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IN THE IOWA DISTRICT COURT
IN AND FOR
PAGE COUNTY

JAMES HUNTER; SHERI HUNTER; BRADLEY HUTCHISON; KATHERINE HUTCHISON; SUSAN KELLEY; WILLIAM MCCONNELL; CINDY O'HEARN; MICHAEL O'HEARN; BARBARA OLIVER; JAMES RINE; MARY RINE; STEPHANIE SHOLES

Petitioners,

v.

PAGE COUNTY, IOWA; BOARD OF SUPERVISORS OF PAGE COUNTY, IOWA; ALAN ARMSTRONG; JACOB HOLMES; JAMES KING; CHUCK MORRIS; CARL SONKSEN

Respondents

.

Case No. _____

PETITION

FOR

WRITS OF CERTIORARI,

ORDERS OF MANDAMUS,

DECLARATORY JUDGEMENT,

AND

TEMPROARY & PERMANENT INJUNCTIONS

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 Writs of Certiorari, Orders of Mandamus, Declaratory Judgments and Temporary and Permanent Injunctions as set forth below, and would show the Court as follows:

TABLE OF CONTENTS

I. PARTIES 4
II. JURISDICTION AND VENUE 5
III. OVERVIEW 6
IV. FACTS COMMON TO ALL CLAIMS 15
A. Wind Turbine Ordinance Adoption & Amendment Promises 15
B. Invenergy's Wind Turbine System Application 27
CLAIM 1: WRITS OF MANDAMUS & CERTIORARI 45
A. General Legal and Factual Allegations 45
1. Source, Scope and Limits of the County's and Board's Authority 45
2. General Factual and Remedies Allegations 49
3. Standards for Mandamus & General Description of Requested Mandamus Relief 50
4. Standards for Certiorari & General Description of Requested Certiorari Relief 51
B. Section 9 of the Ordinance is an Illegal Act in Violation of the Specific Repeal Requirements in Iowa Code § 331.302(4) 51
C. The Board of Supervisors Illegally Abdicated and Sub-Delegated Legislative Power to Private Entities in Contravention of Iowa Code §§ 331.301 & 331.302 54
D. The WECS Application Failed to Comply with the Ordinance and Approval of the WECS Application is Invalid 63
1. Invenergy's Knowing and Intentional Omission of Information Regarding Threatened and Endangered Species Invalidates the WECS Application Approval 65
2. Invenergy's Knowing and Intentional Omission of Information Regarding a Shallowly Buried, Active Petroleum Product Pipeline in the Project Area Invalidates the WECS Application Approval 76
3. Invenergy's Knowing and Intentional Omission of Radio Interference Information and Lack of FCC Authorization Invalidate the WECS Application Approval 77
4. Invenergy's Knowing and Intentional Omission of Information Regarding Planned Encroachments on Required Setbacks for Public Lands Invalidates the WECS Application Approval 80
5. Requested Relief – Approval of an Application Containing Knowingly False Information Must be Revoked 81

E. Approval of the WECS Application was an Illegal Act of the Board in Violation of Page County Wind Moratorium Resolution. 82

F. Adoption of the Ordinance was an Illegal Act in Violation of the Page County Zoning Ordinance. 84

G. Adoption of Section 9 of Ordinance, Adoption of the Ordinance as a Whole, and Approval of the WECS Application, were Each Illegal as Unreasonable and Capricious Acts of the Board. 87

1. The Adoption of Section 9 of the Ordinance was Unreasonable and Capricious 87

2. The Adoption of the Ordinance and Approval of the WECS Application were Unreasonable and Capricious 91

H. Adoption of the Ordinance and WECS Application Approval are Abuses of Zoning Discretion in Violation of Iowa Law 97

I. The WECS Application Approval was an Illegal Act Under Iowa Code § 331.302(14) Because the Decisive Vote was Cast by a Conflicted Supervisor 97

J. The Adoption of the Ordinance, the WECS Application Approval, and the Board's Negotiating Process for Road Use Agreement and Decommissioning Plan are Each Illegal Acts Arising from Violations of the Open Meetings Act 102

K. Requested Orders of Mandamus and Writs of Certiorari 106

CLAIM 2: THE ORDINANCE IS VOID FOR VAGUENESS 108

CLAIM 3: TEMPORARY AND PERMANENT INJUNCTION AGAINST COUNTY 113

CLAIM 4: DECLARATORY JUDGMENT 114

V. REMEDIES AND REQUESTS FOR RELIEF 115

I. PARTIES

1. Each Petitioner identified in the caption of this Petition is a resident of Page County.

2. The Respondents identified in the caption to this Petition are identified below and referred to herein jointly as the "Page County Respondents":

a. Page 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 Page County Auditor or upon the Chair of the Page County Board of Supervisors, each at 112 E. Main Street, Clarinda, IA 51632.

b. The Board of Supervisors of Page County 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 Page County Board of Supervisors, each at 112 E. Main Street, Clarinda, IA 51632.

c. Alan Armstrong ("Armstrong") is a resident of Page County and a member of the Page County Board of Supervisors and may be served at 112 E. Main Street, Clarinda, IA 51632.

d. Chuck Morris ("Morris") is a resident of Page County and a member of the Page County Board of Supervisors and may be served 112 E. Main Street, Clarinda, IA 51632.

e. Jacob Holmes ("Holmes") is a resident of Page County and a member of the Page County Board of Supervisors and may be served at 112 E. Main Street, Clarinda, IA 51632.

f. James King ("King") is the Page County Zoning Administrator and may be

served at 112 E. Main Street, Clarinda, IA 51632.

g. Carl Sonksen ("Sonksen") is the Page County Attorney, and may be served at 112 E. Main Street, Clarinda, IA 51632.

3. Petitioner reserves the right to amend this Petition to add additional respondents that may be discovered during the course of litigation.

II. JURISDICTION AND VENUE

4. 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.

5. This Court has jurisdiction to issue orders of mandamus and related injunctions pursuant to Iowa Code Chapter 661.

6. This Court has jurisdiction to issue writs of certiorari and related stays pursuant to Iowa R. Civ. P. 1.1404 & 1.1405.

7. The Court has jurisdiction and authority to issue declaratory judgments under Iowa R. Civ. P. 1.1101.

8. 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 Page County; (iii) a resident of Page County, or (iv) a business enterprise qualified to do business in Iowa and has transacted business in Page County.

9. Venue is proper in Page County as all of the material events involved actions by Page County and the Board of Supervisors and occurred in Page County.

III. OVERVIEW

10. This cases concerns illegal acts and omissions of Respondents Armstrong and Morris to faithfully exercise their duties as members of the Board of Supervisors ("Board") of Page County ("Page County" or "County), and the failure of Respondent Sonksen to fulfill his obligations as County Attorney.

11. 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.

12. 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")).

13. The Enterprise engaged in more than one predicate act involving undue influence of public officials and self-dealing among those within the Enterprise.

14. The Enterprise's actions, and their efforts to convince the citizens of Page County to believe falsehoods, designed to further the Enterprise's goals, included (i) passage of an intentionally vague and knowingly deficient ordinance (ii) creating an aura that the Respondents, all County representatives, within the Enterprise were unable to remedy or attempt to remedy deficiencies in the ordinance, and (iii) creating a façade of threats of litigation by Invenergy to provide legal cover to hide conversations and meetings from public view.

15. The Respondents cooperated with Invenergy by quickly passing a knowingly deficient ordinance provided to them by Invenergy.

16. Respondents then refused to amend the ordinance to the deficiencies for nearly

three years after its passage.

17. The passage of the ordinance gave Invenergy a "toe-hold" to threaten litigation if changes were made.

18. From the time of passage of the ordinance until the time of Invenergy's first threat of litigation, Invenergy engaged in a process of obtaining real estate interests in Page County speculating that their co-conspirator Respondents would approve an application when their real estate interests needed were acquired.

19. The "threat of litigation" was then used by the Respondents as justification to refuse amendments and hold closed-meetings outside of public scrutiny.

20. The Respondents then approved a knowingly deficient application by Invenergy because of a "threat of litigation" if it was not approved.

21. Respondents Armstrong, Morris, and Sonksen directly, knowingly, and intentionally cooperated with Invenergy for the benefit of the Enterprise.

22. The goal of the Enterprise is to provide Invenergy exclusive access to wind assets available in Page County, and the profits therefrom, to be distributed by Invenergy in its discretion, to benefit of members of the Enterprise.

23. The illegal interstate Enterprise, and its effort to hide information from the citizens of Page County, renders the members of the Enterprise in public office unable to continue to make decisions for the County in matters related to wind energy.

24. This case seeks writs, injunctions, and orders to prevent any further decisions in matters related to wind energy in Page County from being made by the members of the Enterprise until such time as this Petition can be heard and adjudicated.

25. The indicia of the Respondents Armstrong, Morris and Sonksen participating in this Enterprise include:

a. In 2019, Respondents Armstrong and Morris adopted a wind ordinance without any on-the-record discussion of the terms of the Ordinance.

b. In 2019, Respondents Armstrong and Morris used a procedure designed for adopting ordinances in emergencies for the non-emergency adoption of the ordinance, and in doing so waived the normal statutory procedure requiring public hearing at two meetings prior to final adoption of an ordinance.

c. Respondents Armstrong and Morris adopted the 2019 wind ordinance without providing the public the typical month of time to review the ordinance's terms and make comments.

d. The adopted ordinance was drafted by Invenergy, its agents, or other wind energy interests.

e. The wind ordinance given to Respondents was then adopted by Respondents Armstrong and Morris in 2019 without modification, or public input.

f. Respondents Armstrong and Morris repeatedly admitted, from late 2019 through early 2022, that the wind ordinance was deficient in its protections of the interests of the County and its citizens.

g. From late 2019 through early 2022, Respondents Armstrong, Morris and Sonksen repeatedly placated the public with promises of amendments to address the deficiencies of the ordinance; yet, no amendments have ever been considered or voted upon.

h. Before any application to under the ordinance was submitted, Respondents Armstrong and Morris, with the advice and influence of Respondent

Sonksen, rejected resolutions to establish a moratorium on wind turbine applications and approvals while the ordinance was revised.

i. Respondents Armstrong and Morris postponed consideration of amendments to the Ordinance.

j. Respondents Armstrong and Morris lied to residents when they stated that they would consider amendments to the Ordinance when a specific application proposal was submitted.

k. For more than two years after adopting the ordinance, the public repeatedly demanded amendments, and Respondents Armstrong, Morris, and Sonksen deflected and obstructed consideration of any amendments with promises of action to be taken to correct deficiencies later.

l. Respondent Armstrong was the beneficiary of television advertisements on an Omaha station in support of his wind position during a 2022 primary election for the supervisor position.

m. This advertisement in support of Respondent Armstrong was broadcast from Omaha across numerous uninterested counties in western Iowa and eastern Nebraska for a county board of supervisors' primary in Page County Iowa.

n. Respondent Armstrong has never been truthful about his knowledge of the creation, or ultimate funding source, for this advertisement.

o. Respondent Morris has been observed wearing socks that say "wind energy."

p. No publicly recorded action related to wind turbine energy by Respondents Armstrong or Morris has been inconsistent with the interests of Invenergy.

q. All publically recorded actions related to wind turbine energy by Respondents Armstrong, Morris and Sonksen have uniquely benefited

Invenergy's plans and economic interests.

r. Invenergy submitted an application in March 2022 under the ordinance.

s. Despite many on the record admissions that the wind ordinance was defective, Respondents Armstrong and Morris accepted Invenergy's March 2022 commercial wind turbine system application.

t. Invenergy had a representative present at nearly all board meetings relevant to discussions of the defects in the Ordinance.

u. Respondents Armstrong, Morris, and Sonksen met with Invenergy in off-the-record meetings.

v. Invenergy was aware that Respondents Armstrong and Morris admitted prior to Invenergy's application that the ordinance was deficient and that amendment of the Ordinance was probable.

w. With full knowledge that Board has stated the Ordinance was deficient and would be amended upon an application being submitted, Invenergy chose to submit its application.

x. Respondents Armstrong, Morris and Sonksen told the public, after Invenergy's application that changing the ordinance would expose the County to liability and litigation because Invenergy (their co-conspirator) had relied upon the language of the ordinance as adopted.

y. After Invenergy's application was submitted, Respondent Armstrong, with the legal advice of Respondent Sonksen, changed his vote on a moratorium against wind turbine system applications solely with intent to protect Invenergy by, in Respondent Armstrong's mind, grand-fathering in Invenergy's application under the deficient ordinance while blocking

consideration of other potential proposals.

z. Respondent Sonksen was aware that Invenergy had full knowledge of the deficient Ordinance at the time they submitted their proposal.

aa. Respondent Sonksen was aware that Invenergy cannot make a legitimate claim against Page County for failing to pass a moratorium when Invenergy knew that no such moratorium existed at the time their proposal was submitted.

bb. Respondent Armstrong changed his vote on the moratorium for the sole stated reason that Page County needed to avoid potential litigation with Respondent Armstrong's co-conspirator, Invenergy.

cc. Respondent Morris refused to change his vote on the moratorium, giving rise to the question as to whether he was being influenced not just by Invenergy, but also by other wind interests seeking control over the people of Page County.

dd. Respondents Armstrong and Morris demonstrated their participation in the Enterprise by accepting Invenergy's proposal as a predicate act so as to give the impression that the County would be legally bound to Invenergy.

ee. Page County is not legally bound to Invenergy. There is no contract between the County and Invenergy for C-WECS development.

ff. Respondents Armstrong and Morris colluded, lied and furthered the interests of the Enterprise by attempting to create a catch-22 situation for the County – adopting a knowingly deficient ordinance, then putting-off amendments until an application was filed, and then when Invenergy's application was filed stating that any changes would expose the County to

litigation from Invenergy's reliance on the terms of the defective ordinance.

gg. Irrespective of whether or not Page County is, in fact, legally bound to Invenergy, Representatives Armstrong and Morris illegally used their positions as Board Supervisors to enrich the Enterprise on that basis.

hh. Respondents Armstrong and Morris knew the Invenergy application was deficient, failed to include all required information, and that material changes to the disclosed plan would be required.

ii. With this knowledge of deficiencies, Respondents Armstrong and Morris (i) strong-armed Respondent King into blessing the Invenergy application as being in compliance with the ordinance, (ii) then approved the application, in part based on Respondent Sonksen's legal advice that failure to approve the application Respondent Sonksen conclude complied with the ordinance (which conclusion was knowingly false) would expose the County to litigation.

jj. Respondents' primary sources of information regarding the project was Invenergy.

kk. Respondents did not engage an outside consulting firm to evaluate the economic impact of the project on projected revenue, projected expenses, projected damage to roads and resources of the County.

ll. Indicia of corruption, graft, and an illegal Enterprise run throughout the below plead facts.

mm. No rational basis, other than economic or personal advantage for Respondents Armstrong, Morris, and/or Sonksen, can explain their repeated "kicking-the-can-down-the-road" for the benefit of Invenergy, and then

changing the rules and reneging on representations to the citizens they represent with the intent to protect Invenergy's interests to the detriment of the citizens of Page County.

26. Actions taken by the Respondents over the following five distinct time periods establishes a pattern of corrupt Enterprise activities:

a. October 2019 – Respondents Morris, Armstrong, and Sonksen rush adoption of a knowingly weak Ordinance, without study, and without normal public comment;

b. October 2019 to March 2022 – Respondents Armstrong, Morris, and Sonksen continually refuse to consider amendments to the Ordinance until a concrete proposal for a project is submitted to them;

c. March 2022 to July 2022 – A proposal is submitted by Invenergy and then Respondents Armstrong, Morris and Sonksen (i) refuse to consider amendments to the ordinance because Invenergy had submitted a proposal had threatened litigation exposing the County to liability if amendments were made; and (ii) Respondent Armstrong switching his vote on the moratorium to, in his mind, prevent any competitors of Invenergy entering Page County.

d. August 2, 2022 – Respondents approval of a knowingly deficient Invenergy application.

e. August 2, 2022 to Present – Respondents Armstrong, Morris and Sonksen create a procedure to keep road use and decommissioning agreement negotiation processes away from Respondent Holmes and the public to avoid the Open Meetings Act.

27. The above pattern is an illegal and corrupt enterprise cooperating with Invenergy, lying to the public, and trying to keep the enterprises actions from scrutiny.

28. Respondents Armstrong, Morris and Sonksen abandoned their duties to the public and became entangled in Invenergy's plans.

29. Once entangled, Respondents Armstrong, Morris, and Sonksen, in fear of Invenergy's threats of litigation against the County, further abandoned their duties and supplicated themselves to Invenergy and the Enterprise.

30. The citizens of Page County have constitutional and statutory rights to a county government that operates in compliance with the law.

31. The citizens of Page County have constitutional and statutory rights to a county government that is free from undue and illegal influence on its elected representatives.

32. Any action by Respondents to the further the interests of Invenergy while this litigation is pending serves as further evidence and proof of their willful participation in the Enterprise and Invenergy's undue influence on the representatives of the citizens of Page County.

33. The Petitioners ask that this Court dismantle the Enterprise, remove Invenergy's undue and illegal influence over the public's elected representatives, and return the lawful and legal operation of the County to the people as provided under the Iowa Constitution and the laws of the Iowa legislature.

IV. FACTS COMMON TO ALL CLAIMS

A. Wind Turbine Ordinance Adoption & Amendment Promises

34. On September 17, 2019, the Page County, Iowa ("Page County" or "County") Board of Supervisors ("Board") approved the publication of an ordinance summary and notice of public hearing for a proposed ordinance entitled "An Ordinance Regulating the Placement of Wind Energy Conversion Systems (WECS) on Property Located in the Unincorporated Areas of Page County, Iowa."

