

- a. Enjoining any actions by the County in furtherance of authorizing the construction of any WECS pursuant to the Wind Ordinance;
- b. Enjoining the County from issuing any permits to construct WECS pursuant to the Wind Ordinance;
- c. Invalidating the Wind Ordinance as an illegal legislative act of the Board;  
and
- d. Granting such other relief that the court may determine necessary to implement its declaratory judgments and legal findings.

**CLAIM 7: Declaratory Judgment - Approval of the Application was an Illegal Act of the Board - Failure to Consider the Comprehensive Zoning Plan**

- 144.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.
- 145.** In approving the Application, the Board failed its duty to consider the County's comprehensive zoning structure and plan (the Zoning Ordinance) in violation of Iowa Code §§ 351.1, 352.5, & 414.3.
- 146.** The Board's approval of the Application without consideration of the County's comprehensive zoning structure and plan (the Zoning Ordinance) invalidates that approval as it was an illegal act of the Board. *Webb v. Gitner* 468 N.W.2d 838, 840 (Iowa Ct. App. 1991)
- 147.** Indicia the Board's lack of consideration of the Zoning Ordinance in the approval of the Application include:
- a.** The failure of the Board to consider the permitted uses and height limitations within the Zoning Ordinance when approving an application that included a plan to construct WECS in contravention of the permitted uses and height limitations contained in the Zoning Ordinance;
  - b.** The Board minutes discussing the Application do not reflect any discussion or consideration of the Zoning Ordinance.
- 148.** Petitioners request a declaratory judgment that the approval of the Application was an illegal and invalid act of the Board due to its failure to consider the Zoning Ordinance.

**CLAIM 8: Temporary and Permanent Injunctive Relief – Invalidate Approval of the Application as an Illegal Act of the Board - Failure to Consider the Comprehensive Zoning Plan**

**149.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.

**150.** Because the approval of the Application was illegal and invalid due to the Board's failure to consider the Zoning Ordinance at the time of approval, whether by mandamus, certiorari, general equitable authority, common law, or as authorized by statute, Petitioners request that the Court issue both temporary and permanent injunctive relief:

- a.** Enjoining any actions by the County in furtherance of authorizing the construction of any WECS proposed in the Application; and
- b.** Enjoining the County from issuing any permits to construct WECS pursuant to the Wind Ordinance and approved Application; and
- c.** Granting such other relief that the court may determine necessary to implement its declaratory judgments and legal findings.

**CLAIM 9: Declaratory Judgment - Approving and Entering the Road Use Agreement and Decommissioning Agreement were Illegal Acts of the Board - Failure to Consider the Comprehensive Zoning Plan**

**151.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.

**152.** In approving and entering the Road Use Agreement and Decommissioning Agreement, the Board failed its duty to consider the County's comprehensive zoning structure and plan, the Zoning Ordinance, in violation of Iowa Code §§ 351.1, 352.5, & 414.3.



- 153.** The Board's approval of, and entry into, the Road Use Agreement and Decommissioning Agreement without consideration of the County's comprehensive zoning structure and plan, the Zoning Ordinance invalidates the that approval as it was an illegal act of the Board. *Webb v. Gitner* 468 N.W.2d 838, 840 (Iowa Ct. App. 1991)
- 154.** Indicia the Board's lack of consideration of the Zoning Ordinance in the approval and entry of the Road Use Agreement and Decommissioning Agreement include:
- a.** The failure of the Board to consider the permitted uses and height limitations within the Zoning Ordinance when approving and entering agreements serving as prerequisites to the construction of WECS in contravention of the permitted uses and height limitations contained in the Zoning Ordinance;
  - b.** The Board minutes discussing the approval of the Road Use Agreement and Decommissioning Agreement do not reflect any discussion or consideration of the Zoning Ordinance.
- 155.** Petitioners request a declaratory judgment that the approval and entry of the Road Use Agreement and Decommissioning Agreement were illegal and invalid acts of the Board due to its failure to consider the Zoning Ordinance.