35. Jon Herzberg ("Herzberg"), then a supervisor, and Respondents Morris and Armstrong, both supervisors, approved publication and notice.

36. References to "minutes" of the Board in this Petition refer to the written minutes as approved by the Board and publically available through the County's web site.

37. The minutes of the September 17, 2019 meeting do not reflect any discussion of:

- **a.** the substantive terms of the proposed wind ordinance, or
- **b.** the processes and procedures to implement the proposed ordinance.

38. On September 24, 2019, the Board minutes report that the ordinance summary and notice had been delivered to the paper for publication.

39. On October 15, 2019, the minutes indicate:

- **a.** The Board met with Gary Davidson and Keith Wagner to discuss setbacks for wind turbines;
- **b.** The nature of these discussions or the content of the discussions with Davidson and Wagner are not documented; and
- **c.** The capacity Davidson and Wagner appearing with the Board was not set forth.

40. The minutes do not reflect any discussion of wind turbines at the Board's October 22, 2019 meeting.

41. On October 29, 2019, the Board held a public hearing on the proposed wind ordinance.

42. According to the minutes of the October 29, 2019 meeting:

a. Mark Zaccone, a representative of Invenergy, was in attendance at the meeting.

b. Four citizens spoke against the adoption of the Ordinance, and no citizens spoke in favor of the Ordinance.

c. "On motion by Herzberg, seconded by Morris, the board moved to approve the ordinance and waiving the 1st and 2nd reading of the ordinance" prior to the final vote.

d. The Board stated it was moving forward to adopt the ordinance at a single meeting, and waiving the usual three meeting process for ordinance approval, because it "felt it was necessary to approve the ordinance to protect the county infrastructure and residents."

e. There is no indication in the minutes as to what threat existed to the county or to the residents and infrastructure requiring immediate, and minimally noticed, action rather than discussion of the ordinance over the course of three or more meetings as usually practiced by the Board in accordance with Iowa Code § 331.302(6).

43. Invenergy's representative's attendance at the October 29, 2019 meeting is evidence of Invenergy's prior communications with the Board.

44. Invenergy's representative's attendance at the October 29, 2019 meeting indicates Invenergy was involved in the drafting of the ordinance proposed.

45. Readings of an ordinance and preliminary votes at two meetings prior to the third, or later, final vote is generally required by Iowa Code § 331.302(6)(a).

46. Waiving of prior readings and votes is (i) out of the normal course of business of the Board and (ii) generally reserved for emergency situations requiring prompt and swift action.

47. No prompt or swift action was required for approving the wind ordinance.

48. The Board's basis for rushing adoption without discuss is without a reasoned basis.

49. As plead below, more than two years would pass from the County's adoption of the ordinance to its receipt of the first wind turbine system application under the ordinance.

50. How the ordinance protected immediate threats to the infrastructure and residents of Page County at the time of adoption is never explained in any minutes of the Board.

51. According to the October 29, 2019 Board minutes:

a. The Board purportedly lawfully adopted Page County Ordinance 2019-2 "An Ordinance Regulating the Placement of Wind Energy Conversion Systems (WECS) on Property Located in the Unincorporated Areas of Page County, Iowa." (the "Ordinance");

b. The Board did not discuss the substantive terms of the Ordinance;

c. The Board did not discuss the processes and procedures to implement the Ordinance;

d. At the time, "[The] board plans to further research this and potentially amend

the ordinance" and that the supervisors "plan to hold future meetings to discuss [the ordinance] again."

e. The Board acted without knowledge, and without prior research or study on the matter, which is by definition capricious (i.e. without notion – meaning without knowledge).

52. The Ordinance became effective on November 8, 2019.

53. A copy of the Ordinance is attached hereto as Exhibit A to this Petition, and such exhibit is incorporated herein by this reference.

54. Upon information and belief, (i) the Ordinance, summarily published and adopted at one meeting, was not initially drafted at the initiative, or direction, of the Board, but rather (ii) the draft of what would become the Ordinance was provided to one or more of the Respondents, or their staffs, by persons or entities interested in developing commercial wind turbine systems in the Page County area.

55. There is no record of the Board discussing the terms of the Ordinance or discussing possible changes to the terms prior to adoption.

56. At the time the final vote of the Board approving the Ordinance was taken, no member of the Board of Supervisors disclosed a conflict of interest or abstained from voting.

57. The entire Ordinance had not been published for the public prior to the October 29, 2019 meeting.

58. At the November 12, 2019 Board meeting, the minutes reflect that when asked by a citizen how to place the wind ordinance on the agenda for future meetings, and how to propose amendments to the ordinance, Respondent Morris stated he would like to hold a public meeting in December.

59. Town hall meetings with Invenergy presenting were scheduled for December 16, 2019 in Clarinda and December 18, 2019 in Shenandoah.

60. The temporal proximity of Invenergy's quick involvement and organizing meetings in two towns just six weeks after adoption of the Ordinance is indicative of Invenergy, or those acting in Invenergy's interest, being involved in the drafting of the Ordinance and provision of the Ordinance to the Board.

61. No Board minutes in 2019 reflect open meetings between the Board, or a majority of its supervisors, with Invenergy or its representatives.

62. Any meetings between the Respondent supervisors and Invenergy in 2019 occurred in closed meetings for which there is no record of the meeting, or record of the basis for the closed meeting under Iowa law.

63. Each town hall meeting scheduled for December 2019 was attended by more than 50 citizens.

64. The minutes of the two December 2019 town hall meetings include dozens of individual public commenters.

65. At the December 18, 2019 town hall, the minutes reflect that when asked how quickly the Board will be looking to amend the Ordinance, Respondent Morris indicated the Board will look into amending at a meeting in mid-January 2020.

66. The Board never considered amendments to the Ordinance from the time of its adoption through today.

67. The Board minutes for meetings held in 2020 indicate the Ordinance, public comments and complaints regarding the Ordinance, and citizen requests and discussions of potential amendments to the Ordinance occurred on: February 11, and July 14, 2020

68. At the February 11, 2020 Board meeting, the minutes reflect that the Ordinance was not on the agenda, but one citizen during open public comment raised the issue of inadequate setbacks in the Ordinance, and Respondent Holmes, not then a supervisor, met with the Board to discuss the wind turbines and requested the Board hold an open meeting to discuss the Ordinance with the public.

69. At the February 11, 2020 Board meeting, the minutes reflect that Respondent Holmes, not then a supervisor, "asked the Board not to have outside conversations with the wind turbine company except in open meeting."

70. Respondent Holmes's statement warning the Board of violating the Open Meetings Act indicates Respondent Holmes was concerned in early 2020 that unrecorded and undocumented closed meetings of the Board with Invenergy and other wind turbine companies were occurring.

71. At the July 14, 2020 Board meeting, the minutes reflect that:

a. County Attorney Sonksen provided on the record advice on legal considerations before another open meeting regarding the Ordinance should be held.

b. Sonksen indicated, the Ordinance can be "modified moving forward, but it cannot be retroactive. Any change in the ordinance that would affect landowners that have already signed contracts would likely result in legal action against the county."

72. On September 1, 2020, the minutes indicate:

a. Citizens requested meetings and modifications to the Ordinance be discussed.

b. Citizens requested that property takings of non-participating land-owners be discussed at public hearings.

c. Numerous citizens expressed concerns regarding the Ordinance.

d. Citizens advised the Board that despite its statements in October 2019 and December 2019 that further study and amendment would be forthcoming, no changes in the nearly one year since the Ordinance was adopted had occurred.

e. Respondent Morris stated that "moving setbacks a few hundred feet would be allowed, but shutting wind energy down in Page County could result in litigation."

73. At the October 6, 2020 meeting, Respondent King, acknowledged that wind turbine companies transporting turbine equipment through the County to projects in other areas were damaging the roads, and that "if and when the wind farms stop tearing up the roads, [J55] will be returned to a hard surface road."

74. From its interaction with wind companies transporting wind turbine components through Page County for other projects, the Page County engineer, Respondent King, and the Board knew of the damage caused to public roads by these excessively heavy trucks and cargo.

75. The Board held a "wind forum" on October 13, 2020 with panelist comprised of the Executive Director of the Iowa Rural Development Council, Director of Iowa Energy Office Department of Iowa Economic Development Authority, Vice President of Development for Tenaska (a wind turbine developer), Manager of Renewable Development – Invenergy, LLC, Dean of Industrial Tech Programs – Iowa Western Community College, and a farmer in Adair County.

76. All panelist invited by the Board to the October 13, 2020 "wind forum" spoke in favor of wind development.

77. Citizens were not allowed to question the October 13, 2020 "wind forum" panelists.

78. The minutes of the Board do not reflect open meetings, or the basis for holding closed meetings, demonstrating the manner in which the Board organized the participants who appeared at the October 13, 2020 "wind forum"

79. The October 13, 2020 "wind forum" was held shortly before the upcoming election in November, and the candidates for election had expressed differing views on wind energy development in Page County.

80. The minutes reflect that at the October 20, 2020 meeting of the Board:

- **a.** Citizens asked whether the Board would provide and organize a similar "wind forum" with a panel of individuals against wind turbines.
- **b.** Respondent Morris indicated he would "consider" such a panel.
- **c.** Respondent King presented the Board with two applications to build meteorological towers (MET Towers) – one from Invenergy and the other from Tenaska.
- **d.** The Invenergy representative, Gabe Klooster, stated the proposed 195 foot tower would be temporary (two or three years) and then it would be removed.
- **e.** The Board approved the Invenergy temporary MET tower application 3-0.

81. The Board has never organized a public panel comprised only of wind turbine opponents.

82. The November 10, 2020 Board minutes reflect:

- **a.** The Board put to a vote the question of whether a non-participating land-owners' rights forum should be held.
- **b.** The motion to hold such a forum was rejected on a 3-0 vote.

83. Respondent Holmes was elected to the Board seat previously held by Herzberg. Holmes assumed the seat and attended his first Board of Supervisors meeting on January 4, 2021.

84. The March 30, 2021 Board meeting minutes reflect the following:

a. Citizens again requested a public meeting regarding wind projects in the county.

b. Respondent Morris "stated that two companies are working to obtain land in the county but no projects have been presented to the board for approval at this time and that he feels that it would be more beneficial to have public meeting once a project is presented."

c. Respondent Holmes moved for a public meeting on wind projects in Page County. Holmes "stated he feels other people who are now seeing action around their property who didn't realize everything that was going on a couple of years ago, might be more interested in attending a public meeting now."

d. Respondent Holmes's proposal for a public meeting was rejected on a 2-1 vote (Respondents Armstrong and Morris in the majority).

e. Respondent Morris encouraged Respondent Holmes to meet with the County's legal counsel (Respondent Sonksen) the following week on the turbine issues.

f. Following the rejection of Respondent Holmes's motion, Respondent Armstrong moved that there be a public meeting once a project is submitted to the Board, and for the Board's legal counsel to be present at the meeting.

g. Respondent Armstrong's motion for a public meeting upon receipt of a proposal was approved 3-0.

h. When further citizens voiced concerns of meeting after a project was proposed rather than amending the Ordinance prior to such a proposal, Respondent Morris "stated he would be willing to listen to anything new in regards to wind but if it has been previously discussed he is not interested."

i. One citizen inquired as to why the County's abstracts were being re-written and changed if no wind projects had been proposed.

85. The temporal proximity between abstracts being re-written, and Respondents Armstrong and Morris "road-blocking" discussions of amendments before the submission of a proposal, indicates closed meetings being held by a majority of its supervisors with wind industry interests.

86. The temporal proximity between abstracts being re-written, and Respondents Armstrong and Morris road blocking discussions of amendments before the submission of a proposal is further indication of conflicted interests of the supervisors.

87. Throughout the remainder of 2021, the minutes reflect repeated requests for information, meetings, clarifications, and amendments by citizens always being rejected by Respondent Morris and Respondent Armstrong.

88. The minutes reflect citizen requests for public discussions and Board provision of information to the public at Board meetings held on April 6, September 28, and October 5, 2021

89. The minutes of the Board reflect that the amount of work, and Board discussion and planning for other projects (such as the County's ATV ordinance and the County's

project to replace the windows in certain Page County buildings), was extensive when compared to the lack of work on the wind turbine ordinance reflected in the same minutes.

90. This difference in treatment of projects, occurring at temporally proximate times, demonstrates the citizens were not receiving (i) full information as to the backroom, unrecorded closed meetings and/or (ii) full information as to the Board's cooperation with Invenergy in blocking proposed amendments to the Ordinance.

91. The minutes reflect that the Board told the public in 2021 that amendments to the Ordinance would be addressed when a project proposal was submitted.

92. The minutes reflect that the Board did not place the Ordinance or wind turbines on the agenda for any meetings in January and February 2022.

93. The minutes reflect that the citizens requested information, requested amendments, and requested discussion on the Ordinance and wind turbine issues at Board meeting held on January 25, 2022.

94. The 2021 minutes, and those from the first two months of 2022, show dearth of discussion of wind turbines by the Board in its meetings.

95. When compared to the events of March 2022 to present, the lack of discussion of turbine issues in 2021 and early 2022 reflect the Board was:

- **a.** Holding closed meetings with Invenergy during the entire period; and
- **b.** Aware of the details of a project proposal to soon be submitted by Invenergy.

96. The minutes of the Board's February 28, 2022 meeting reflect:

- **a.** More than 90 citizens attended the meeting.
- **b.** Nearly 20 citizens spoke against approval of wind turbine projects.
- **c.** Invenergy's representative, Mark Cowl, was present at the meeting.

d. Cowl indicated Invenergy would be submitting proposal and application within weeks.

e. Respondent Holmes discussed safety and noise information.

f. Respondent Holmes stated that it was his view that "the consensus seems to be that everyone is very concerned about the timeline of the submitted project." An interesting comment given no project proposal had been submitted. This comment and the discussions of a "proposal" not yet submitted are further indication of the Board holding closed meetings with Invenergy.

g. Respondent Morris, in response to citizens, stated "the ship has already sailed" and that "he isn't going to change the ordinance because of the potential legal consequences."

h. Respondent Holmes voiced concern as to allowing Invenergy to proceed with a project due to Invenergy lying regarding its breaking its road use agreement with the County.

i. A citizen voiced concern that a tax incentive ordinance passed in 2008 is still in place and has not been repealed.

j. A citizen read the minutes from the October 29, 2019 meeting approving the Ordinance at which Respondent Sonksen said details of the Ordinance can be amended before or after a plan is submitted.

k. Citizens requested a hearing to amend the Ordinance before any proposal was submitted.

l. Respondent Holmes expressed concerns on the Ordinance provisions on setbacks and decommissioning.

B. Invenergy's Wind Turbine System Application

97. Section 3 of the Ordinance ("Section 3") established procedures and requirements for persons or entities applying for a permission to construct commercial wind energy conversion systems ("C-WECS") and for non-commercial wind energy conversion systems ("Non C-WECS").

98. On or about March 7, 2022, Shenandoah Hills Wind Project, LLC ("SHW"), an Invenergy affiliate, submitted an application under the Ordinance for a proposed C-WECS in Page County.

99. The application was entitled "Shenandoah Hills Wind Project WECS Application" (the "WECS Application").

100. A copy of the WECS Application is attached hereto as Exhibit B and incorporated herein by reference.

101. The WECS Application by SHW was submitted on "Invenergy" letterhead.

102. The WECS Application disclosed that SHW was an "affiliate of Invenergy LLC."

103. The WECS Application did not describe or disclose the nature of the "affiliation" between SHW and Invenergy, LLC or any other Invenergy affiliates.

104. The WECS Application was not signed by any person or entity representing SHW or any Invenergy affiliate.

105. The WECS Application was not signed by anyone.

106. The WECS Application did not include any attestation as to the accuracy, truthfulness, or completeness of the information provided.

107. The WECS Application described the "Project" as including up to 64 wind turbines to be deployed, with 31 sites in Page County and 33 sites in Fremont County, with disclosed turbine heights of between 500 to nearly 600 feet, as well as up to two

permanent, non-guyed, meteorological (MET) towers of 344 feet in height.

108. Section 1.1 of the WECS Application stated that that the "application complies with and demonstrates that the Project meets all requirements for a Wind Energy Conversion System ("WECS") of the Page County Zoning Ordinance, as well as the additional sections of the Ordinance incorporated therein by reference. . ."

109. Invenergy's statement in Section 1.1. of the WECS Application quoted in the immediately preceding paragraph is without basis because:

a. No provision of the County Zoning Ordinance sets requirements specifically applicable to WECS.

b. No provision of the Ordinance states that the Ordinance's provision are incorporated into the Page County Zoning Ordinance.

c. No provision of the Ordinance states that it is part of the Page County Zoning Ordinance.

d. No provision of the Page County Zoning Ordinance states that it incorporates any provision of the Ordinance.

e. No provision of the Ordinance amends, modifies, repeals or otherwise changes specific provisions of the Zoning Ordinance.

f. The WECS Application was never submitted to, or reviewed by, the Page County Zoning Commission.

110. The WECS Application was submitted after 3:00 p.m. on March 7, 2022.

111. A meeting of the Board convened the following day, March 8, 2022, at 8:30 a.m.

112. The minutes of the March 8, 2022 Board meeting reflect:

a. The Board considered a resolution to impose a 180-day moratorium "on the submission, acceptance, or implementation of any [WECS] permit

application as well as any recording of easements while the ordinance is reopened for review and amending."

b. The moratorium proposal was rejected on a 2-1 vote (Armstrong and Morris in the majority).

c. In rejecting the moratorium, Respondent Armstrong "stated until he sees a specific project he isn't certain what needs amended in the ordinance."

d. Respondent Holmes requested an amendment to rescind Section 11.a of the Ordinance and amend Section 11.c of the Ordinance to provide for increased setback requirements.

e. Respondent Morris refused to vote for any amendments because he "is overloaded and needs to take time to look them over."

f. Respondent Armstrong stated he preferred to have amendments on the following week's schedule "so they can have adequate time to look into specific items in the ordinance."

g. Respondent King was tasked with looking at the road use agreement attached to the Ordinance.

113. Petitioners have no information as to why Respondent King, the County's Zoning Administrator and Engineer, had not looked at the road use agreement attached to the 2019 Ordinance prior to receiving the WECS Application in March 2022.

114. The minutes of the March 15, 2022 Board meeting reflect:

a. Public comments were taken, all against approval of the WECS Application.

b. No discussion of a moratorium or amendments to the Ordinance were raised by any of the supervisors.

115. The minutes of the March 22, 2022 meeting reflect:

a. No on-the-record discussion of the Ordinance or WECS Application occurred.

b. The Board conducted a closed meeting citing Iowa Code § 21.5 (1)(c)(conference with counsel regarding existing or threatened litigation).

116. The topic of conversation in the § 21.5 meeting on March 22, 2022 was threat of litigation received by the County and Board from Invenergy.

117. The minutes of the March 29, 2022 meeting reflect:

a. A proposed 180-day moratorium was discussed with the County attorney present.

b. The County Attorney, Respondent Sonksen, stated that "any ordinance can be amended and changed."

c. Respondent Morris stated he would not support the moratorium based on the right of people to use their property as they see fit.

d. Respondent Holmes stated there were still problems in the Ordinance (light, property rights issues, height, setbacks, and sound) that needed addressed.

e. Respondent Armstrong stated the Board "worked hard to develop an ordinance that was beneficial to the citizens" citing tax revenue.

f. The proposed 180-day moratorium was adopted on a 2-1 vote (Armstrong and Holmes in the majority).

118. The facts plead above (i) demonstrate the dearth of meetings prior to adoption the Ordinance in 2019, and (ii) the refusal of the Board to consider amendments in 2020 and 2021; all of which directly conflict with Respondent Armstrong's statement that the Board "had worked hard to develop an ordinance that was beneficial to the citizens."

119. The Board did not conduct any on-the-record work in open meetings to develop the Ordinance in 2019.

120. The Board always refused attempts to amend, or discuss amendments to, the Ordinance in 2020 and 2021.

121. The minutes of the Board from the two meetings prior to adoption of the Ordinance through March 29, 2022 only contain the following in connection with the wind turbine issue:

- **a.** The Board rejecting citizen requests to discuss amendments to the Ordinance.
- **b.** The Board stating it wanted to delay consideration of amendments until after a proposal was received.

122. Respondent Armstrong voted against a 180-day moratorium on March 8, 2022 (less than 24-hours after the WECS Application was submitted.)

123. Respondent Armstrong voted for a 180-day moratorium three-weeks later on March 29, 2022.

124. Respondent Armstrong's March 29, 2022 moratorium vote was a switch from his prior pro-wind votes with himself and Morris in the majority.

125. Respondent Armstrong's March 29, 2022 moratorium vote aligned himself with Respondent Holmes who was historically in the minority.

126. On March 29, 2022 Respondent Armstrong was facing stiff competition in the primary elections to retain his seat on the Board.

127. Respondent Armstrong did not change his vote on any other matters during the time period between March 8, 2022 and March 29, 2022.

128. Respondent Armstrong offered no reason for his change in vote on March 29, 2022.

129. The minutes do not reflect any discussion of the Ordinance or any applications

under the Ordinance at the Board meetings held on April 5, 12, 19, 26, or May 3, 10, 17, 24, 2022.

130. The minutes reflect the Board held closed sessions under Iowa Code § 21.5 (1)(c) (conference with counsel regarding existing or threatened litigation) on April 12 and 19, 2022.

131. The topic of conversation at the April 12 and 19, 2022 § 21.5 meetings was the threat of litigation by Invenergy against the County.

132. On or about May 30, 2022, Respondent King, solely in his capacity as Page County Zoning Administrator, delivered the Board the WECS Application with his singular conclusion that the WECS Application complied with the Ordinance.

133. Respondent King is not a lawyer.

134. Respondent King could not provide a legal opinion about the WECS Application.

135. Respondent King was not asked to provide a conclusion to the Board about the WECS Application in his capacity as Page County Engineer.

136. Respondent King did not provide a conclusion to the Board about the WECS Application in his capacity as an engineer.

137. The Board could have included in the Ordinance a required approval of the WECS Application from Respondent King in his capacity as an engineer.

138. The Board could have included in the Ordinance a required approval of the WECS Application from Respondent King as County Engineer

139. The Board could have included in the Ordinance a required approval of the WECS Application by the County Attorney.

140. The Board chose to request a conclusion from Respondent King solely in his capacity as Page County Zoning Administrator, and required no other approvals

prior to a Board vote.

141. The Board chose not to require in the Ordinance that the County Attorney find that the WECS Application complied with the Ordinance.

142. Respondent King was present at nearly every single Board meetings from 2019 to 2022.

143. Respondent King was aware of Respondent Armstrong's votes on the Ordinance and WECS Application.

144. Respondent King was aware of Respondent Morris's votes on the Ordinance and WECS Application.

145. Respondent King was aware of some of Respondents Armstrong's non-open meeting conversations with Invenergy.

146. Respondent King was aware of some of Respondents Morris's non-open meeting conversations with Invenergy.

147. Respondent King was aware that Respondent Armstrong wanted the WECS Application to be approved.

148. Respondent King was aware that Respondent Morris wanted the WECS Application to be approved.

149. Respondent King was aware that he can be terminated from his position by majority vote of the Board.

150. Respondent King was aware that Respondent Armstrong and Respondent Morris comprised a Board majority at the time that Respondent King delivered his WECS Application approval.

151. Respondent King was aware that his continued employment as Zoning Administrator was dependent on his ability to comply with the expressed wishes of

Respondent Armstrong that the WECS Application be approved.

152. Respondent King was aware that his continued employment as County Engineer was dependent on his ability to comply with the expressed wishes of Respondent Armstrong that the WECS Application be approved.

153. Respondent King was aware that his continued employment as Zoning Administrator was dependent on his ability to comply with the expressed wishes of Respondent Morris that the WECS Application be approved.

154. Respondent King was aware that his continued employment as County Engineer was dependent on his ability to comply with the expressed wishes of Respondent Morris that the WECS Application be approved.

155. Respondent King was aware that he was expected to "rubber stamp" the WECS Application.

156. Respondent King, with the above referenced knowledge, complied with the expressed wishes of Respondent Armstrong and approved the WECS Application.

157. Respondent King, with the above referenced knowledge, then complied with the expressed wishes of Respondent Morris and approved the WECS Application.

158. The minutes of the May 31, 2022 Board meeting reflect:

a. Invenergy's representative advised the Board that Invenergy was requesting a vote on the WECS Application be taken at the Board's June 14, 2022 meeting.

b. Respondent Holmes requested time to study the WECS Application's map and proposal.

c. Respondent Holmes reiterated that the Board had previously indicated that once the plan was approved by King, the Board would take time to consider

the plan.

d. Respondent Armstrong, together with Respondent Morris, refused Respondent Holmes's and the citizens' requests for a public hearing on possible amendments in March 2021, and instead in March 2021 forced adoption of a resolution to hear public comments and concerns after an application was received.

e. Respondents Armstrong and Morris refused the citizens' request in contradiction of their March 2021 statements on the record.

f. Respondent Holmes asked whether the environmental study was done. Invenergy's representative stated he would email the study to Respondent Holmes.

159. The minutes of the June 7, 2022 Board meeting reflect:

a. Respondent Morris raised the question about the different number of turbines contained on the application compared to the number included in the digital plan submitted.

b. Invenergy stated several turbines had been removed from that in the WECS Application.

160. The Board never revealed a study or estimates of any tax revenue that would be generated for the County based on the WECS Application.

161. The Board never released a study of the estimated tax revenue impact of the reduction of the number of turbines in the proposal.

162. The primary elections for Page County Board of Supervisors was held in early June 2022.

163. Respondent Armstrong was defeated in the primary election, garnering only 31.41%

of the Republican vote.

164. The primary opponent defeating Respondent Armstrong received 68.45% of the vote.

165. The development of wind power in Page County was a significant issue in Respondent Armstrong's primary campaign.

166. The WECS Application was not addressed at the June 14, 2022 Board meeting following the primary election defeat of Respondent Armstrong.

167. The minutes of the June 21, 2022 Board meeting reflect:

a. Mike Blazer (described as "special counsel for Invenergy") requested a date for a meeting to discuss and vote on the WECS Application.

b. Blazer read a letter complaining about the contents and scope of a legal hold notice sent by counsel for the Petitioners to the Board of Supervisors.

168. Petitioners do not know how Invenergy came into receipt of a legal hold notice sent to the Board.

169. The only possible source of Invenergy's possession of the legal hold letter was one of the Page County Respondents.

170. At the June 30, 2022 Board meeting, citizens raised issues with approval of the WECS Application being contrary to the moratorium resolution adopted by the Board in March 2022.

171. The July 5, 2022 Board meeting minutes establish:

a. A representative of Page County Horizons (a citizens group organized in opposition to wind turbines) presented to the Board, and commented upon Invenergy's conduct at the prior week's meeting in which Invenergy's representatives offered to make concessions on its plan if the Board would

approve the WECS Application at that time, such as Invenergy offering to remove four turbines from the Project (when such a change would have been material requiring re-application and the Ordinance did not prevent adding the turbines back, each as plead below).

b. Another citizen presented a letter for the supervisors to send to Invenergy inquiring about Invenergy's disclosures under Section 3.5 of the Application regarding environmental concerns for species.

c. Respondent Armstrong said he would "follow-up with Invenergy to request the information suggested in the letter."

172. Respondent Armstrong never provided the requested environmental information before approval of the WECS Application.

173. The July 12, 2022 Board meeting minutes establish:

a. A representative of Page County Horizons appeared at the Board meeting to discuss issues surrounding the Project's turbine interference with KYFR's radio signal, and the proposed placement of turbines too close to a public area (Wabash Trace Trail).

b. KYFR representatives appeared at the meeting indicating KYFR's engineers were still reviewing the proposal for impacts of three turbines causing distortion of the station's broadcast pattern.

174. The July 18, 2022 Board meeting minutes establish:

a. A member of Page County Horizons asked for clarification regarding the project line boundary in the WECS Application.

b. A member of Page County Horizons asked whether any future projects within the line would be grandfathered-in to any subsequent changes to the

Ordinance.

c. A member of Page County Horizons requested third-party legal and engineering opinions.

d. Representative Holmes stated he had requested environmental information from Invenergy but he only received a summary.

e. The meeting concluded with a closed session under Iowa Code § 21.5 (1)(c) (conference with counsel regarding existing or threatened litigation).

175. The topic of conversation at the July 18, 2022 § 21.5 meeting was the threat of litigation by Invenergy against the County.

176. The July 26, 2022 Board meeting minutes establish:

a. A citizen asked the Board who would be the County's point of contact for compliance with the Ordinance if there were violations.

b. A citizen asked whether any changes had been made to the Ordinance during the 120 days that had passed since passage of the moratorium.

c. Respondent Armstrong stated the Board had been working with legal counsel on the Invenergy WECS Application.

d. Respondent Armstrong stated that if legal counsel approves the WECS Application, the application would go to a vote, and then after the vote the Board would be able to concentrate on the Ordinance and future projects.

e. A citizen, in response to a challenge by Respondents Armstrong and Morris at a prior meeting for her to locate another county's ordinance measuring setbacks from property lines not structures, presented such an ordinance from Madison County.

f. The minutes indicate Respondents Armstrong and Morris rejected the

Madison County example because Madison County did not have an active wind project.

177. The Petitioners cannot understand the logic of Respondents Armstrong and Morris regarding Madison County at the July 26th meeting because at the time Page County, just like Madison County, did not have an active wind project.

178. The only explanation of the July 26th statements is that Respondents Armstrong and Morris, as members of the Enterprise, considered an active wind project to be ongoing in Page County, even when such a project had not yet been approved.

179. The rejection of the presented Madison County ordinance demonstrates the lack of reason (unreasonableness) and arbitrariness of the Board in approving the WECS Application.

180. On July 29, 2022, the Board held another closed meeting pursuant to Iowa Code § 21.5 (1)(c) (conference with counsel regarding existing or threatened litigation).

181. The topic of conversation at the July 29, 2022 § 21.5 meeting was the threat of litigation by Invenergy against the County.

182. The Board's published agenda for the August 2, 2022 meeting (i) conflicted with the Board's prior promises and resolutions to consider Ordinance amendments after receiving a specific proposal, and (ii) pre-ordained a result, when the agenda item was "Discuss/Approve Shenandoah Hills Application" (emphasis added).

183. The evens of August 2, 2022 demonstrate three members of the Enterprise, Respondents Armstrong, Morris and Sonksen, had repeatedly lied to the public regarding the amendment process and planned proceedings to amend for more than two years.

184. The August 2, 2022 Board meeting minutes establish:

a. At least 100 people were present personally or by Zoom.

b. Only one citizen spoke in support of approving the WECS Application.

c. KYFR spoke against the approval of WECS Application on the grounds of Invenergy refusing to engage in good faith negotiations regarding radio interference.

d. Citizens raised the issue for the first time as to the danger of the project to the Buckeye petroleum product pipeline running through the Project area.

e. The Board had not been informed by anyone prior that a pipeline was in the area.

f. A citizen raised the issue of a television advertisement run for Respondent Armstrong's unsuccessful primary campaign touting his pro-wind position, and inquired as to the source of funding for the ad.

g. Respondent Armstrong stated "he was not sure who was running the ad and that he did not contact them and it was that company who endorsed Armstrong."

h. Citizen questioned Respondent Armstrong as to his conflicts of interest.

i. Respondent Armstrong denied any conflict on the Invenergy WECS Application.

j. Questions as to eminent domain were raised, but not addressed by the Board.

k. Citizens noted for the Board that there were errors and omissions in the WECS Application.

l. Citizens noted that information regarding the WECS Application's proposed placement of turbines inside of the required setbacks for public land had not

been addressed by the Board.

m. A citizen asked how it had only taken two meetings to pass a 26-page wind ordinance, but it had taken seven meetings to pass a 5-page ATV ordinance.

n. The Board was advised that Invenergy had not obtained a FCC permit.

o. Respondent Holmes suggested that a vote on the WECS Application be delayed until the FCC permit had been obtained.

p. Respondent Holmes's suggested delay on a vote to await FCC permitting was rejected by Respondents Armstrong and Morris.

q. The Board stated Invenergy would not provide more information on the environmental studies beyond that summary information already provided to the public.

r. The Board acknowledged that the Ordinance was confused as to whether the turbine placement near Wabash Trace trail, a public area, was permitted or not.

s. The Board indicated the Ordinance is weak, but the WECS Application met the requirements.

t. The WECS Application was approved on August 2, 2022 on a 2-1 vote (Armstrong and Morris in the majority).

u. Respondent Holmes stated he was not voting for the WECS Application because (i) Invenergy had breached its only prior contract with the County, (ii) representatives of Invenergy had lied to his face in the board room, and (iii) the application was full of problems.

185. Mere seconds after approving the WECS Application, the audio & video record of the Board meeting show Respondent Armstrong acknowledging that the Board

knows of deficiencies in the Ordinance and WECS Application materials.

186. Mere seconds after approving the WECS Application, the audio & video record of the Board meeting show Respondent Armstrong stating that the deficiencies in the Ordinance and WECS Application can be addressed later.

187. The August 9, 2022 Board meeting minutes establish the Board, only one week after "approving" the WECS Application, voted to extend the moratorium to March 2023.

188. Neither the Ordinance nor the WECS Application was discussed at the August 16, 2022.

189. The August 23, 2022 Board meeting minutes establish:

- **a.** The Board was asked how Invenergy communicated with the Board.
- **b.** Armstrong responded and "stated through emails and phone calls."
- **c.** A citizen stated that such communication from Invenergy should be public information.
- **d.** Armstrong indicated that updates would be provided at later meetings.
- **e.** Armstrong stated he had contacted outside counsel for assistance with preparing the road use agreement and decommissioning plan.
- **f.** Armstrong stated he was getting advice from outside counsel regarding the setback encroachment near Wabash Trail.
- **g.** The Board discussed whether it would be able to TIF (tax incremental financing) the Wind Turbine Project and the need for expert help to determine what the "costs and benefits would be."

190. The minutes and agenda for the August 30, 2022 meeting establish:

a. Counsel had advised the Board that a resolution was needed to authorize supervisors or staff to work with outside counsel to prepare and negotiate along the final road use and turbine decommissioning agreements with Invenergy. The proposal was approved and a vote on the proposal was delayed at the request of Respondent Holmes.

b. "Armstrong explained that legal counsel wanted one board member to be a point of contact that would work with outside counsel and King."

c. "Brownell [outside counsel] felt that after reading through the minutes [of the August 2nd meeting] they needed to assign a board member to be in contact with legal counsel. Legal counsel would then contact Invenergy and go back and forth on the road use agreement and decommissioning agreement. This process will take approximately 30-45 days. Once an agreement has been met it would then be presented to the entire Board of Supervisors to vote on."

d. Holmes questioned why Invenergy should have any say in the agreements and the agreements were to protect Page County resources.

e. Holmes stated that he "prefers that all three board members have a say in both agreements and feels it should be discussed in public meetings."

f. "Morris stated due to potential litigation and the fact that the Road Use Agreement is included in the Wind Ordinance he felt it was required to be in closed session if all three supervisors were present."