**CLAIM 10: Temporary and Permanent Injunctive Relief – Invalidate Approval and Entry of Road Use and Decommissioning Agreements as an Illegal Act of the Board - Failure to Consider the Comprehensive Zoning Plan**

- 156.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.
- 157.** Because the approval and entry of the Road Use Agreement and Decommissioning

Agreement were illegal and invalid due to the Board's failed to consider the Zoning Ordinance at the time of approval and entry, whether by mandamus, certiorari, general equitable authority, common law, or as authorized by statute, Petitioners request that the Court issue both temporary and permanent injunctive relief:

- a. Invalidating the Road Use Agreement and Decommissioning Agreements as illegal and invalid contracts;
- b. Enjoining any actions by the County in furtherance of authorizing the construction of any WECS proposed in the Application; and
- c. Enjoining the County from issuing any permits to construct WECS pursuant to the Wind Ordinance and approved Application; and
- d. Granting such other relief that the court may determine necessary to implement its declaratory judgments and legal findings.

**CLAIM 11: Declaratory Judgment - The Adoption of the Wind Ordinance was an Illegal Act of the Board – Failure to Take Preliminary Votes at the First and Second Readings of the Proposed Wind Ordinance**

- 158.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.
- 159.** Iowa Code § 331.302(6)(a) requires that a proposed ordinance be considered and voted on for passage at two meetings of the board prior to the meeting at which it is finally passed.
- 160.** The Board minutes of the first two meetings considering the proposed Wind Ordinance do not reflect any preliminary votes on the proposed wind ordinance were taken at those meetings.
- 161.** Failure to take the preliminary votes at the first two meetings failed to substantially

comply with the requirements of Iowa Code § 331.302(6)(a).

**162.** Adoption of the Wind Ordinance in contravention of Iowa Code § 331.302(6)(a) was an illegal and invalid act of the Board.

**163.** Petitioners request a declaratory judgment that the Wind Ordinance is illegal and invalid because of the Board's failure to take the two preliminary votes required by Iowa Code § 331.302(6)(a).

**CLAIM 12: Temporary and Permanent Injunctive Relief - The Adoption of the Wind Ordinance was an Illegal Act of the Board – Failure to Take Preliminary Votes at the First and Second Readings of the Proposed Wind Ordinance**

**164.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.

**165.** Because the approval of the Wind Ordinance was illegal and invalid because the Board failed to take preliminary votes at the first and second readings, whether by mandamus, certiorari, general equitable authority, common law, or as authorized by statute, Petitioners request that the Court issue both temporary and permanent injunctive relief:

- a.** Enjoining any actions by the County in furtherance of authorizing the construction of any WECS pursuant to the Wind Ordinance;
- b.** Enjoining the County from issuing any permits to construct WECS pursuant to the Wind Ordinance;
- c.** Invalidating the Wind Ordinance as an illegal legislative act of the Board;  
and
- d.** Granting such other relief that the court may determine necessary to implement its declaratory judgments and legal findings.

**CLAIM 13: Declaratory Judgment - The Adoption of the Wind Ordinance was an Illegal Act of the Board – Failure to Hold Three Readings of the Same Ordinance**

166. Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.
167. Iowa Code § 331.302(6)(a) requires that a proposed ordinance be considered and voted on for passage at two meetings of the board prior to the meeting at which it is finally passed.
168. The Board minutes of the three meetings considering a proposed wind ordinance indicate that the proposed ordinance underwent changes to its terms between each of the meetings.
169. The final wind ordinance was not read and considered at three separate meetings.
170. The final wind ordinance was only considered at a single meeting.
171. The Board did not take action under Iowa Code § 331.302(6)(a) to waive the three meeting requirement.
172. Failure to read the same ordinance at three different meetings does not substantially comply with the requirements of Iowa Code § 331.302(6)(a).
173. Adoption of the Wind Ordinance in contravention of Iowa Code § 331.302(6)(a) was an illegal and invalid legislative act of the Board.
174. Petitioners request a declaratory judgment that the Wind Ordinance is illegal and invalid because of the Board's failure to read and consider the same ordinance at three separate meetings of the Board as required by Iowa Code § 331.302(6)(a).

**CLAIM 14: Temporary and Permanent Injunctive Relief - The Adoption of the Wind Ordinance was an Illegal Act of the Board – Failure to Hold Three Readings of the Same Ordinance**

175. Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth

herein.

**176.** Because the approval of the Wind Ordinance was illegal and invalid due to the Board's failed to read the same ordinance at three separate meetings, whether by mandamus, certiorari, general equitable authority, common law, or as authorized by statute, Petitioners request that the Court issue both temporary and permanent injunctive relief:

- a.** Enjoining any actions by the County in furtherance of authorizing the construction of any WECS pursuant to the Wind Ordinance;
- b.** Enjoining the County from issuing any permits to construct WECS pursuant to the Wind Ordinance;
- c.** Invalidating the Wind Ordinance as an illegal legislative act of the Board;  
and
- d.** Granting such other relief that the court may determine necessary to implement its declaratory judgments and legal findings.