191. Prior to August 30, 2022, the Board had never considered or adopted a resolutions approving any Board supervisors or staff to negotiate with Invenergy or any other potential wind turbine system applicant.

192. At the August 30, 2022, the Board discussed the assigning Armstrong to the negotiate one agreement and Holmes to negotiate the other.

193. At the September 6, 2022 meeting, on a 2-1 vote (Armstrong and Morris in the majority):

- **a.** Respondent Armstrong was assigned to serve as contact and negotiator to work with outside counsel on the road use agreement;
- **b.** Respondent Morris was assigned to serve as contact and negotiator to work with outside counsel on the decommissioning plan;
- **c.** Respondent Holmes was not assigned to participate in the negotiations.

194. Respondent Holmes voted to deny the Invenergy WECS application on August 2, 2022 because Invenergy lied about its damage to Page County roads from its transports across the county for other projects.

195. Respondent Holmes received no assignment because he demanded Invenergy to comply with other road use agreements

196. In September 2022, Cass County now also learns 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 now the bridge to now be repaired and local transportation before harvest hampered.

[https://www.kjan.com/index.php/2022/09/cass-county-sheriffs-office-updates-crane-accident-info-1-other-accident/]



197. Litigation is ongoing in Minnesota and other areas attempting to obtain wind turbine developers to pay after damaging roads even with road use agreements.

198. Respondent Armstrong and Respondent Morris intentionally, and with allegiance to Invenergy, blocked Respondent Holmes from negotiating the road use agreement.

CLAIM 1: WRITS OF MANDAMUS & CERTIORARI

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

A. General Legal and Factual Allegations

1. Source, Scope and Limits of the County's and Board's Authority

200. Iowa Constitution, art. III, § 39A, grants Iowa counties home rule power and authority to determine and act in local affairs and government.

201. Iowa Constitution, art. III, § 39A prohibits an Iowa counties from acting inconsistent with the laws of the laws of the State of Iowa general assembly.

202. The Iowa general assembly is vested under Iowa Constitution art. III Legislative

Department § 1 with sole legislative authority for the State.

203. 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).

204. The Iowa legislature directed that all duties of a county must performed by, or under the direction of, the board of supervisors. Iowa Code § 33.301(2).

205. 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).

206. 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.

207. 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).

208. 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)).

209. 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").

210. 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 ordinance or resolution.

211. Actions by the Board in contravention of 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).

212. 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).

213. 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.

214. In adopting the Ordinance the Board was required under the Home Rule Statute to provide Petitioners notice and opportunity to be heard.

215. In and approving the WECS Application the Board was required under the Home Rule Statute to provide Petitioners notice and opportunity to be heard

216. In adopting the Ordinance the Board was required to (i) determine the factual basis for its actions, (ii) apply Iowa Code § 331.301(1) to those facts, and (iii) make its determination whether those actions were within its jurisdiction and authority as delegated by the Home Rule Statute.

217. In approving the WECS Application the Board was required to (i) determine the factual basis for its actions, (ii) apply Iowa Code § 331.301(1) to those facts, and (iii) make its determination whether those actions were within its jurisdiction and

authority as delegated by the Home Rule Statute.

218. Under Section 3 of the Ordinance, before approving the WECS Application, the Page County Zoning Administrator was required to determine that the WECS Application complied with the Ordinance.

219. Under Section 3 of the Ordinance, after certification of the WECS Application's compliance with the Ordinance from the County Zoning Administrator, the Board was required to determine that the WECS Application complied with the Ordinance.

220. In adopting the Ordinance each supervisor, and the entire Board, was required to determine if any member was acting with a conflict of interest as to the matter upon which action was being taken.

221. In approving the WECS Application, each supervisor, and the entire Board, was required to determine if any member was acting with a conflict of interest as to the matter upon which action was being taken.

222. Only the courts may adjudicate whether the Board acted consistent with its power, authority and procedures as delegated by statute.

223. Only the courts may adjudicate whether the Board has violated the rights of the citizens of Page County to be subject to only those laws and rules adopted in conformance with the Constitution and laws of the State of Iowa.

224. Only the courts may determine whether the Board complied with the statutory procedural requirements of the Iowa Code.

225. 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.

2. General Factual and Remedies Allegations

226. The Petitioners are personally interested in the requests for relief contained within this entire Petition.

227. The Petitioners, as residents of Page County, have interest in the following:

a. The lawful exercise of governmental power by their County elected officials;

b. The employees, officers and supervisors of the County exercising their powers in accordance with the law;

c. The health, safety and welfare of the residents of Page County;

d. The financial and infrastructure resources of Page County;

e. The habitats and species of Page County; and

f. The impact of the SHW proposed C-WECS system on their property, businesses, living conditions, health, safety, life, roadways, and standard of living.

228. Invenergy is comprised of companies headquartered in downtown Chicago.

229. Invenergy's employees and representatives have been deployed to Page County to effectively "carpet bag" ordinances and approvals to Invenergy's economic advantage over the wishes of the Page County citizens

230. Invenergy does not share the same concerns as the Petitioner's identified above.

231. The Page County Respondents each have a duty, arising out of their office, to comply with the Constitution and laws of the State of Iowa.

232. The Page County Respondents each have a duty, arising out their office, to comply with the Board's previously adopted ordinances and resolution that have not been specifically repealed or amended.

233. The Page County Respondents each had a duty to assure that Invenergy's WECS

Application complied with the requirements of the Ordinance before approving the WECS Application.

234. The Petitioners have demanded that the Page County Respondents comply with their duties, verbally at numerous public meetings, and in writings to the Board by individuals and by their attorneys, and the Page County Respondents have refused and/or neglected to do so.

235. The record of the open meetings held regarding Invenergy's WECS Application approval demonstrates that any further demands to properly perform these duties would be futile.

3. Standards for Mandamus & General Description of Requested Mandamus Relief

236. 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.

237. Petitioners pray for all appropriate orders of mandamus be issued to the Page County Respondents, including appropriate orders to take actions to rectify and remove illegal acts from the laws of the County (including repealing the Ordinance, revoking Invenergy's WECS Application approval and authorization, revoking any other authorizations issued, prohibiting entry of any contract or agreement contemplated by the Ordinance, revoking any other tangential or related authorizations, exceptions, and permits granted under other ordinances, zoning exceptions, or zoning approvals), arising out of the breach of the duties of their offices to comply with the laws of the United States, the State of Iowa, and the laws

of the County

238. Petitioners further pray for an order of mandamus requiring the Board to initiate restraining order proceedings under Iowa Code § 335.23 to prevent Invenergy from the unlawful construction of a C-WECS, and to restrain and abate violations of the Page County Zoning Ordinance by Invenergy.

4. Standards for Certiorari & General Description of Requested Certiorari Relief

239. 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); *Hoefer v. Sioux City Cmty. Sch. Dist.*, 375 N.W.2d 222, 224 (Iowa 1985); Iowa R. Civ. P. 1.1401.

240. Petitioners pray for writs of certiorari be issued to the Page County Respondents acting in a quasi-judicial nature (i) outside of their statutory jurisdiction; (ii) illegally by exercising power in excess of that provided by the legislature; (iii) illegally and without jurisdiction by adopting the Ordinance in its entirety, and/or by adopting specific provisions within the Ordinance as plead below; and (iv) illegally and without jurisdiction in granting the WECS Application.

B. Section 9 of the Ordinance is an Illegal Act in Violation of the Specific Repeal Requirements in Iowa Code § 331.302(4)

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

242. Adoption and application of Section 9 of the Ordinance is an illegal act in violation of the specific repeal requirements of Iowa Code § 331.302(4).

243. The Home Rule Statute prohibits the County and Board from exercising powers "inconsistent with the law of the general assembly." Iowa Code § 331.301(1).

244. Iowa Code § 331.302(4) establishes requirements for the Board to act specifically when amending or repealing ordinances previously adopted.

245. Iowa Code § 331.302(4) provides (emphasis added):

> 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.

246. Section 9 of the Ordinance ("Section 9") provides:

> All ordinance(s) in conflict with the provisions of this Ordinance are hereby repealed.

247. Section 9 does not "specifically" identify any ordinance, code, section, subsection, paragraph or subpart purportedly repealed by Section 9.

248. The County and Board have not set forth versions of any County ordinance, code, section, subsection, paragraph, or subpart as amended by the purported effect of Section 9.

249. By failing to identify specific ordinances, codes, sections, subsections, paragraphs or subparts repealed by Section 9, and by failing to publish amended versions of modified ordinances, codes, sections, subsections, paragraphs or subparts impacted by Section 9, the public has no notice of the existing laws of the County.

250. Because Section 9 did not identify the "specific" changes to existing ordinances, codes, sections, subsections, paragraphs or subparts purportedly repealed by its enactment:

a. Section 9 was not adopted in substantial compliance with the procedures established by the general assembly under Iowa Code § 331.302(4);

b. Section 9 is an act inconsistent with the laws imposed on the County by the

general assembly in violation of Iowa Code § 331.301(1); and

c. Section 9 is an illegal act outside of the delegated jurisdiction and powers of the Board.

251. Because no ordinance, code, section, subsection, paragraph or subpart purportedly repealed by Section 9 has been published as specifically amended, repealed or modified:

a. The County failed to substantially comply with the procedures established by the general assembly under Iowa Code § 331.302(4); and

b. Any purported amendment, repeal or modification to existing ordnances ordinance, codes, sections, subsections, paragraphs or subparts by Section 9 are invalid as illegal acts of the Board.

252. Because the Board acted illegally by:

a. adopting Section 9 as a general, rather than "specific," repeal, and

b. failing to republish any ordinances, codes, sections, subsections, paragraphs and subparts affected by Section 9;

the Petitioners seek Writs of Certiorari and Orders of Mandamus declaring, and ordering all actions by the Page County Respondents to effectuate remedies to, the following:

(i) Section 9 of the Ordinance is an illegal, unauthorized and *ultra vires* act by the Board as it is inconsistent with the laws adopted by the general assembly; and

(ii) The repeal, amendment or modification of any Page County ordinance, code, section, subsection, paragraph or subpart by Section 9 is ineffective, and other ordinances, codes, sections, subsections, paragraphs and subparts remain in effect, in full force, without repeal or amendment because the adoption of Section 9.

253. Petitioners also seek a declaratory judgment that Section 9 of the Ordinance (i) is of no legal force and effect, and (ii) does not lawfully repeal, amend or modify any pre-existing or future ordinance, code, subsection, paragraph or subpart lawfully adopted by the County.

C. The Board of Supervisors Illegally Abdicated and Sub-Delegated Legislative Power to Private Entities in Contravention of Iowa Code §§ 331.301 & 331.302

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

255. The Ordinance and approval of the WECS Application constituted an illegal abdication and delegation of legislative power, and county power, to private entities in contravention of the Iowa Code as plead below.

256. The Home Rule Statute, Iowa Code Chapter 331, constitutes the Iowa general assembly's delegation of a portion of its sole constitutional legislative power to the County. Iowa Code § 331.301(1).

257. The legislature's delegation of constitutional legislative power is not unlimited because both the Iowa Constitution and the Home Rule Statute provide that the County is not vested with the power to take any action inconsistent with the Iowa Constitution or the laws of the general assembly.

258. The general assembly specified that "[A] power of a county is vested in the board, and a duty of a county shall be performed by or under the direction of the board." Iowa Code § 331.302(2).

259. The general assembly did not authorize any entity or person, other than the board or those acting under direction of the board, to exercise the powers delegated by the State to the County, or to exercise and fulfill the duties of the County.

260. The general assembly did not authorize the Board to sub-delegate, assign or abdicate, its duties and powers to any other person or entity.

261. The Ordinance, and the approval of the WECS Application, unlawfully abdicate, sub-delegate, and assign the County's and Board's powers to a private entity in violation of the Home Rule Statute and the Iowa Constitution.

262. Section 4 of the Ordinance ("Section 4") sets forth the provisions applicable to the "siting, construction and operation" of a C-WECS after approval of a C-WECS application.

263. Section 4's restrictions are limited to requirements as to the following: color of the turbines; tower configuration, lighting and signage; feeder powerlines; waste disposal; signal interference; compliance with FAA standards; use of National Electric Codes; setbacks of towers from structures, property lines, public rights-of-way, radio communication paths and public areas; and safety measures for towers as to wiring, non-climbability, access, and markings.

264. Other than Section 4, no provision in the Ordinance limits or restricts an approved C-WECS owner's or operator's actions, decisions, or conduct in the "siting, construction or operation" of a Board approved C-WECS.

265. No provision of the Ordinance provides a mechanism for the County to inspect or enforce the provisions of Section 4 even if a Board approved C-WECS owner or operator acts in contravention of those requirements.

266. No provision of the Ordinance provides for the revocation of the C-WECS authorization and decommissioning of turbines installed if the Board approved C-WECS owner or operator violates the few listed Section 4 restrictions on the siting, construction, and operation of the turbines.

267. No provision of the Ordinance requires the information provided in a C-WECS application to be truthful or complete to the best of the applicant's knowledge.

268. No provision of the Ordinance requires the applicant to sign the application or attest to its contents.

269. No provision of the Ordinance provides a remedy or ability to revoke Board approval of an application to construct or operate a C-WECS when the application contained false or misleading information.

270. No provision of the Ordinance requires a Board approved C-WECS owner or operator to comply with the terms and conditions of the project as described in the submitted and approved application.

271. No provision of the Ordinance provides a remedy or ability to revoke a C-WECS approval based upon the owner's or operator's deviation from the project as described in the submitted and approved application.

272. No provision of the Ordinance authorizes the County to impose additional or modified limitations on the siting, construction or operation of turbines after application approval.

273. Section 3(10) of the Ordinance required the applicant to affirm a "sound study was completed showing expected maximum decibel levels produced" by the proposed turbines,

274. No provision of the Ordinance requires the turbines actually constructed to comply with the disclosed standards.

275. No provision of the Ordinance requires the turbines to comply with any noise standards at all.

276. No provision of the Ordinance provides a remedy if the fully constructed turbines

fail to meet the sound levels disclosed in the application.

277. Section 9 of the Ordinance purports to repeal any existing or future lawfully adopted ordinance that would impose sound limitations upon the operation of the turbines.

278. Section 3(12) of the Ordinance required the applicant to affirm the applicant had identified migratory flyways, nesting areas, and the species in the area

279. No provision of the Ordinance requires a C-WECS owner or operator to limit damage to these identified flyways, nesting areas or species in the area.

280. No provision of the Ordinance provides any remedy if the fully constructed turbines damage or impact any identified, threatened or protected flora or fauna.

281. Section 9 of the Ordinance purports to repeal any existing or future lawfully adopted ordinance that imposes regulation on, procedures to protect, or penalties to be assessed for harm to such flora or fauna.

282. Section 3(4) of the Ordinance required the applicant to disclose the height and rotor diameter of the wind turbines.

283. No provision of the Ordinance requires an approved C-WECS owner or operator to comply with the height or rotor diameter descriptions of the application in the final project.

284. No provision of the Ordinance provides any remedy if the fully constructed turbines exceed the height or dimensions included and disclosed in the application.

285. Section 9 of the Ordinance purports to repeal any existing or future lawfully adopted ordinance that imposes height or diameter limitations on structures or turbines.

286. Section 6 of the Ordinance, applicable to non-commercial wind turbines even after construction, specifically prohibits non-commercial turbines from exceeding one hundred feet in total height.

287. Unlike the provisions of Section 6 of the Ordinance applicable to non-commercial wind projects, no provisions of the Ordinance restrict the height of commercial turbines.

288. The difference in the Ordinance's treatment of height limitation between commercial and non-commercial turbines will be cited by Invenergy and other approved C-WECS developers for the proposition that the Board knew how to impose height restrictions on turbines, as they did for non-commercial turbines, and, therefore, the lack of height restrictions on commercial turbines within the Ordinance means no height restrictions, now or in the future, may be applied to commercial turbines.

289. Section 9 of the Ordinance as adopted, would serve to repeal any existing or future height restrictions on commercial turbines contained in any lawfully adopted ordinance.

290. The final paragraph of Section 3 of the Ordinance provides that if "there are any material changes to the information provided as part of the application" that occur "from the time of the application until the construction of the WECS, the applicant shall submit a new application . . . together with the updated information for each Wind Turbine, and any such change shall be in compliance with the Ordinance."

291. Nothing in the Ordinance requires disclosure or re-application in the event of material changes after construction is completed.

292. The Ordinance does not define "material change."

293. The Ordinances does not require resubmission of an application if a series of immaterial changes, in the aggregate, materially change the plan or information as submitted in the application.

294. The Ordinance does not provide any remedy or penalty, or the ability to revoke an approval of a C-WECS application, if the C-WECS developer fails to resubmit a revised application due to material changes in information.

295. The Ordinance does not provide that the original application approval, prior to changes in material information, is revoked and of no force and effect unless the revised application is approved.

296. The Ordinance does not provide that all construction and development must cease until the re-application disclosing material changes is approved.

297. The Ordinance does not provide that if the amended re-application is not approved, construction and operations must cease, and be dismantled or decommissioned.