**CLAIM 15: Declaratory Judgment and Temporary & Permanent Injunctive Relief - Adoption of the Wind Ordinance, Approval of the Application, and Approval and Entry of the Road Use Agreement and Decommissioning Agreement were Unreasonable, Arbitrary and Capricious**

**177.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.

**178.** An action of a board is illegal and unenforceable if "the board['s] . . . actions were unreasonable, arbitrary, or capricious." *Perkins v. Bd. of Supervisors*, 636 N.W.2d 58, 64 (Iowa 2001).

**179.** The test for legality under *Perkins* is directed at evaluating the "actions" of the Board, and not directed at substantive results of those actions. A reasonable

ordinance could be adopted through unreasonable, arbitrary or capricious actions of the Board, and that reasonable ordinance would still be an illegal and unenforceable act of the Board.

- 180.** “Unreasonable” means “without reason.” Reason requires logic applied to facts.
- 181.** “Capricious” means governed or characterized by caprice.
- 182.** “Caprice” means sudden, impulsive, or unmotivated by notion.
- 183.** “Notion” means a conception or impression of something known (i.e. knowledge).
- 184.** To be legal and enforceable actions of the Board, the Board must act with logic, without sudden or impulsive motivations, and thoughtfully based upon facts.
- 185.** The actions of the Board, plead herein, related to the adoption of the Wind Ordinance, approval of the Application, and approval and entry of the Road Use Agreement and Decommissioning Agreement were unreasonable and capricious.
- 186.** These unreasonable and capricious actions are illegal and unenforceable, regardless of any reasonability of the results of those actions.
- 187.** The Petitioners request the following declaratory judgments:
  - a.** The actions of the Board in adopting the Wind Ordinance were unreasonable and capricious, and therefore the Wind Ordinance is an illegal and unenforceable legislative act by the Board.
  - b.** The actions of the Board in approving the Application were unreasonable and capricious, and therefore the Application approval is illegal and unenforceable.
  - c.** The actions of the Board in negotiating, approving and entering the Road Use Agreement and Decommissioning Agreement were unreasonable and capricious, and therefore the Road Use Agreement and Decommissioning

Agreements are of no legal effect and void.

**188.** Because the Board's actions described above were illegal and unenforceable, whether by mandamus, certiorari, general equitable authority, common law, common law, or as authorized by statute, Petitioners request that the Court issue both temporary and permanent injunctive relief:

- a.** Enjoining any actions by the County in furtherance of authorizing the construction of any WECS pursuant to the Wind Ordinance;
- b.** Enjoining the County from issuing any permits to construct WECS pursuant to the Wind Ordinance;
- c.** Invalidating the Wind Ordinance, Application approval, and approval and entry of the Road Use Agreement and Decommissioning Agreement as illegal acts of the Board; and
- d.** Granting such other relief that the court may determine necessary to implement its declaratory judgments and legal findings.

**CLAIM 16: Declaratory Judgment and Temporary & Permanent Injunctive Relief – Supervisor Conflicts of Interest**

**189.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.

**190.** Iowa Code § 331.302(14) provides that an action taken by a board of supervisors is invalid if the decisive vote was cast by a supervisor with a conflict of interest.

**191.** A conflicted supervisor cast the decisive vote approving the Wind Ordinance.

**192.** A conflicted supervisor cast the decisive vote approving the Application.

**193.** A conflicted supervisor cast the decisive vote approving entry of the Road Use Agreement and Decommissioning Agreement.

- 194.** Respondent Sheldon operates a trucking, hauling, construction, and earth moving business that may bid or seek to obtain business arising out of the construction, maintenance, operation, decommissioning, and road repair work performed in connection with the proposed project.
- 195.** Respondent Clark operates a trucking and hauling business that may bid or seek to obtain business arising out of the construction, maintenance, operation, decommissioning, and road repair work performed in connection with the proposed project.
- 196.** Respondents Sheldon, Clark, and Hickey, and former supervisor Terry Graham, may receive benefits (directly or through their business operations) arising out of activities related to the construction, maintenance, operation, road repairs and decommissioning of the proposed WECS project.
- 197.** The Petitioners request the following declaratory judgments:
- a.** The Board's adoption of the Wind Ordinance was an illegal act of the Board due to supervisor conflicts under Iowa Code § § 331.302(14).
  - b.** The Board's approval of the Application was illegal act of the Board due to supervisor conflicts under Iowa Code § § 331.302(14).
  - c.** The Board negotiation, approval and entry of the Road Use Agreement and Decommissioning Agreement were illegal acts of the Board due to supervisor conflict under Iowa Code § § 331.302(14).
- 198.** Because the Board's actions described above were illegal due to supervisor conflict, whether by mandamus, certiorari, general equitable authority, common law, or as authorized by statute, Petitioners request that the Court issue both temporary and permanent injunctive relief:



- a. Enjoining any actions by the County in furtherance of authorizing the construction of any WECS pursuant to the Wind Ordinance;
- b. Enjoining the County from issuing any permits to construct WECS pursuant to the Wind Ordinance;
- c. Invalidating the Wind Ordinance, Application approval, and approval and entry of the Road Use Agreement and Decommissioning Agreement as illegal acts of the Board; and
- d. Granting such other relief that the court may determine necessary to implement its declaratory judgments and legal findings.

**CLAIM 17: Declaratory Judgment and Temporary & Permanent Injunctive Relief – Order to Enforce Obligation to Reapply Due to Material Changes in Application Information**

**199.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.

**200.** Section 4.B of the Wind Ordinance provides, in part:

If there are any material changes to the information provided as part of the application in Section 3 that occur from the time of the application until the construction of the WECS, the applicant shall submit a new application (along with an application fee per Wind Turbine (with changes to the information required to be provided in Section 3 . . .

**201.** The turbine siting map included with the Application is known to be inaccurate.

This in map accuracies include, failure to identify structures required to be disclosed, wrongly identifies the location of structures, fails to include all conservation areas, and fails to include at least a mile of the footprint area immediately north of the Missouri border.

**202.** The omitted site map information is material to a determination as to whether the

proposed turbine locations comply with the setback requirements in the Wind Ordinance.

**203.** In physically examining the proposed turbine locations identified in the site map in comparison to the missing or wrongly located structures, several proposed turbine locations violate the setback requirements in the Wind Ordinance.

**204.** Upon information and belief, the number and/or exact location of turbines planned have been modified or changed since the Application was finalized in February 2022.

**205.** The Board has a duty to abide by and enforce the laws of the County.

**206.** The Petitioners request the following declaratory judgments:

- a.** The Application contains material omissions;
- b.** Material changes to information contained in the Application have occurred since the Application was submitted.

**207.** Because the information in the Application is materially incorrect and materially changed since the Applications submission, by mandamus, general equitable authority, common law, or as authorized by statute, Petitioners request that the Court issue both temporary and permanent injunctive relief:

- a.** Requiring the Board to fulfill its legal duty to enforce Section 4.B. of the Zoning Ordinance, and requiring the Board to take all necessary actions to require re-application under the Wind Ordinance.
- b.** Enjoining any actions by the County in furtherance of authorizing the construction of any WECS subject of the original Application;
- c.** Enjoining the County from issuing any permits to construct WECS subject of the original Application; and

- d. Granting such other relief that the court may determine necessary to implement its declaratory judgments and legal findings.

**CLAIM 18 Open Meetings Act – The Board Violated the Open Meetings Act in its Deliberation and Adoption of the Wind Ordinance.**

**208.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.

**209.** The adoption of the Wind Ordinance was within the Board’s sole legislative and policy-making authority under the Home Rule Statute.

**210.** In considering, discussing, and deliberating the terms of the proposed wind ordinances, a majority of the Board engaged in “Meetings” in violation of the Open Meetings Act.

**211.** The adoption of the Wind Ordinance following closed “Meetings” was an illegal act of the Board in violation of the Open Meetings Act.

**212.** The following are indicia of the existence of the closed-meetings being held to deliberate the proposed wind ordinances;

- a. Prior to the first reading of the wind ordinance, the Board minutes do not reflect any discussion of the possible terms of a wind ordinance in properly noticed open meetings;
- b. The proposed wind ordinance was different at each of the three-readings, implying that between readings “Meetings” occurred in which the terms and conditions of the proposed ordinance were discussed so that revisions could be made.
- c. At the final reading of the proposed Wind Ordinance, the Board minutes reflect that the Board “thanked Invenergy” for revising the set-back

requirements. This is an admission that “Meetings” occurred in which the set-back requirements were deliberated in violation of the Open Meetings Act.

**213.** The Petitioners request the Court grant all legal, statutory, and equitable remedies available against each Respondent under Iowa Code § 21.6 for the Board’s violations of the Open Meetings Act in its deliberation and adoption of the Wind Ordinance.

**CLAIM 19: Open Meetings Act – The Board Violated the Open Meetings Act in its Deliberation and Approval of the Application.**

**214.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.

**215.** The approval of the Application was within the Board’s legislative and policy-making authority.

**216.** In considering, discussing, and deliberating the Application, a majority of the Board engaged in “Meetings” in violation of the Open Meetings Act.

**217.** The approval of the Application following closed “Meetings” was an illegal act of the Board in violation of the Open Meetings Act.

**218.** The following are indicia of the existence of the closed-meetings being held to deliberate the Application;

**a.** The Board minutes reflect that the Board was aware of information regarding Invenergy’s plans prior to the adoption of the Wind Ordinance and no Board minutes reflect the information being provided to the Board in open session;

**b.** The Board presented materials to the public, including financial information regarding the tax revenue projected, that could only have been

obtained through Meetings held in violation of the Open Meetings Act;

- c. The Board minutes do not reflect any discussion of the terms of the Application by any Board member during the deliberation of approving the application. The Board minutes reflect public comment, but do not reflect any Board deliberation of the Application and proposal.
- d. The Zoning Administrator reviewed the Application for two months prior to delivering it to the Board. The Board then approved the Application at a single meeting. This implies closed Meetings in violation of the Open Meetings Act occurred during such two month period.

**219.** The Petitioners request that the Court grant all legal, statutory, and equitable remedies available against each Respondent under Iowa Code § 21.6 for the Board's violations of the Open Meetings Act in its deliberation and approval of the Application.

**CLAIM 20: Open Meetings Act – The Board Violated the Open Meetings Act in its Deliberation, Approval, and Entry of the Road Use Agreement and the Decommissioning Agreement**

**220.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.

**221.** The negotiation, deliberation and approval of the terms of the Road Use Agreement and the Decommissioning Agreement were within the Board's policy-making authority.

**222.** The Board is prohibited from delegating matters of judgment and discretion. *Bunger v. Iowa High Sch. Athletic Ass'n*, 197 N.W.2d 55, 559-60 (Iowa 1972).

**223.** In considering, discussing, and deliberating the Road Use Agreement and Decommissioning Agreement, a majority of the Board engaged in "Meetings" in

violation of the Open Meetings Act.

**224.** The approval and entry of the Road Use and Decommissioning Agreements following closed “Meetings” were an illegal acts of the Board in violation of the Open Meetings Act.

**225.** The following are indicia of the existence of the closed-meetings being held to deliberate the terms and conditions of the Road Use Agreement and Decommissioning Agreement;

**a.** The final Road Use and Decommissioning Agreements were presented and approved at a single meeting. An agreement could only reach final form acceptable to all Board members if closed-meetings to deliberate the terms and conditions of such agreement occurred prior to the meeting at which the agreement was approved.

**b.** The Board minutes reflect that the Board relied entirely on the interpretation of these Agreements given by Invenergy at the December 28, 2022 Board meeting.

**c.** The Board minutes reflect that the Board had communicated to Invenergy the terms it would require in the Road Use Agreement and Decommissioning Agreement. These communications of the Board’s position to Invenergy imply closed-meetings occurred among the Board to develop those required terms and closed-meetings occurred to discuss the agreements, and County policy to be reflected therein, with Invenergy.

**226.** The Petitioners request that the Court grant all legal, statutory, and equitable remedies available against each Respondent under Iowa Code § 21.6 for the Board’s violations of the Open Meetings Act in its deliberation and approval of the Road Use

Agreement and Decommissioning Agreement.

**CLAIM 21: Conditional – Declaratory Judgment and Temporary & Permanent Injunctive Relief - Void for Vagueness**

**227.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.

**228.** Section 13 of the Wind Ordinance provides, in part:

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**229.** As plead above, Petitioners' position is that Section 13 is legally ineffectual to constitute an amendment to the Zoning Ordinance because (i) the Wind Ordinance was not adopted in conformance with the amendment processes and requirements within the Zoning Ordinance, (ii) the Wind Ordinance failed to comply with the specificity requirements for ordinance amendments contained in Iowa Code § 331.302(4), and (iii) the Board failed to comply with Iowa Code § 335.5(4)(d).

**230.** Petitioners make this void for vagueness claim conditionally and in anticipation of the defense being raised that the Section 13 “general repealer” provision acts to amend or repeal all, or a portion of, the Zoning Ordinance. To the extent this defense is not raised, Petitioners do not assert any void for vagueness claims.