298. As the Ordinance is drafted, there are no limitations on Invenergy's actions after the Board's approval of the WECS Application (with the exception of those areas identified in Section 4 of the Ordinance, and even then, no enforcement mechanism exists in the Ordinance to enforce violations of Section 4).

299. By operation of the Ordinance as adopted, upon approval of the WECS Application the Board has unlawfully delegated the power to repeal lawfully adopted ordinances of Page County to Invenergy.

300. Any subsequently approved C-WECS applicant would similarly be delegated such powers to repeal ordinances lawfully adopted by the Board.

301. If Invenergy, or any other Board approved applicant, takes an action in connection with the siting, construction or operation of a turbine system that (i) is not inconsistent with the Ordinance and (ii) is inconsistent or violates any existing County ordinance, then by operation of Section 9 of the Ordinance, the existing, inconsistent County ordinance is repealed by Invenergy's or other Board approved

applicant's actions.

302. The ability of an unelected, private enterprise, through merely taking physical acts in furtherance of a privately owned wind turbine system, to effectuate the 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.

303. 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 Page 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.

304. The Ordinance divests the citizens of Page County of political control of their laws and representatives, and subjects the citizens of Page 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 Ordinance with the power to repeal other lawfully adopted ordinances, with no political or legal recourse whatsoever provided.

305. 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.

306. 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.

307. 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.

308. 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.

309. Invenergy's pleadings in litigation already ongoing in other parts of the State of Iowa (Worth County as an example), and in threats of litigation already made by Invenergy against Page County while Invenergy was preparing its WECS Application, while Invenergy's WECS Application was being considered by Respondents King and Sonksen, and being considered and approved by the Board, demonstrate Invenergy's position, now judicially estopped from change, that county ordinances and their C-WECS approval processes, similar to those at issue in this case, simply by being adopted and Invenergy making preliminary investments in developing a plan and pursuing approval to construct a C-WECS, vest Invenergy nearly unfettered discretion to develop and construct wind systems without any interference or restraint by the county, and without ability of the county to change, modify, add, or modify any restrictions on Invenergy's siting, construction or operation of a turbine system.

310. Section 9 (repealing any contradictory ordinance), combined with the minimal regulation provided by Section 4, and Invenergy's litigation position that it has a vested interest based upon its actions in reliance on the ordinance and WECS Application approval that cannot be revoked, modified or regulated, means, as

examples:

a. Invenergy alone is now vested with the sole discretion to determine the height and diameter of wind turbines deployed in the approved area regardless of any existing or future ordinances to the contrary, and

b. Invenergy alone may determine the actual noise level of the turbines regardless of any existing or future ordinances to the contrary.

311. Height restrictions and noise levels are clear examples of the police powers vested by the Iowa legislature solely in the County and its Board.

312. Nothing in the Home Rule Statute authorizes the Board to abdicate, assign, or sub-delegate these powers to regulate height and noise to a private enterprise.

313. The 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 as to which Petitioners seek all necessary Orders of Mandamus and Writ of Certiorari:

(i) declaring the Ordinance invalid;

(ii) declaring the approval of the WECS Application invalid; and

(iii) directing the Page County Respondents to take all necessary actions to effectuate and document the invalidity of the Ordinance, WECS Application approval, and any other authorizations provided to Invenergy to site, construct, and operate a C-WECS in Page County.

D. The WECS Application Failed to Comply with the Ordinance and Approval of the WECS Application is Invalid

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

315. The WECS Application failed to comply with the requirements of the Ordinance, and the Board's approval of the WECS Application, therefore, is invalid for the reasons plead below.

316. Section 3 required Invenergy, as an applicant, to submit an application and application fee to Page County.

317. Section 3 of the Ordinance set forth 12 categories of information required to be included within Invenergy's application.

318. By specifically including these 12 categories of in the Ordinance, the Board determined that such information was material to their decision as to whether or not to approve an application.

319. By specifically including these 12 categories of information in the Ordinance, the Board determined that such information was material to the public's evaluation of any application under the Ordinance.

320. Invenergy failed to truthfully respond with all information within its knowledge, or that reasonably could be obtained, responsive to the material information required by Section 3.

321. The WECS Application contained omissions of material information.

322. The WECS Application contained material misstatements of fact.

323. The WECS Application's omissions and misstatements were knowing.

324. The WECS Application's omissions and misstatements were intentional.

325. Under Section 3, the Page County Zoning Administrator was to determine whether the WECS Application satisfied the requirements of the Ordinance, and if so, then the WECS Application was to be presented to the Board of Supervisors to review its compliance with the Ordinance and vote on whether to approve an application.

326. The Board of Supervisors was to evaluate the WECS Application compliance with the Ordinance and evaluate the WECS Application, if compliant, as to the best interest of the citizens of Page County.

327. The citizens in Page County were entitled to complete and truthful information from Invenergy with respect to all 12 material information categories required by Section 3, so they could evaluate their individual position regarding the proposed project, and so they could be informed to comment upon such proposal at required open meetings to consider the matter and to consider in voting in subsequent supervisor elections if the Board took action contrary to their position.

328. The WECS Application under the Ordinance was submitted to the County on March 7, 2022.

329. Under Section 3, if material changes to the information provided as part of the WECS Application occurred prior to construction of the C-WECS, the applicant was required to "submit a new application with updated information."

330. The Board and the citizens of Page County were entitled under the Ordinance for Invenergy to resubmit its application if material changes to the information contained in the original WECS Application was necessitated by changes of facts, the applicant learning of new information, or due to changes in the applicant's proposed plan and project.

331. As specifically plead below, while the WECS Application was pending, material

changes occurred and Invenergy did not submit a new re-application.

332. At the time the WECS Application was approved:

(i) Invenergy knew the information contained within the WECS Application was incomplete, omitted material information, and failed to include all information responsive to Section 3 of the Ordinance within Invenergy's knowledge; and

(ii) Invenergy knowingly failed to submit a new re-application to correct information to account for developments between the time of the original application's submission and the time of the original application's Board approval.

These intentional omissions, misstatements, and undisclosed material changes currently known to Petitioners, are set forth below.

1. Invenergy's Knowing and Intentional Omission of Information Regarding Threatened and Endangered Species Invalidates the WECS Application Approval

333. Section 3(12) of the Ordinance requires an applicant to affirm "that the applicant has identified significant migratory flyways and nesting areas of federally listed birds, bats, and endangered species within one (1) mile of the proposed Wind Turbine."

334. When species have habitats and migratory patterns covering tens, hundreds, and thousands of miles, such as birds, bats and migratory butterflies, a one mile limitation is arbitrary and without reasoned basis, and has no scientific basis as a standard for disclosure.

335. When asked to provide complete scientific studies and raw data supporting its disclosures in response to Section 3(12) of the Ordinance, Invenergy only supplied summaries and refused requests for further information.

336. At the final August 2, 2022 meeting approving the WECS Application, the Board acknowledged that summary information is all that would be provided by Invenergy.

337. Invenergy knowingly and intentionally:

a. Omitted information required by Section 3(12) of the Ordinance from its application;

b. Failed to supply complete studies;

c. Refused requests for additional information; and

d. Failed to reapply with material changes to information, regarding several species.

338. Invenergy's knowing and intentional omission of required application information invalidates the WECS Application approval.

339. Invenergy omitted information from its WECS Application regarding the terms and conditions of any Incidental Take Permits, Conservation Agreements, or any similar agreements with governmental entities regarding conservation efforts which Invenergy, or any entity with whom Invenergy has contractually agreed to sell (or has an understanding or course of business dealings which indicating the potential to sell) the completed project, is required to comply.

340. Bald eagles are protected from any taking under The Bald and Golden Eagle Protection Act (16 U.S.C. § 668-668c) ("Protection Act").

341. Bats and pollinators perform important agricultural and horticultural functions (pest control and pollination).

342. Pollinators also perform the function of maintaining the aesthetics of Page County by performing essential functions to the reproduction of the natural flora within

Page County.

343. The Petitioners are involved in agriculture and horticulture and would be effected by the diminishment in the population of any species, including those discussed below, providing crucial elements of the ecosystem in Page County.

344. The Petitioners would be directly impacted, both economically as the entire area is agriculture dependent, and in the loss of aesthetics in which they live and recreate daily.

Bald Eagle

345. The Protection Act imposes criminal penalties for, among other things, killing, wounding, or disturbing bald eagles.

346. In April 2022, criminal penalties of $8 million were imposed on one wind farm operator for the taking of more than 150 eagles in Montana. All of the eagles killed were struck by moving turbine blades.

[https://abcnews.go.com/Technology/wireStory/wind-energy-company-kills-150-eagles-us-pleads-83916292]

347. Bald eagles are listed by the federal government as a threatened species.

348. Active bald eagle nests are in Page County, near Northboro, within the Project boundaries and proposed turbines are within the expected range of nesting bald eagles.

349. Invenergy knew the bald eagle was a bird for which disclosure was required under Section 3 at the time of the WECS Application was submitted.

350. The WECS Application contained no information regarding the bald eagles in Page County for consideration by the Board or citizens of Page County.

Migratory Birds

351. The Migratory Bird Treaty Act ("MBTA") 16 U.S.C § 703 et seq. protects 1,093 species of birds and prohibits, among other things, killing such species excepted as authorized under a valid permit. 50 C.F.R. §21.11.

352. For MBTA protected birds allowed to be hunted in-season, baiting of those birds is prohibited.

353. The federal list of migratory birds contains numerous species common in Page County.

354. The WECS Application identified, vaguely, the Mississippi Flyway in a map that merely shades in the states east of the Missouri river.

355. In Section 3.5 of the WECS Application, SHW stated that their "environmental consulting firm" found that no federally listed birds, their habitat or nesting areas were confirmed present within one mile of any proposed turbine.

356. The above quoted Section 3.5 disclosure is a patently, and knowingly, false statement.

357. Those living in southwestern Iowa have seen protected migratory birds flying over-head.

358. On its face, Section 3.5 of the WECS Application is a lie.

359. The WECS Application failed to disclose any birds listed under the MBTA in Page County.

360. The WECS Application failed to disclose the potential impact of the Project on those MBTA protected bird species.

361. The WECS Application failed to disclose if SHW has obtained any permits from the Department of Interior permitting the taking of listed migratory birds.

Indiana Bat

362. The U.S. Fish and Wildlife Service ("USFWS") considers Page County as within the habitat range of the Indiana Bat.

363. The Indiana Bat is an endangered species.

364. [https://www.iowadot.gov/erl/archiveoct2013/CM/content/Appendix%206-1_b_1.pdf]

365. "One species that may be affected by wind energy generation is the endangered Indiana bat (Myotis sodalist), which is found in the eastern and Midwestern United States. In addition to mortality from wind energy generation, the species also faces range-wide threats from emerging infectious fungal disease, white-nose syndrome (WNS). . . Wind turbine mortality interacted with WNS and together these stressors had a larger impact than would be expected from either alone . . . " Effects of Wind Energy Generation and White-Nose Syndrome on the Viability of the Indiana Bat, Reickson, Thogmartin (US Geological Survey), Diffendorfer (US Geological Survey), Russell (USFWS), Szymanski (USFWS-Midwest Region), Dec. 2016

366. [https://www.researchgate.net/publication/311826151_Effects_of_wind_energy_generation_and_white-nose_syndrome_on_the_viability_of_the_Indiana_bat]

367. All projects authorized, carried-out or funded by the Iowa Natural Resources Conservation Service require consultation with USFWS to ensure actions do not jeopardize the Indiana bat or any other threatened species. [https://www.nrcs.usda.gov/wps/portal/nrcs/ia/newsroom/factsheets/nrcs142p2_008516/]

368. Invenergy knew the Indiana Bat was a bat for which disclosure was required under Section 3 at the time of the WECS Application was submitted.

369. The WECS Application contained no information regarding the Indiana Bat in Page County for consideration by the Board or citizens of Page County.

370. Invenergy and its affiliates have been previously enjoined, and limits placed on its other projects, due to its failures to properly identify and protect the Indiana Bat. *Animal Welfare Inst. V. Beech Ridge Energy, LLC.,* 675 F.Supp.2d (D. Md. 2009).

Northern Long-Eared Bat

371. Page County is within the habitat area of the Northern Long-Eared Bat.

372. The Northern Long-Eared Bat was a threatened species at the time the WECS Application was submitted.

373. Invenergy knew at the time of its submission on March 7, 2022, that the Northern Long-Eared Bat, federally listed as a threatened species, would soon be listed as an endangered species.

374. On March 22, 2022, fifteen days after the submission of the WECS Application, the USFWS proposed a final rule changing its listing of the Northern Long-Eared Bat from threatened to endangered.

375. [https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis]

376. The USFWS found that "wind energy-related mortality of the northern long-eared bat is a stressor at local and regional levels where the northern long-eared bat populations have been impacted by WNS [white nose syndrome]. In 2020 northern long-eared bats were at risk from wind mortality in approximately 49 percent of their range based on the areas where wind turbines were in place and operating. . . Most bat mortality at wind energy projects is caused by direct collisions with moving turbine blades." 87 F.R. 16442,16446 (Mar. 23, 2022).

377. Invenergy knowingly failed to include information regarding the Northern Long-

Eared Bat in its WECS Application as required by the Ordinance.

378. Invenergy knowingly failed to resubmit a new application upon the material change of information regarding the change of listing the Northern Long-Eared Bat as threatened to endangered on March 22, 2022.

379. Invenergy knew prior to its WECS Application on March 7, 2022, that USFWS would soon be proposing the change in listing of the Northern Long-Eared Bar, but chose not to include any information on the species as required.

380. Invenergy knowingly omitted required information regarding the Northern Long-Eared Bat from its WECS Application for consideration by the Board and citizens of Page County evaluating the application.

Monarch Butterfly

381. Page County is within the migratory path of the Monarch Butterfly.

382. The Iowa Department of Natural Resources has declared "increasing concern about the health of the population and migration of Monarch Butterflies. Their numbers have dropped significantly in the last 10-15 years."

[www.iowadnr.gov/Conservation/Iowa-Wildlife/Pollinators]

383. In 2017, the Iowa Renewable Fuels Association launched its Monarch Fueling Station Project to encourage biofuel producers in Iowa to add Monarch Butterfly habitat near production facilities. [https://monarch.ent.iastate.edu/iowa-renewable-fuels-association-launches-monarch-fueling-stations]

384. In 2018, the Iowa Monarch Conservation Consortium, whose members include the Iowa Department of Natural Resources, Iowa State University, a number of fuel and power energy produces (but not Invenergy), and other colleges, universities, and conservation groups, adopted its "Conservation Strategy for the Eastern Monarch

Butterfly in Iowa" to address the more than 80% decline in the monarch population over the last two decades.

385. In 2018, the Midwest Association of Fish and Wildlife Agencies, of which Iowa DNR is a member, adopted a Mid-America Monarch Conservation Strategy to address the more than 80% decline in the monarch population over the prior twenty years. [https://www.mafwa.org/?page_id=2347;https://www.mafwa.org/wp-content/uploads/2018/07/MAMCS_June2018_ Final.pdf]

386. On December 17, 2020, the USFWS found the Monarch Butterfly to be endangered, and found that changing the Monarch Butterfly's listing as threatened to endangered is warranted. 85 F.R. 81813, 81815 (Dec. 17, 2020).

387. At the time of Invenergy's WECS Application, the Monarch Butterfly was federally listed as a threatened species.

388. Invenergy's March 7, 2022 WECS Application contained no information regarding the presence of the Monarch Butterfly in the area of the proposed project and the application contained no information about the potential impact of the project on the Monarch Butterfly population.

389. On July 21, 2022, after Invenergy's initial application, but before Invenergy received the Board's approval, the International Union for Conservation of Nature ("IUCN") , comprised of more than 1,400 government and civil organizations, including the United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, United States Department of the Interior Bureau of Ocean Energy Management, U.S. Agency for International Development, United States Department of Agriculture – Forest Service, and United States Department of the Interior (Fish and Wildlife Service & National Park

Service), listed the North American migratory monarch as an endangered species. [https://www.iucn.org/press-release/202207/migratory-monarch-butterfly-now-endangered-iucn-red-list].

390. In its July 21, 2022 press release, the IUCN noted that "monarch butterflies and their extraordinary migration teeter on the edge of collapse."

391. Contrary to the requirements of the Ordinance, Invenergy failed to resubmit its application to account for this change of status of the Monarch Butterfly.

392. In November 2021, four months before the submission of the WECS Application, the Green Plains ethanol plant in Page County announced it would begin planning and constructing a "monarch fueling station" on the plant's property near Shenandoah. These "monarch fueling stations" are designed to attract Monarch populations through planting and developing plants, including milkweed, for the Monarchs to use for reproduction and to pollinate.

393. [https://www.kmaland.com/news/green-plains-in-shenandoah-joins-monarch-habitat-project/article_d4f16c5a-5c23-11ec-8819-3769f3093070.html]

394. Organizations across the world, within the United States federal government, within the states of the Mid-West, within the State of Iowa, and within Page County are engaged in an effort to preserve the dwindling population of the endangered Monarch Butterfly.

395. At the same time "monarch fueling stations" are being developed in Page County to attract and assist the Monarch population, Invenergy and the Page County Board of Supervisors, without any study, seek to erect a series of wind turbines through which the Monarchs must fly twice each year during their migration. Page County cannot be permitted to bait endangered Monarchs to the area and then swat them

to death with large fans.

Invenergy's Failure to Comply with Ordinance Section 3(12) Requirements

396. Bald Eagles, protected migratory birds, Indiana Bats, Northern-Long Eared Bats, and Monarch Butterflies are present in Page County, within 1 mile of proposed turbines, and have ranges that would bring them in contact with Invenergy's proposed wind turbines.