**231.** Iowa Code § 331.302(4) requires that any ordinance, code, section, subsection, paragraph or subpart amended by the Board must be set forth after approval of in an “as amended” state.

**232.** The County and Board have not republished or set forth any amended ordinances, codes, sections, subsections, paragraphs or subparts purportedly amended or repealed by operation of Section 13 of the Wind Ordinance.

**233.** The Board never complied with the requirements of Iowa Code § 335.5(4)(d)

requiring distribution of any amended zoning ordinance to the organizations specified therein.

- 234.** No changes have been made to the Zoning Ordinance as it appears on the books and records of the County since adoption of the Wind Ordinance.
- 235.** The due process clause of article I, section 9 of the Iowa Constitution prohibits enforcement of vague statutes and ordinances. *Formaro v. Polk County*, 773 N.W.2d 834, 840 (Iowa 2009); *State v. Nail*, 743 N.W.2d 535, 539 (Iowa 2007).
- 236.** A law is vague if it impermissibly delegates basic policy matters to those entrusted with enforcing it. *Helmets v. City of Des Moines*, 918 N.W.2d 501 (Iowa Ct. App. 2018) 918 N.W.2d 501 (Iowa Ct. App. 2018)(quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)).
- 237.** The Wind Ordinance is illegal and fails to meet the requirements of the Iowa Due Process Clause because it is so vague and standardless that it leaves the public uncertain as to what conduct it permits and what conduct it prohibits. *Helmets v. City of Des Moines*, 918 N.W.2d 501 (Iowa Ct. App. 2018)(quoting *City of Chicago v. Morales*, 527 U.S. 41, 56 (1996)).
- 238.** The citizens of Fremont County are (i) unable to discern what ordinances, or parts thereof, are considered to be in conflict with the provisions of the Wind Ordinance, and (ii) are unable to determine, if a conflict exists, whether entire existing ordinances are repealed or amended, or whether certain portions of existing ordinances are repealed or amended, and in either case, unable to determine the terms of any amendment made as a result of applying Section 13 of the Wind Ordinance.
- 239.** For example, if Section 13 of the Wind Ordinance is given effect, there is no ability



for anyone to determine whether, for example, the height limitations applicable to land in the Agricultural District in the published Zoning Ordinance remain in effect, or if they have been amended in some manner to accommodate wind energy or if they have been entirely repealed, or even if the entire Zoning Ordinance was repealed.

**240.** As further example, County Ordinance 2010-1 regulates and requires removal of nuisances. A copy of the Nuisance Ordinance is attached as Exhibit G hereto (the “Nuisance Ordinance”). It is possible that the prohibitions on nuisances, such as dangerous overgrowth of weeds or brush (Nuisance Ordinance § F.1.3(i)) or failure to dispose of animal carcasses (Nuisance Ordinance § F.1.3(l)), could be implicated by a WECS operator failing to properly maintain growth around turbines, or by bird and bat kills resulting from the operation of wind turbines. A citizen cannot determine whether the brush and weed clearing requirement, or the carcass removal requirement is amended or repealed by Section 13 of the Wind Ordinance. Other “nuisances” as defined in Ordinance 2010-1 could also possibly arise during the construction, maintenances, and operation of wind turbines, and the public cannot discern which ordinance or part thereof governs.

**241.** Section 13 of the Wind Ordinance does not define how a conflict between the Wind Ordinance and any other ordinances is to be determined or resolved.

**242.** The effect of Section 13 of the Wind Ordinance on other pre-existing ordinances is void-for-vagueness as the public is unable to ascertain the provisions of the County’s ordinances with which they must comply or which they need not comply because they have been amended or repealed by Section 13 of the Wind Ordinance.

**243.** Petitioners request declaratory judgment that Section 13 of the Wind Ordinance,

and the Wind Ordinance itself, are unconstitutionally vague under the Iowa Constitution.

**244.** Because Section 13 of the Wind Ordinance is unconstitutionally vague under the Iowa Constitution, whether by mandamus, certiorari, general equitable authority, common law, or as authorized by statute, Petitioners request that the Court issue both temporary and permanent injunctive relief:

- a.** Enjoining the County or any party from relying upon Section 13 of the Wind Ordinance to amend, modify or repeal any ordinance or portion thereof, whether now existing or adopted in the future;
- b.** Enjoining the County from issuing any permits to construct WECS pursuant based upon Section 13 of the Wind Ordinance repealing, amending or modifying any existing ordinance of the County with which such construction would conflict;
- c.** Invalidating the Section 13 of the Wind Ordinance as void-for-vagueness under the Due Process Clause of the Iowa Constitution;
- d.** Invalidating the Wind Ordinance as void-for-vagueness under the Due Process Clause of the Iowa Constitution; and
- e.** Granting such other relief that the court may determine necessary to implement its declaratory judgments and legal findings.