397. Invenergy failed identify any of these species in its WECS Application.

398. Invenergy knew of the information regarding these species at the time the WECS Application was submitted.

399. Invenergy intentionally omitted this species information from its WECS Application.

400. Invenergy failed to re-apply and update the WECS Application to reflect material changes in information regarding these species between the time of application and the time of application approval.

401. Evidence of Invenergy's knowledge and awareness of the status of these species, and the impact of wind turbines on their populations, is publically available.

402. Invenergy has prepared Habitat Conservation Plans for the Indiana Bar and Northern Long-Eared Bat in connection with its projects in other areas. For example, see the November 3, 2020 study by Invenergy's consultant prepared for Invenergy in connection with its High Prairie Wind Energy Facility in Missouri. [https://downloads.regulations.gov/FWS-R3-ES-2020-0136-0002/content.pdf]

403. Invenergy is well aware of issues regarding the Indiana Bat, has a pattern of ignoring the Indiana Bat, and has had wind turbine project construction enjoined under the Endangered Species Act in prior federal court orders and Invenergy

required to obtain necessary USFWS permits before continuing construction. *Animal Welfare Inst. v. Beech Ridge Energy, LLC.,* 675 F.Supp.2d (D. Md. 2009).

404. Invenergy participated in a draft Midwest Wind Energy Multi-Species Habitat Conservation Plan within an Eight-State Planning Area, including Iowa. 77 FR 52754 (Aug. 30, 2012)

405. The Invenergy statement in its application that birds, bats or endangered species, their habitat, or nesting areas were confirmed to not be present in or near the project area was false, and Invenergy knew the statement was false when made.

406. By failing to disclose material information regarding these species, Invenergy deprived the Board and the citizens of Page County of information that may have led to the imposition of conservation plans or other remedies as a condition to application approval, or may have led to the denial of the WECS Application all together.

407. Possible conditions to approval could have included those similar to requirements have imposed in Pennsylvania to prohibit operation of turbines at night from April to November while bats are feeding, but allowing turbine operations at night when bats are hibernating.

408. The Board and citizens were deprived of considering such conditions to approval of Invenergy's WECS Application because Invenergy hid information regarding the potential impact of the Project on the local species.

409. Neither equity nor the law condones false statements in an application submitted to a governmental entity charged with evaluating the application in relationship to the County's powers to protect the health, safety, and welfare of the public in Page County.

410. Invenergy's receipt of application approval under the Ordinance, based upon its submission of knowingly false information upon which it sought for the Board and the residents of Page County to rely, is akin to fraud in the inducement, and equity cannot uphold the Board's authorization granted to Invenergy under such circumstances.

411. Invenergy failed to amend its application following changes to the listing of the Northern-Long-Eared Bat and the Monarch Butterfly while its application was pending. Such material changes to the information required Invenergy to file a new and revised application and Invenergy failed to do so.

412. Board approval of a pending application, when a new application or re-application was required by the Ordinance, is an unlawful and illegal act in contravention of the terms of the Ordinance.

413. The Board's act of approving the WECS Application is inconsistent with the adopted Ordinance and therefore constitutes an illegal act of the Board, and is of no legal force or effect, and confers no, and has not conferred any, rights or privileges to Invenergy.

2. Invenergy's Knowing and Intentional Omission of Information Regarding a Shallowly Buried, Active Petroleum Product Pipeline in the Project Area Invalidates the WECS Application Approval

414. Invenergy failed to contact Buckeye Pipeline to assess its projects potential impact on petroleum pipelines in the project area.

415. The pipeline running through the area is merely one foot to three feet below ground in some places.

416. The pipeline running through the area was constructed in the 1930s.

417. Large, heavy machinery, trucks and cranes will be used in constructing the wind

turbines.

418. The potential impact of these large pieces of equipment on an active petroleum product pipeline has not been studied or considered by the Board.

419. The Page County Board of Supervisors, approved the WECS Application as being in compliance with the Ordinance knowing petroleum pipelines were in the area and a potential hazard for the proposed plan without requiring Invenergy to modify its application upon receiving material information regarding the location of those lines.

420. Petitioners, in addition to the orders of mandamus and writs of certiorari, request a declaratory judgment that any change to the Project necessary or prudent to mitigate risks to the pipeline, or required by the pipeline owner, be declared "material changes" requiring resubmission of an C-WECS application and a "material change" revoking the existing approval without any liability to the County to Invenergy.

3. Invenergy's Knowing and Intentional Omission of Radio Interference Information and Lack of FCC Authorization Invalidate the WECS Application Approval

421. Invenergy knows that wind turbines can interfere with and distort terrestrial radio communications.

422. Radio station KYFR broadcasts in southwestern Iowa and appeared at meetings of the Board and identified four proposed turbine towers that would interfere with its radio signal.

423. At the Board meeting at which the WECS Application was approved, KYFR appeared and voiced these concerns and voiced difficulty in dealing with Invenergy to modify the plan to avoid this interference.

424. Section 4(8) of the Ordinance prohibits C-WECS from interfering with licensed microwave communication paths, and requires the approved C-WECS developer or owner to minimize and mitigate any interference with electromagnetic communications such as radio, telephone or television signals.

425. The remedy for violations of Section 4(8) of the Ordinance are minimal.

426. Section 4(8) of the Ordinance only provides that "If after construction of the C-WECS, the owner receives a written complaint related to the above-mentioned interference, the owner shall take reasonable steps to respond to the complaint."

427. The Ordinance does not require that the radio signal interference be mitigated or minimized.

428. There is no provision of the Ordinance allowing the County to take action to require anything in the event the construction causes interference with radio signals.

429. Invenergy did not disclose the potential interference with the radio signals

430. Invenergy knows its Project will interfere with radio signals.

431. Section 3(11) of the Ordinance required Invenergy to affirm that it had applied "for necessary and appropriate Federal Communication Commission (FCC) applications. [sic]"

432. Section 3(11) of the Ordinance also required the same affirmation with respect to applications to the Federal Aviation Administration (FAA) no hazard determinations.

433. SHW provided an affirmation as to both the FCC and FAA, however SHW only provided a list of FAA Aeronautical Study Numbers.

434. SHW did not provide any proof of its FCC applications.

435. SHW did not affirm it had filed any FCC applications.

436. SHW only affirmed that it had applied for "necessary and appropriate FCC applications."

437. SHW's FCC affirmation leaves open the question of whether or not (i) SHW considered any FCC application to be necessary or appropriate, and (ii) SHW filed anything with the FCC at all.

438. The lack of FCC licensure or clearance of the Project was discussed at the meeting approving the WECS Application.

439. At that approval meeting, Respondent Holmes even requested a delay in approval until the FCC issues were resolved. This request was denied by Respondents Armstrong and Morris.

440. Invenergy and the Board knew the information in the WECS Application regarding radio interference was inaccurate and incomplete, and knew the Project would cause interference prohibited by Section 4.

441. Under the Ordinance, Invenergy was required to re-apply with updated information regarding interference and it did not so apply.

442. Invenergy did not re-apply, and the Board approved a knowingly inaccurate WECS Application.

443. The Board was required to reject the WECS Application as containing knowingly material misstatements regarding radio interference and FCC permitting.

444. The Board's action of approving a non-compliant WECS Application was illegal under the Ordinance and therefore an unlawful act of the Board.

4. Invenergy's Knowing and Intentional Omission of Information Regarding Planned Encroachments on Required Setbacks for Public Lands Invalidates the WECS Application Approval

445. Section 3(5) of the Ordinance required Invenergy "to provide a site layout, including the location of the wind turbines and those items to which a setback applies." The site layout was required to include distances and be drawn to scale, in order for the County to determine if the turbines meet the setback requirements of the Ordinance."

446. Section 3(9) of the Ordinance required Invenergy to identify those public areas listed in Section 4(2)(f) of the Ordinance potentially impacted by the proposed turbines.

447. At least one turbine contained in the Plan submitted with the WECS Application violates the public lands setback requirements contained in Section 4(2)(f) of the Ordinance.

448. The Board was advised of this setback violation prior to its approval of the WECS Application.

449. At the time the WECS Application was approved, both Invenergy and the Board knew that the WECS Application contained false statements of its compliance with Section 4(2)(f) of Ordinance.

450. At the time the WECS Application was approved, Invenergy and the Board knew a revised plan to comply with the setbacks from public lands was required.

451. Any revision of turbine location in the proposed Project would be a material change requiring re-application.

452. Invenergy did not re-apply, and the Board did not require Invenergy to re-apply, with a new application containing a plan in compliance with the public lands

setback requirements.

453. Approval of the WECS Application with known violations of Section 4(2)(f) of the Ordinance was an illegal and invalid act of the Board.

5. <u>Requested Relief – Approval of an Application Containing Knowingly False Information Must be Revoked</u>

454. The WECS Application's known false statements and omissions as plead above, and Invenergy's failure to amend its application and re-apply as required by Section 3 of the Ordinance, constituted the failure of Invenergy's application to comply with the requirements of Section 3 of the Ordinance.

455. The Board's knowing failure to require complete disclosure and re-application brings them before this court with unclean hands and not entitled to appeals to equity.

456. The Page County Zoning Administrator's determination that the application complied with the requirements of Section 3 was incorrect, erroneous, unreasonable, illegal, arbitrary, capricious, and *ultra vires*.

457. The Page County Attorney's determination that the application complied with the requirements of Section 3 was incorrect, erroneous, unreasonable, illegal, arbitrary, capricious, and *ultra vires*.

458. The Board's approval of an application based upon a known non-compliant, deficient, and knowingly false application information was incorrect, erroneous, unreasonable, illegal, arbitrary, capricious, and *ultra vires* as to which Petitioners seek, in addition to certiorari and mandamus relief as set forth herein, a declaration of the invalidity of the Board's approval of Invenergy's WECS Application as it was illegally and invalidly obtained and such approval is of no legal force or effect.

E. Approval of the WECS Application was an Illegal Act of the Board in Violation of Page County Wind Moratorium Resolution.

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

460. The WECS Application was submitted to Page County the afternoon of March 7, 2022.

461. At the Board meeting held the following morning, March 8, 2022, the Board rejected on a 2-1 vote (Armstrong and Morris in the majority) a 180-day moratorium on wind application and approvals under the Ordinance.

462. On March 29, 2022, the Board adopted a 180-day moratorium on a 2-1 vote (Armstrong and Holmes in the majority) with Armstrong changing his March 8th vote due to stiff primary competition for his seat, an election that Armstrong subsequently lost.

463. A copy of the approved moratorium resolution, Page County Resolution #26-2022 is attached as Exhibit C and incorporated herein by reference ("Moratorium Resolution").

464. The minutes reflect that the Board adopted the Moratorium Resolution based upon the County's interest in protecting its infrastructure, natural resources, property rights, the need for a robust road use agreement, addressing decommissioning issues, abating sound nuisances, addressing lighting system nuisances, and the Board's need for substantial time to gather information and coordinate with multiple agencies for purposes of reviewing, updating or creating ordinances related to C-WECS development.

465. The Board's declared bases for adopting the Moratorium Resolution without any changes to the Ordinance prior to approval of the WECS Application, demonstrates the unreasonableness, arbitrariness, and capriciousness of the WECS Application approval.

466. The precise wording of the Moratorium Resolution is important to analyzing whether the Board violated its own resolution in approving the WECS Application.

467. The effective portion of the Moratorium Resolution provides:

> NOW THEREFORE BE IT RESOLVED by the Board of Supervisors of Page County, Iowa, that Page County now imposes a moratorium, effective immediately and for a period of one-hundred eighty days, on C-WECS permit applications for the purposes of drafting and adopting any necessary and proper revisions to the existing C-WECS ordinance. This moratorium shall not affect any construction permits already filed with Page County as of the effective date of this resolution.

468. Iowa Code § 331.302 requires a board to exercise its powers by passage of "a motion, a resolution, an amendment, or an ordinance."

469. The Moratorium Resolution is an effective act of the Board under its § 331.302 authority and was an effective act on March 29, 2022.

470. The Moratorium Resolution was adopted before the Zoning Administrator certified his conclusion that the WECS Application complied with the Ordinance and submitted the WECS Application to the Board for approval.

471. At the time of adoption of the Moratorium Resolution, the prerequisites for Board consideration of the WECS Application had not been satisfied.

472. The WECS Application was an application to which the Moratorium Resolution applied.

473. Construction permits are routinely issued by the County under its zoning and construction codes.

474. The WECS Application was not a "construction permit already filed with Page County."

475. August 2, 2022 was less than 180 days after March 29, 2022.

476. The approval of the WECS Application on August 2, 2022 was a violation of the Moratorium Resolution and an illegal act of the Board.

F. Adoption of the Ordinance was an Illegal Act in Violation of the Page County Zoning Ordinance.

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

478. A copy of the Page County Zoning Ordinance is attached hereto as Exhibit D ("Zoning Ordinance") and is incorporated herein by this reference.

479. Section 15.2 of the Zoning Ordinance requires a properly completed application be submitted to the Zoning Administrator to initiate an amendment to the Zoning Ordinance.

480. No application was completed by any Respondent or any other citizen to amend the Zoning Ordinance for conflicts with the Ordinance or the WECS Application.

481. Section 15.3 of the Zoning Ordinance requires the Planning and Zoning Commission ("PZC"), upon receiving an application to amend the Zoning Ordinance, to make the application materials available to the public.

482. The PZC did not receive or make any materials available to the public in connection with the adoption of the Ordinance or the approval of the WECS Application.

483. Section 15.3 of the Zoning Ordinance requires the PZC secretary to set a date, time and place for a public hearing before the PZC on any proposed changes to the Zoning Ordinance.

484. The PZC secretary did not set a date, time and place for a public hearing before the PZC on any proposed changes to the Zoning Ordinance in connection with the Ordinance or WECS Application.

485. Section 15.3 of the Zoning Ordinance requires the PZC, after hearing, to make its determinations regarding the proposed amendment to the Zoning Ordinance and submit them and a proposed amendment to the Zoning Ordinance to the Board of Supervisors.

486. The PZC did not make any determinations or propose any amendments to the Zoning Ordinance in connection with the Ordinance or the WECS Application.

487. Under Section.4 of the Zoning Ordinance, after PZC recommendations and request for amendment, the Board must set a date, time and place for a hearing on the proposed changes or amendment to the Zoning and Ordinance and arrange for public notice of the meeting. The board is also required to gather public opinion at the hearing.

488. The Board never received a PZC recommendation, never scheduled a meeting, and never held hearings on proposed changes or amendments to the Zoning Ordinance in connection with the Ordinance or the WECS Application.

489. The Board's adoption of the Ordinance and approval of the WECS Application failed to comply with the requirements for amending the Zoning Ordinance.

490. To the extent the Ordinance or WECS Application purports to amend the Zoning Ordinance, the actions of the Board in approving the Ordinance and/or WECS

Application were illegal and unenforceable acts in violation of the Zoning Ordinance.

491. In addition to the remedies otherwise requested herein, the Petitioner's request a declaratory judgment that (i) the Ordinance and WECS Application approval are ineffective to change, modify or amend the Zoning Ordinance and the Agricultural District permitted uses in Section 5.1 of the Zoning Ordinance and the height restrictions contained in Section 5.4, and that (ii) the Agricultural District permitted uses and height restriction set forth in the Zoning Ordinance are unamend and unchanged by the Ordinance and WECS Application approval.

492. As with the requirements for amending the Zoning Ordinance plead above, the County failed to comply with the Special Exception procedures established in Chapter X of the Zoning Ordinance.

493. In connection with the Ordinance adoption and WECS Application approval the Special Exception Procedures were not followed for the following reasons:

a. No application for a special exception use was submitted on the prescribed application to the Zoning Administrator; and

b. The Board of Adjustment was not involved in any manner in arranging a public hearing to consider a special exception to the Zoning Ordinance or making a decision as to a proposed special exception;

494. In addition to the remedies otherwise requested herein, the Petitioners request a declaratory judgment that the adoption of the Ordinance and the WECS Application approval did not constitute the granting of a special exception to the Zoning Ordinance in conformance with Chapter X of the Zoning Ordinance.

G. Adoption of Section 9 of Ordinance, Adoption of the Ordinance as a Whole, and Approval of the WECS Application, were Each Illegal as Unreasonable and Capricious Acts of the Board.

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

496. Unreasonable and capricious acts of the Board are illegal, unenforceable, and of no legal effect.

497. The Petitioners seek Writs of Certiorari and Orders of Mandamus declaring adoption of Section 9 of the Ordinance, the Ordinance as a whole, and the Board's approval of the WECS Application, were illegal, invalid, and of no legal force or effect because they were unreasonable, arbitrary and capricious as plead below.

498. "Unreasonable" means "without reason." Reason requires logic applied to facts.

499. "Capricious" means governed or characterized by caprice.

500. "Caprice" means sudden, impulsive, or unmotivated by notion.

501. "Notion" means a conception or impression of something known (i.e. knowledge).

502. Capricious means actions taken suddenly, impulsively, and without knowledge.

503. All of the Board's acts as plead above were taken without reason and taken impulsively without knowledge in violation of the law. By definition, these acts were unreasonable and capricious.

1. The Adoption of Section 9 of the Ordinance was Unreasonable and Capricious

504. The idiomatic expression "Don't throw the baby out with the bathwater" is a description of the act of discarding the essential with excessive zeal when unnecessary. In other words, the expression describes an unreasoned and impulsive act.