**CLAIM 22: Conditional – Declaratory Judgment and Temporary & Permanent Injunctive Relief - Illegal Act – Failure to Republish Amended Ordinances**

**245.** Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.

**246.** Petitioners make this illegality claim conditionally and in anticipation of the

defense being raised that the Wind Ordinance Section 13 “general repealer” provision acts to amend or repeal all, or a portion of, the Zoning Ordinance. The Petitioners further make this illegality claim conditioned upon the Court determining that Section 13 does act to amend existing County Ordinances. To the extent such defense is not raised or the Court does not so find, no claim is made as to failure to publish amended ordinances.

**247.** The Respondents have failed to substantially comply with the requirement of Iowa Code § 331.302(4) requiring that any ordinance, code, section, subsection, paragraph or subpart amended by the Board must be set forth “as amended” as a result of the adoption of the Wind Ordinance.

**248.** Petitioners seek declaratory judgment that because the Board and County failed to so substantially comply, (i) the adoption of the Wind Ordinance is an illegal act and of no force and effect and (ii) Section 13 of the Wind Ordinance has not, and cannot, be used to amend or repeal any ordinances of Fremont County.

**249.** Because adoption of the Wind Ordinance was an illegal act for the above reasons, whether by mandamus, certiorari, general equitable authority, common law, or as authorized by statute, Petitioners request that the Court issue both temporary and permanent injunctive relief:

- a.** Enjoining the County or any party from relying upon Section 13 of the Wind Ordinance to amend, modify or repeal any ordinance or portion thereof, whether now existing or adopted in the future;
- b.** Enjoining the County from issuing any permits to construct WECS pursuant to the Wind Ordinance or Zoning Ordinance;
- c.** Invalidating any purported amendments to Fremont County Ordinance by

operation of Section 13 of the Wind Ordinance; and

- d. Granting such other relief that the court may determine necessary to implement its declaratory judgments and legal findings.

**CLAIM 23: Conditional - Declaratory Judgment and Temporary & Permanent Injunctive Relief - Illegal Delegation of Board Authority to Private Entities**

250. Petitioners incorporate the foregoing and subsequent paragraphs as if fully set forth herein.
251. Petitioners make this illegal delegation claim conditionally and in anticipation of the defense being raised that the Wind Ordinance Section 13 “general repealer” provision acts to amend or repeal all, or a portion of, any existing or subsequently adopted ordinance of Fremont County to the extent such ordinance “conflicts” with the Wind Ordinance. The Petitioners further make this illegality claim conditioned upon the Court determining that Section 13 does act to amend or repeal such County ordinances.
252. Petitioners request declaratory judgment that the Wind Ordinance constitutes an illegal and *ultra vires* abdication and sub-delegation of powers belonging solely to the Board under Iowa Code §§ 331.301(1), (2) & 331.302(1) to private entities.
253. Section 13 of the Ordinance purports to amend or repeal any existing or future lawfully adopted ordinance that conflicts with the Wind Ordinance.
254. By operation of Section 13, upon approval of the Board has unlawfully delegated the power to repeal lawfully adopted ordinances of Fremont County to Invenergy or any other WECS operator in Fremont County.
255. For example, if the WECS are constructed and the brush surrounding them not maintained, or the operation of the turbines kills birds and bats and the carcasses

not removed, as required by the nuisance ordinance, any attempt to enforce the nuisance ordinance will be defended by the WECS operators appeal to the repeal of any ordinance contrary to the authorization to build and operate WECS granted.

**256.** Continuing the example Invenergy, SHW, or any subsequent owner or operator of WECS, by application of Section 13 of the Wind Ordinance, will have the power and ability to flaunt, amend and repeal validly adopted ordinances. By simply failing to properly mow and cut-back overgrowth, or by failing to collect and dispose of carcasses, the WECS operator through its actions or inactions will be able to repeal and amend the provisions of the nuisance ordinance as in conflict with the authority to operate WECS provided by the Wind Ordinance which does not contain similar requirements regulating overgrowth or carcass removal in the obligations of the operator under the Wind Ordinance.

**257.** The ability of an unelected, private enterprise, through merely taking, or failing to take, physical acts in furtherance of a privately owned wind turbine system, to effectuate the amendment or repeal of lawfully adopted county ordinances, violates the Home Rule Statute vesting legislative power to adopt, amend and repeal county ordinances solely in the County and its Board.

**258.** The County has impermissibly, and illegally, abdicated and effectively delegated, the legislative powers vested by the general assembly solely in the Board to Invenergy, and possibly future approved applicants, in perpetuity, without the ability of Fremont County's residents to vote upon Invenergy's actions going forward, or to seek legal redress for Invenergy's acts that otherwise would be illegal under county ordinances but for Invenergy taking such an illegal act that then has the effect of repealing the lawfully adopted ordinance prohibiting that action in the

first place.

- 259.** The Ordinance divests the citizens of Fremont County of political control of their laws and representatives, and subjects the citizens of Fremont County to the unknown sensibilities, risk aversion or non-aversion, and risk analysis (which can never be known to the County or the public), of a private, for profit enterprise, which now is vested by the Wind Ordinance with the power to repeal other lawfully adopted ordinances, with no political or legal recourse whatsoever provided.
- 260.** The purpose of the home rule provisions of the Iowa Constitution and Home Rule Statute was to place political and policy control in the hands of the eligible electors in the counties.
- 261.** The purposes of the home rule provisions are completely thwarted and overridden when a company, based in Chicago, is vested with dictating the policy and legislative decisions rightfully belonging solely to the County and its citizens.
- 262.** The Board's abdication and sub-delegation of its powers to a non-governmental entity is inconsistent with the Iowa Constitution and the acts of the Iowa general assembly.
- 263.** No law of the State of Iowa vests Invenergy with the authority to take actions that repeal or amend lawful enactments of the County or Board.
- 264.** Petitioners seek declaratory judgment that because the Board and County have illegally delegated legislative authority, (i) the adoption of the Wind Ordinance is an illegal act and of no force and effect and (ii) Section 13 of the Wind Ordinance has not, and cannot, be used or relied upon to cause the amendment or repeal of any ordinances of Fremont County.
- 265.** Because adoption of the Wind Ordinance was an illegal act for the above reasons,

whether by mandamus, certiorari, general equitable authority, common law, or as authorized by statute, Petitioners request that the Court issue both temporary and permanent injunctive relief:

- a. Enjoining the County or any party from relying upon Section 13 of the Wind Ordinance to amend, modify or repeal any ordinance or portion thereof, whether now existing or adopted in the future;
- b. Enjoining the County from issuing any permits to construct WECS pursuant to the Wind Ordinance or Zoning Ordinance;
- c. Invalidating the Section 13 of the Wind Ordinance as an illegal delegation of the Board's legislative authority;
- d. Invalidating the Wind Ordinance as an illegal delegation of the Board's legislative authority; and
- e. Granting such other relief that the court may determine necessary to implement its declaratory judgments and legal findings and legal findings.

**V. REMEDIES AND REQUESTS FOR RELIEF**

Petitioners pray for the relief as plead in each of the Claims set forth above, and that this Court, including entry of judgment and orders that:

- (i) invalidate the Wind Ordinance as an illegal and unenforceable act of the Board;
- (ii) invalidates the approval of the Application under the Wind Ordinance as an illegal and unenforceable action of the Board;
- (iii) invalidates the approval and entry of the Road Use Agreement and Decommissioning Agreement as illegal and unenforceable actions of the Board;

- (iv) directs Fremont County and its Board of Supervisors, individual members of the Board of Supervisors, officers, and employees to take all actions necessary to reflect the illegality and repeal of the Wind Ordinance, revocation of the Application approval, and voidance of the Road Use Agreement and Decommissioning Agreement so as if the Ordinance were never adopted, the Application never approved, and the Road Use Agreement and Decommissioning Agreement never entered;
- (v) enjoins the Board of Supervisors from any violations of the Open Meetings Act for a period of 12-months;
- (vi) grants all penalties and fines available at law against each Respondent;
- (vii) grants such further relief, remedy or damages to which the Petitioners may be entitled;
- (viii) if not invalidated, affirmatively ordering the Board to fulfill its duty to require re-application due to material omissions and material changes of information contained in the original Application; and
- (ix) to the full extent permitted by law or equity, award Petitioners such amounts as to fees, costs, and expenses, including attorney's fees, court costs, and related litigation expenses.

Petitioners request any trial be held before a jury.

Dated: January 25, 2023  
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