505. Section 9 purports to repeal entire ordinances, when amendments, exceptions or variances would suffice.

506. Section 9 is an unreasoned and impulsive act of the Board, discarding the good with the bad, and is illegal and unenforceable.

507. Examples of the Board's lack of logic and reasoning in adopting Section 9 are as follows:

a. Section 5.1 and 5.2 of the Page County Zoning Ordinance list permissible uses of land within an Agricultural District. Construction and operation of C-WECS systems are not included in those permitted uses.

b. Section 5.4 of the Zoning Ordinance provides height limitations in Agricultural Districts of 2.5 stories for principal structures and 15 feet for accessory structures. The structures proposed to be built in the Agricultural Districts of Page County in the WECS Application will be between 344 and 600 feet in height, well in excess of these limitations.

c. The Ordinance and the WECS Application approval authorizes Invenergy's (i) construction of C-WECS systems, which are not included in the Zoning Ordinance permissible uses and (ii) construction of turbines and towers more than 400 times greater in height than the existing height restrictions in the Zoning Ordinance.

d. Section 9 provides that "All ordinance(s) in conflict with the provisions of this Ordinance are hereby repealed."

e. By its terms, Section 9 repeals the entire Zoning Ordinance, including all provisions unrelated to the Project. The effect of Section 9, applying the plain meaning of its terms, is that Page County is now without any zoning ordinance

whatsoever. Such an act by the Board is certainly unreasonable and capricious, and a direct violation of Iowa Code Chapter 335.

f. Being unjustifiably lenient, and applying a strained, but more narrow, reading, Section 9 repeals the Agricultural District use and height limitations in Zoning Ordinance sections 5.1, 5.2 and 5.4, and possibly other sections and subsections of all of Page County's ordinances. Such an act is certainly unreasonable and capricious, especially when Section 9 of the Ordinance repeals the height limitation for all structures in an Agricultural District, but then in Section 6 the Ordinance independently imposes a 100 foot limitation on Non C-WECS. Under this more narrow reading of Section 9 of the Ordinance, the only structures subject to a height limitation in Page County now are Non C-WECS. This result is unreasonable and capricious, and also arbitrary in singling out non C-WECS as the only structure with a height limitation.

g. Any attempt to read Section 9's language of "repeal" to mean "exception to" or "variance from" is contrary to plain English. "Repeal" means the "abrogation or destruction of a law by legislative act." Section 9 "repeals" conflicting "ordinances," it does not amend, create exceptions or grant variances. Any argument by Respondents that "repeal" has any other meaning will only demonstrate the unconstitutionality of the Ordinance's for vagueness as plead below, and is evidence of the Enterprise's collusion and intent.

h. Section 9 throws the baby out with the bathwater by repealing entire ordinances. This result, from failure to specifically identify amendments, repeals and modifications to an ordinance is exactly why compliance with Iowa Code §331.302(4), as plead above, is essential to reasoned and non-capricious

ordinance promulgation.

508. The limitation on Non C-WECS to 100 feet in height compared to C-WECS with an unlimited height (currently proposed heights up to 600 feet) is designed by the Enterprise, in part, to create electric customers and eliminate excess Non C-WECS generation from entering the grid.

509. The Non C-WECS regulations and provisions within the Ordinance are designed, by the wind energy industry, in part to stifle competition, reduce non-industrial grid contributions, and maintain customer demand in rural areas for industrial energy providers.

510. The Petitioners request that the Court: (i) declare Section 9 to be unreasonable and capricious and therefore illegal and unenforceable; (ii) declare the Page County Zoning Ordinance to be in full force an effect, without any changes, modification or repeal by effect of Section 9; (iii) declare the WECS Application approval authorizing Invenergy to construct C-WECS structures in contravention of the Zoning Ordinance limitations to be an illegal act; and (iv) enjoin Invenergy from continuing or furthering any illegal use of property interests it may have in violation of the Zoning Ordinance.

511. If the Board wishes to proceed, it must do so in a reasoned, intentional and non-impulsive manner, and draft a new Ordinance, reasoned and narrowly tailored, without sweeping repeals of unidentified ordinances, and proceed through the required public open meeting process to specifically amend those existing ordinances that it intends to amend.

2. The Adoption of the Ordinance and Approval of the WECS Application were Unreasonable and Capricious

512. The above and subsequent allegations are incorporated as if fully set forth in full herein.

513. As plead above, the Ordinance is devoid or all normal and usual markers of a well-reasoned and considered legislative act.

514. The unreasonableness of the Ordinance is evident from, among others, the following:

a. Failures to include enforcement provisions of any kind;

b. Failure to require attestation to facts in applications;

c. Failure to require compliance with project proposals;

d. Unreasoned differences in treatment between C-WECS and Non C-WECS;

e. Failure to consider the impact of a Project on existing near surface petroleum pipelines;

f. Failure to consider the impact of the Project on indigenous species;

g. Contradictions between the Ordinance provisions and road use agreement to assure road repairs at no cost to the County;

h. Approving the WECS Application containing knowingly false information;

i. Invoking the procedure of waiving the first two readings of the proposed Ordinance when no need to act quickly was present and such procedure had been used sparingly before;

j. Approving the 26-page Ordinance in two meetings within 8-days when seven meetings were necessary to approve a 5-page ATV ordinance;

k. The Board's acknowledgement that the Ordinance was weak and with gaps to

be filled at the time the WECS Application was approved;

l. The Board's approval of the WECS Application knowing of a threatened pipeline and no study or information requested prior to approval; and

m. The Board's approval of the WECS Application knowing of a radio interference with no study or information requested prior to approval.

515. The "one mile" distance from turbines for purposes of species reporting in the WECS Application is without any reasoned basis.

a. The range of an Indiana Bat or Northern Long-Eared Bat from its hibernacula is five miles.

b. While nesting bald eagles may fly 10-20 miles per day, and a hundred miles a day when migrating.

c. Monarchs migrate from Canada to Mexico.

d. The range of migratory birds subject of the MBTA is thousands of miles.

516. The Moratorium Resolution was adopted on March 29, 2022 to provide time for the Board to address known deficiencies in the Ordinance.

517. The Board has yet to consider amendments to the Ordinance.

518. Respondent Armstrong acknowledged just after voting for the approval of the WECS Application that the Ordinance was weak.

519. The Board repeatedly acknowledged the need for amendments to the Ordinance, but approved the WECS Application before addressing the any amendments.

520. From 2019 to 2022, the Board repeatedly rejected requests to amend known Ordinance deficiencies.

521. Approving the WECS Application knowing the Ordinance is inadequate and weak is unreasoned, capricious and arbitrary, and is without logic or reason.

522. It is unreasonable for the Board to have approved the WECS Application when there were never studies of the financial benefit to the county and the possibility of TIF financing was not even considered or discussed until one month after the approval of the WECS Application.

523. The Invenergy employee safety manuals require employees to remain more than 3,000 feet away from a tower during storms and for an hour after lightening has not appeared in the area, but the setbacks from residences and other inhabited structures in the Ordinance are 1,500 feet. Such an Ordinance, exposing citizens to risks Invenergy by policy does not expose its employees is unreasoned, arbitrary and capricious.

524. These glaring deficiencies in the Ordinance reveal the lack of reason and thought in approving the Ordinance and granting the WECS Application, and therefore such acts of the Board are illegal, and of no force, effect or legal meaning.

525. The Board acted impulsively, by improper influence, grift, graft, strong-arm tactics, and other undue influence, to adopt an Ordinance (drafted and prepared by Invenergy or other wind energy interests). It is no surprise that every vagary or omission in the Ordinance is to the advantage of Invenergy.

526. The interstate enterprise composed of members of the Respondents coordinated outside of the law to obtain the adoption of an ordinance and application approval to their economic advantage.

527. The Ordinance contains no provision providing increased revenue to the County.

528. The Ordinance and WECS Application approval allow Invenergy to destroy county roads and drainage systems without enforceable recourse.

529. The Ordinance and WECS Application approval allow Invenergy to operate in the

County with complete disregard for existing ordinances.

530. While the WECS Application was pending, Invenergy threatened the County with litigation if the application was not approved.

531. The Board refused to implement proposed moratoriums on C-WECS applications and approvals under threat from Invenergy.

532. The Board approved the WECS Application the same night it learned of concerns that the Project's plan could impact existing petroleum pipelines without the Board asking for further information, study, or seeking assurances or conditions on the approval to address these valid safety concerns.

533. The actions of the Board, under these influences and threats of litigation, are not reasoned decisions.

534. The actions of the Board are impulsive to kowtow to the big-wind companies and to avoid the confrontation needed to protect the interests of the citizens of Page County.

535. Invenergy's legal position, expressed in their current litigation in Iowa and in threats to Page County, is without merit.

536. Invenergy, its affiliates, its contract partners, its investment structures, etc. may have obtained real estate interests throughout Page County.

537. The Board's use of alleged "threats of litigation" to cloak backroom meetings to avoid amendments, approve a deficient plan, and hide negotiations of the road and decommissioning agreement, is an arbitrary, capricious and unreasonable (without legal basis).

538. At the time Invenergy was making real estate investments and signing real estate contracts acquiring interests in real estate in Page County, the use of the land for C-

WECS was not permitted, and even after adoption of the Ordinance, no approval of the construction, siting, or operation of a C-WECS in Page County had been granted by the Board to Invenergy.

539. Invenergy's Page County real estate transactions were purely speculative as to the possibility of potential future use for a C-WECS system.

540. The acquisition of interests in real estate in this manner is based upon speculation as to future changes in the law.

541. A land speculator's belief that a change in the law in the future is likely does not vest that speculator with any enforceable interest to require the legislative change at speculation.

542. The lack of the legislative change, or denial of an application, contrary to the speculation of an investor does not provide a cause of action for the speculator's loss on any investment entered knowing the law may or may not change, or an application may be denied.

543. It would not be "speculation" if the purchase came with the right to force a change that was at the time of investment "speculative."

544. Speculation by definition involves risk that the investor's foresight is in error.

545. The courts, and the threat of costly litigation, as Invenergy has demonstrated as its pattern, are not to be utilized to force changes to laws to eliminate the risk Invenergy assumed in speculating on whether or not the change could or would occur in the first place.

546. Invenergy is a sophisticated party.

547. Invenergy's purchase or acquisition of real property interests, at the time unusable for under then current law of Invenergy's intended purpose, does not give Invenergy

the legal right to threaten litigation that could break counties if the law is not changed.

548. Invenergy's urgency to move forward, without appropriate study and without any interference, is based solely upon its need to treat the Project as under-construction for it to receive production tax credits that expired on December 31, 2021.

549. Absent Invenergy's qualification for these credits, the Project is economically unviable, and Invenergy's costs in speculative investments is a loss.

550. Any such loss is the risk of speculation, and that risk belongs to Invenergy, and not to the Petitioners or the citizens of Page County at the expense of illegal, unreasoned, and capricious Board action.

551. Without the Ordinance, provided to the Board by Invenergy and wind interests, there would have been no arguable standing of Invenergy to even threaten the Board with litigation.

552. Invenergy's influence on the Board, created by it providing a deficient ordinance proposal, boot-strapped Invenergy into its position of threatening the Board with litigation. The Home Rule Statue does not provide Invenergy with this authority.

553. The Board has been subjected to undue influence and threats by Invenergy, leading to the adoption of an unreasoned and capricious Ordinance and WECS Application approval, solely for the benefit Invenergy, and its affiliates and contract parties, and the Enterprise to take advantage of the production tax credit.

H. Adoption of the Ordinance and WECS Application Approval are Abuses of Zoning Discretion in Violation of Iowa Law

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

555. Adoption of the Ordinance and approval of the WECS Application constituted an abuse of the Board's zoning discretion, and was inconsistent with, and in violation of, Iowa law as plead below.

556. The Ordinance, the WECS Application, and the approval granted to Invenergy, conflict with the Page County Zoning Ordinance and comprehensive plan referred to in that ordinance, as well as with other County ordinances.

557. In approving the WECS Application, the Board failed its duty to consider the County's comprehensive zoning structure and plan in violation of Iowa Code §§ 351.1, 352.5, & 414.3.

558. These failures constituted the Board's abuse of discretion as to which Petitioners seek this Writ of Certiorari declaring the Ordinance invalid and correspondingly declaring the WECS Application approval thereunder invalid.

I. The WECS Application Approval was an Illegal Act Under Iowa Code § 331.302(14) Because the Decisive Vote was Cast by a Conflicted Supervisor

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

560. The Board's WECS Application approval was an illegal act because the approval was granted on a 2-1 vote, with the decisive vote cast by a supervisor with a conflict of interest as plead below.

561. Iowa Code § 331.302(14) provides that an action of the Board of Supervisors is

invalid if a supervisor voting on the measure has a conflict of interest and that supervisor's vote was decisive to the passage of the ordinance.

562. At the time of approving Invenergy's WECS Application, supervisor Armstrong had a conflict of interest.

563. Between the time of the adoption of the Ordinance and approval of the WECS Application, Respondent Armstrong was a member of the Board of Supervisors and during this time invested in, and owned, equity securities in a Nebraska based mineral exploration company supplying minerals necessary for the development of wind turbines.

564. At the time of approving Invenergy's WECS Application, supervisor Armstrong cast the decisive vote.

565. The adoption of the Ordinance and approval of the WECS Application were illegal and invalid under Iowa Code § 331.302(14) because a conflicted supervisor cast the decisive votes.

566. The temporal proximity of events, and out of the ordinary conduct of the Board from 2019 through approval of the WECS Application, are indicative of members of the Board of Supervisors and/or the County Attorney, all Respondents, having undisclosed interests in seeing the approval of Invenergy's application in the face of substantial public oppositions.

567. The indicia of interestedness at the time of adoption of the Ordinance, and at the time of approval of the WECS Application include:

a. Accepting a draft of the Ordinance from a wind energy interest;

b. Waiving the normal first and second reading of an ordinance prior to adoption at the third meeting;

c. The Board's statement on October 29, 2019 that it would study and research the implications of the Ordinance after, not before, the Ordinance was adopted;

d. Town hall meetings were convened by the Board after, not before, the Ordinance was adopted.

e. The Board minutes reflect no on-the-record discussion of the terms of the Ordinance during the meeting immediately prior to adoption of the Ordinance or at the meeting at which the Ordinance was adopted;

f. The Board's holding of a public forum for panelists to provide pro-wind information to the public one year after adoption of the Ordinance;

g. The Board holding pro-wind public panel presentations and then refusing to hold anti-wind panels;

h. Refusing to delay approval until complete information regarding radio interference and FCC application information was received;

i. Citing potential land-owner litigation against the County as a reason for not repealing or amending unacceptable and admittedly weak portions of the Ordinance, when the legal basis for such claims is shaky at best and the only reason landowners would have such claims is because the Ordinance was adopted without consideration of the issues;

j. Failing to follow the usual, customary and required procedures under the Zoning Ordinance;

k. The Board of Supervisor minutes show repeated closed meetings allegedly to discuss potential litigation matters;

l. The County Attorney's repeated advice not to interfere with the project out of fear of litigation from Invenergy;

m. Invenergy coming into possession of a legal hold notice sent by Petitioner's counsel only to members of the Board of Supervisors and not Invenergy (i.e. the Board was cooperating with Invenergy and sharing litigation demands and threat with Invenergy);

n. The County Engineer was tasked with looking at the road use agreement in March 2022 when the road use agreement was attached to the Ordinance adopted in 2019 (this means the Board received no input from the County Engineer prior to voting on the Ordinance);

o. The failure of the Board to ever provide the citizens an economic impact study showing anticipated County revenue from the complete project;

p. The failure to consider the possibility of tax incremental financing possibilities until a month after approving the WECS Application;

q. The refusal to consider or implement a moratorium until after the Invenergy WECS Application had been submitted;

r. Armstrong switching his vote from anti-moratorium to pro-moratorium after the Invenergy WECS Application had been submitted;

s. Respondent Armstrong believing the moratorium grand-fathered Invenergy;

t. The stark difference between procedures used, consideration of issues, and minutes of wind related actions compared to non-wind related actions taken by the Board;

u. The repeated delays of considering amendments or changes to the standards of the Ordinance until a proposal was submitted, and then when the proposal was submitted stating changes could not be made without risk of litigation;

v. The Board's refusal to delay approval until the radio disruption issues and

Wabash Trail setback issues were decided;

w. The Board's continual placation of opposed citizens by promising to evaluate potential amendments after the next significant event, and then not doing so;

x. Television advertisements supporting Armstrong in the primary election paid for by private parties (Armstrong claiming to not know who was behind the ads) touting his support of wind energy running during the time the WECS Application had been submitted;

y. The Board voting to approve the WECS Application after Armstrong had lost his primary election 68% to 41% on the basis of the candidates wind development platforms;

z. The assignment of Armstrong and Morris, and the exclusion of Holmes, as points of contact and negotiators with outside counsel on the road agreement and decommissioning plan;

aa. The position of Armstrong and Morris after the WECS Application was approved that (i) the entire Board need not be involved in the negotiations of the road use and decommissioning plan, and (ii) if the entire Board was involved in the negotiations those sessions would have to be closed due to "threats of litigation;"

bb. The temporal proximity of (i) the Board's adoption of a moratorium immediately after submission of Invenergy's application, (ii) an extension of the moratorium after the approval of Invenergy's WECS Application; (iii) exclusion of Respondent Holmes from negotiations regarding road use and decommissioning; and (iv) attempting to cloak negotiations of the road and decommissioning documents from public view or public meeting because of

"alleged threats of litigation," all individually, and in the aggregate, show nothing other than Respondents Armstrong's and Morris's protection of Invenergy and the Enterprise.

568. In combination, these factors demonstrate the Board was motivated by personal interests in seeing Invenergy succeed in approval of its project (i) under the terms of a weak Ordinance drafted by Invenergy, an affiliate of Invenergy, or an entity with similar economic interests as Invenergy, and (ii) under road and decommissioning agreements only Armstrong and Morris would be involved in negotiating..

569. The adoption of the Ordinance and WECS Application approval each constituted an illegal and *ultra vires* act by the Board under Iowa Code § 331.302(14) as to which Petitioners seek this remedies declaring the Ordinance invalid and correspondingly declaring the WECS Application approval thereunder invalid, and/or declaring the WECS Application approval alone invalid.

J. The Adoption of the Ordinance, the WECS Application Approval, and the Board's Negotiating Process for Road Use Agreement and Decommissioning Plan are Each Illegal Acts Arising from Violations of the Open Meetings Act

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

571. All of the indicia of interestedness set forth above are also indicia that closed meetings involving a majority of the Board or their agents occurred to conduct County business, including closed meetings with Invenergy and its representatives off-the-record.

572. It is not possible for the Board to have not met in closed meetings with wind

interests in receiving a draft Ordinance and then passing the Ordinance is a matter of eight days, and with no on the record discussion or public comment as to the terms of the Ordinance and options considered.

573. It is not possible for the Board to have evaluated the WECS Application without hiring independent experts, implies the Board or its representatives met with Invenergy and its experts.

574. Numerous closed meetings were held during relevant times citing legal privilege for ongoing or threatened litigation without the Board ever discussing the particular threats on the record.

575. The Board's proposal in the August 30, 2022 agenda to authorize Board members or staff to negotiation, along with Respondent Sonksen, with Invenergy demonstrates that The Board knows prior Board approval is necessary before supervisors and staff hold meeting with Invenergy.

576. No Board approval to negotiate with Invenergy was adopted by the Board in 2019, 2020, 2021, or 2022.

577. The Board's August 20, 2022 proposal affirms that any prior discussions by Board members' or the staff prior to August 30, 2022 were *ultra vires* and illegal actions in violation of the Board's authority.

578. Invenergy came into possession of a legal hold letter sent to the Board.

579. In adopting the Ordinance, the Board failed to comply with the requirements of Iowa Code § 21.1(1) requiring "open sessions" absent an applicable exception to such requirement and with that exception stated on the record.

580. In adopting the Ordinance, closed sessions were held and the records and recordings required by Iowa Code § 21.5(5) were not created or maintained.

581. The adoption of the Ordinance in violation of the Open Meetings Act in Iowa Code Chapter 21 constituted an illegal and *ultra vires* act by the Board as to which Petitioners seek this Writ of Certiorari declaring the Ordinance invalid and correspondingly declaring the WECS Application approval invalid.

582. In considering and voting to approve the WECS Application, the Board failed to comply with the requirements of Iowa Code § 21.1(1) requiring "open sessions" absent an applicable exception to such requirement and with that exception stated on the record.

583. In considering and voting to approve the WECS Application, closed sessions were held and the records and recordings required by Iowa Code § 21.5(5) were not created or maintained.

584. In considering and voting to approve the WECS Application in violation of the Open Meetings Act in Iowa Code Chapter 21 constituted an illegal and *ultra vires* act by the Board as to which Petitioners seek this Writ of Certiorari declaring the approval of the WECS Application, and all authorizations and permissions granted therewith or in relation thereto, invalid.

585. The process adopted for negotiating the road use agreement and decommissioning plan is a ruse to permit Armstrong and Morris to conduct unrecorded closed meetings with their Enterprise partner Invenergy in violation of the Open Meetings Act as evident from the following:

a. The cloaking of road use and decommissioning plan negotiations from public scrutiny and public meetings

b. Armstrong and Morris sing vague and unsubstantiated threats of litigation by Invenergy as the basis for keeping negotiations private between Invenergy and

Armstrong and Morris

c. Armstrong and Morris voted to limit the involvement of the sole dissenter, Respondent Holmes, from participating in those negotiations for the purposes of:

d. Creating a process to eliminate Holmes's access to information;

e. Prevent Holmes from discovering information as to prior communications between Armstrong, Morris, Sonksen, and Invenergy;

f. Avoiding the requirements of recording closed sessions that would reveal the Enterprise; and

g. Advance the interests of Invenergy without public scrutiny or that of the dissenter on the Board.

h. Appointing Armstrong and Morris to each communicate with the same outside counsel separately for each agreement, in an attempt to cloak their unrecorded closed meetings with outside counsel in privilege.

i. None of the § 21.5 exceptions to the Open Meetings Act apply to the negotiation of road use agreements or turbine decommissioning plans.

j. None of the § 21.5 exceptions to the Open Meetings Act form a basis for depriving the public information and communications regarding negotiations of road use and decommissioning plans.

586. Respondent Armstrong meeting with Maria and then Morris meeting with Maria each to discuss agreements with Invenergy is a "meeting," formal or informal, of a majority of the Board to deliberate action on matters within the scope of the Board's policy-making duties" under Iowa Code § 21.1(2).

587. The road use agreement and decommission plan are inter-related documents being drafted as part of a single transaction.

588. The structure of separate meetings with Maria to discuss related agreements with Invenergy is intended to avoid the purposes of the Open Meetings Act.

589. The process adopted by the Board for conducting negotiations with Invenergy regarding the road use agreement and the decommissioning plan violates the Open Meetings Act and must be enjoined before any agreements are entered.

590. In addition to granting Petitioners requested writ, Petitioner requests that the court assess damages against each member of the board participating in the violation of the Open Meetings Act, grant Petitioners recovery of all costs and reasonable attorney fees and issue an injunction prohibiting future violations as provided in Iowa Code § 21.6(a), (b), and (e)

K. Requested Orders of Mandamus and Writs of Certiorari

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

592. Equity will not suffer a wrong without a remedy.

593. Equity looks on that as done which ought to have been done.

594. Equity imputes an intention to fulfill an obligation.

595. Remedies at equity are unavailable to those who approach the court with unclean hands.

596. Equity will not reward dishonesty, misrepresentation, illegality or unfairness.

597. For the reasons set forth above, Petitioners request Orders of Mandamus (and permitted injunctions, temporary orders, and stays permitted under Iowa Code Ch. 661) and Writs of Certiorari (and stays necessary to effect the same as permitted

under Iowa R. Civ. P. 1.1405) declaring Section 9 of Ordinance (generally repealing conflicting existing ordinances) (i) to be an illegal act in contravention of Iowa Code § 331.302(4), and (ii) to be unenforceable to invalidate any ordinance (including without limitation the Page County Zoning Ordinance) duly passed and of legal effect prior to the adoption of the Ordinance, and ordering the Page County Respondents to take all actions necessary to document the removal of Section 9 from the Ordinances and laws of the County

598. For the reasons set forth above, Petitioners request Orders of Mandamus (and permitted injunctions, temporary orders, and stays permitted under Iowa Code Ch. 661) and Writs of Certiorari (and stays necessary to effect the same as permitted under Iowa R. Civ. P. 1.1405) declaring the Ordinance (i) to be an illegal act in contravention of Iowa Code Ch. 331, and (ii) to be unenforceable, and ordering the Page County Respondents to take all actions necessary to document the removal of the Ordinance from the ordinances and laws of the County as it had never been passed.

599. For the reasons set forth above, Petitioners request Orders of Mandamus (and permitted injunctions, temporary orders, and stays permitted under Iowa Code Ch. 661) and Writs of Certiorari (and stays necessary to effect the same as permitted under Iowa R. Civ. P. 1.1405) (a) declaring the approval of the WECS Application (i) to be an illegal act in contravention of Iowa Code Ch. 331, and (ii) to be unenforceable and of no legal effect, and (b) ordering the Page County Respondents to take all necessary actions to revoke Invenergy's WECS Application approval, including all authorizations, permits, or authorities granted to Invenergy thereby, and to take all actions necessary to cease activity being taken by Invenergy in

connection with the Project, including seeking injunctive relief against SHW and its affiliates for violations of the Zoning Ordinance if necessary to effectuate such order.

600. As part of any injunction, Respondents request that the County be enjoined from entering any road use agreement or decommissioning agreement with SHW, the County be ordered to revoke any permit, authorization, or exception issued for ancillary project items such as substations and switching stations.

601. Petitioners further request all other remedies as plead herein.

602. Any statute of limitations, or limitation on remedies, is equitably tolled based on the Board's continued promises of addressing the weaknesses and to consider amendments throughout the process and then the Board failing to do so. The public relied on these promises of the Board to address the issues without need for initiating litigation. The Board cannot be permitted to lie and placate the public and then renege and claim advantage of a limitation on time.

CLAIM 2: <u>THE ORDINANCE IS VOID FOR VAGUENESS</u>

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

604. The Due Process Clause of the United States Constitution as well as article I, section 9 of the Iowa Constitution prohibit 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).

605. In conjunction with, or as an alternative to, the Writs of Certiorari and Orders of Mandamus set forth above, the Ordinance is illegal and fails to meet the requirements of the Due Process Clause because it is so vague and standardless that

it leaves the public uncertain is to what conduct it permits and what conduct it prohibits. *Helmers 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))

606. As examples, a citizen of Page County cannot determine whether or not the height, noise, impact on birds, bats, and endangered species, or the exact, specific location of a turbine are regulated by the Ordinance or not. The Ordinance required information as to each of these items in the application, but the Ordinance does not otherwise require compliance with the disclosures contained in the application.

607. The enforcement provisions of the Ordinance are non-existent.

608. Wind farm construction projects of the type proposed by Invenergy cause millions of dollars in damages to roadways and attached drainage systems.

609. Section 5(1) of the Ordinance provides "Roadways of any surface type will be restored to preconstruction condition by the Developer at no cost to the County."

610. Section 5(1) of the Ordinance requires an approved C-WECS developer to enter into a "road use agreement substantially in the form attached to [the] Ordinance, prior to the start of construction."

611. Section 2 of the "road use agreement" attached to the Ordinance, in contrast to the terms of Section 5(1) of the Ordinance, only commits the approved C-WECS developer to responsibility for "maintaining the unpaved roads within the Wind Farm project boundaries."

612. The conflict between the terms of Section 5 of the Ordinance requiring restoration of roadways of all surface types anywhere in Page County at no cost to the County and the provisions of the "road use agreement" committing the C-WECS developer only to repair "unpaved roads" "within the project boundaries" (which does not

cover the entire county) are in direct conflict, and that conflict is irreconcilable.

613. This irreconcilability will become even more pronounced down-the-road when Invenergy fails to repair paved roads within the project boundaries and/or fails to repair any roads outside of the project boundaries citing no enforcement provisions in the Ordinance, but a vested contractual rights to only repair unpaved roads in the project area with specific remedy provision in the road use agreement approved by the Board and constituting the contractual agreement and commitment of the County when signed.

614. As Invenergy has done in litigation already in the State of Iowa, Invenergy will assert a contract right to which it is entitled, and that, notwithstanding Section 5(1) of the Ordinance, it may only be required to repair unpaved roads in the project boundaries and has no obligation to repair paved roads anywhere or unpaved roads outside of the project area. Invenergy will argue the road use agreement is a contractual waiver of any obligation to comply with the Ordinance road repair requirements.

615. Transportation of wind turbine equipment to site locations will require the use of paved and unpaved roads in Page County both within and outside of the project area.

616. No mechanism exists for enforcing the C-WECS developer's obligation under the Ordinance to repair damaged paved or unpaved roads in the County outside of the "project area" at no cost to the County, and no provisions provide for enforcing the C-WECS developer's obligation under the Ordinance to repair paved roads within the project area.

617. The road repair provisions, which includes incorporation of the "road use agreement" attached to the Ordinance, are unconstitutionally vague as to the obligations of the C-WECS developer's and the definition of their required conduct is vague.

618. Invenergy should not be permitted to latch on to this vagueness down-the-road to shirk its responsibilities to repair damage to the County's roads. The vagueness and contradiction within the Ordinance renders it unconstitutional under the Due Process clauses of the United States and State of Iowa Constitutions.

619. Further Ordinance vagueness arises from the requirement in Section 3 for a commercial wind system applicant to disclose turbine heights in the WECS Application, but then not be obligated under Section 4 of the Ordinance to comply with any height requirements or to limit the height to those included in the application. In stark contrast, the height limitation for a non-commercial turbine is limited to 100 feet in Section 6 of the Ordinance.

620. These contradictions and inconsistencies related to height limitations create vagueness as to what is permitted and prohibited by the Ordinance and therefore the Ordinance is unconstitutionally vague, especially when the heights proposed by Invenergy are also inconsistent with the Page County Zoning Ordinance.

621. A law is vague if it impermissibly delegates basic policy matters to those entrusted with enforcing it. *Helmers 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)).

622. The void-for-vagueness doctrine is designed to prevent the vesting of virtually unlimited discretion in governmental officials. Id.

623. Therefore, even more so, an ordinance, such as the Ordinance in this case, vesting virtually unlimited discretion for policy-making in an unelected person is certainly vague in its definition of permitted and prohibited conduct.

624. If a law is void for vagueness if it delegates policy-making to government law enforcement officials, a law that delegates policy-making to a purportedly regulated non-governmental entity is certainly void on vagueness grounds.

625. The Ordinance fails to delegate enforcement at all to any law enforcement or governmental entity and instead policy making matters are delegated to Invenergy. This structure violates the Due Process Clause.

626. The Ordinance unconstitutionally vests the non-governmental proverbial fox with the authority to guard the hen house as it sees fit.

627. The vagueness of the Ordinance further deprived the citizens of Page County of the opportunity to understand the meaning of the ordinance while being considered by the Board.

628. Petitioners seek a declaration, whether as certiorari, mandamus, or declaratory judgment under Iowa R. Civ. P. 1.1101, that the Ordinance as adopted by the Board of Supervisors is unconstitutionally vague and void, and violates the Due Process Clause.

629. Petitioners further seek an injunction against the County prohibiting it from entering the "road use agreement" appended to the Ordinance with Invenergy while this litigation is pending.

CLAIM 3: TEMPORARY AND PERMANENT INJUNCTION AGAINST COUNTY

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

631. As an auxiliary or alternative remedy to the Writs of Certiorari and Orders of Mandamus set forth above and below, Petitioners seek a temporary and permanent injunction at equity and pursuant to Iowa R. Civ. P. 1.1501& 1.1502 to the same effect and on the same terms as Petitioners requests under its pleadings herein regarding the declaratory judgments, writs, and orders sought as to the unenforceability and invalidity of the Ordinance and/or WECS Application approval as plead above and below in support of the Writs of Certiorari, Orders of Mandamus, declarations of invalidity and unconstitutionality, and other equitable relief.

632. The Petitioners request a temporary injunction pursuant to Iowa Code § 661.16 permitting the court to make temporary orders for purposes of preventing damage or injury to the Petitioners until the action is decided.

633. The County's continued operation of under an illegal Ordinance with no enforcement provisions, and allowing Invenergy to proceed with development under an illegal application approval based on an application containing knowing material misstatements and omissions, would cause great, or irreparable injury to the Petitioners' rights to have their government conduct itself within the bounds of the law. Money damages are insufficient to compensate the Petitioners' for Page County's violations of the laws governing its authority and ability to act.

634. Page County, by allowing Invenergy to continue development of the C-WECS project, while litigation as to the legality of the Ordinance and legality of the WECS Application approval are ongoing, exposes Page County, and correspondingly the Petitioners as residents and taxpayers in Page County, to potential further cost and expense arising out of Invenergy's possible, although unjustified, claims based upon reliance, imputed contract, or similar types of claims. Invenergy has already demonstrated its claims unfettered entitlement to pursue such projects in its litigation Tama County, Worth County, and in demands to Page County. Temporary and permanent injunctive relief prohibiting Invenergy from unilaterally expanding its entitlement claims is necessary to limit future harm to all involved.

CLAIM 4: <u>DECLARATORY JUDGMENT</u>

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

636. For all of the reasons set forth herein, Pursuant to Iowa R. Civ. P. 1.1101, Petitioners seek declaratory judgment against all Respondents declaring (i) the invalidity, illegality, unconstitutionality, and unenforceability of the Ordinance, and (ii) the invalidity, illegality, and unenforceability of Invenergy's WECS Application purportedly granted pursuant to the Ordinance.

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, whether by Writ of Certiorari, Order of Mandamus, Declaratory Judgment, by Injunction, at law or equity, or by any other remedy available at law or equity, enter an order that:

(i) invalidates the Ordinance as an illegal, unconstitutional, and unenforceable act of the Board of Supervisors;

(ii) invalidates the approval of the WECS Application under the Ordinance as an illegal and unenforceable action of the Board of Supervisors;

(iii) invalidates Invenergy's WECS Application approval to construct a wind turbine system in Page County and declares Invenergy has never had a right to do so;

(iv) directs Page 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 Ordinance and revocation of the WECS Application approval so as if the Ordinance were never adopted and the WECS Application never approved;

(v) enjoins the County from authorizing any person to negotiate a road use agreement or decommissioning agreement with Invenergy;

(vi) enjoins the County from entering a road use agreement or decommissioning agreement with Invenergy;

(vii) enjoins the Board of Supervisors from any violations of the Open Meetings Act for a period of 12-months;

(viii) grants all penalties and fines available at law against each Respondent;

(ix) grants such further relief, remedy or damages to which the Petitioners may be entitled; and

(x) 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.

Dated: September 16, 2022

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