

# BOONE COUNTY ZONING COMMISSION MINUTES

AUGUST 31, 2009

7:00 P.M. – BOONE COUNTY COURTHOUSE, 1<sup>ST</sup> FLOOR

201 STATE STREET, BOONE

PLEASE ENTER THROUGH THE EAST DOOR

## I. OPEN MEETING AND ROLL CALL

Herman Kopitzke	Maggie Stone	Lawrence Bice
Steve Lawler	Rebecca Shivvers	Robert North
Duane Haglund	Pam Prouty	Thomas Ross

**ATTENDANCE:** Thomas Ross, Robert North, Pam Prouty, Rebecca Shivvers, Maggie Stone, Duane Haglund, and Herman Kopitzke

**ABSENT:** Lawrence Bice and Steve Lawler

**ALSO IN ATTENDANCE:** Roger Franksain

## II. APPROVAL OF MINUTES

A. July 27, 2009 minutes approved.

## III. CITIZENS COMMENTS ON ITEMS NOT ON THE AGENDA (ADDITIONS TO AGENDA)

A. Roger Franksain addressed the Zoning Commission. He stated he was in the process of getting a permit for a wind turbine. Franksain stated he had a couple of concerns and suggestions in regards to the Zoning Ordinance.

He asked for clarification of Section 8.03.03 # 2. Setbacks, letter B which refers to Section 8.04.05. Setbacks. This section of the ordinance reads as follows:

All towers shall adhere to the setbacks established in the following table:

Setbacks provisions may be waived if the following conditions are met:

1. Property owners may waive the setback requirement for Property Lines and/or Occupied Buildings on the participating Landowner property and/or Non-Participating Landowner property by signing a waiver that sets forth the applicable setback provision(s) and the proposed changes.
2. The written waiver shall notify applicable property owner(s) of the setback required by this Ordinance, describe how the Wind Energy Facility is not in compliance, and state that consent is granted for the Wind Energy Facility to waive the setback as required by this Ordinance.
3. Any such waiver shall be signed by the applicant, the Participating Landowner(s) and/or Non-participating Landowner(s), and recorded in the Deeds Office where the property is located.

	Wind Turbine – Non Commercial WECS	Wind Turbine – Commercial/Utility WECS	Meteorological Towers
Property Lines	1.1 times the total height if in [Ordinance #95 February 2009] Agricultural or Transitional Agricultural Districts only. In other districts, the setback shall be the distance of the fall zone, as certified by a professional engineer, + 10 feet	1.25 times the total height.	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or 1.1 times the total height.
Neighboring Dwelling Units*		750 feet	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or 1.1 times the total height.
Road Rights-of- Way**	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.	One times the height.	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.
Other Rights-of- Way	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.
Public conservation lands	NA	600 feet	600 feet
Wetlands, USFW Types III, IV, and V	NA	600 feet	600 feet
Other structures	NA	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.	The greater of: The fall zone, as certified by a professional engineer, + 10 feet or one times the total height.

Franksain stated he had read the section of the ordinance which dealt with waivers for wind turbines, and had gone to the surrounding property owners and had each of them sign a waiver stating they approved of him putting the wind turbine closer to the property lines than the ordinance required.

He stated when he applied for the zoning permit and was told that the waiver section applied only to the big commercial wind turbines.

Franksain questioned whether the waiver section of the ordinance applied to small wind turbines also.

Franksain stated he had been told that just the table applied to the small wind turbines and not the waivers as listed above.

Robert North questioned whether Mr. Franksain wanted to locate the wind generator closer to the neighbor's property line.

Franksain stated he had been told by the installer that this would be the best location for the wind generator due to the trees on his northern property boundary. He stated he had spoken with both of his neighbors and that they did not object. He again noted both neighbors had signed waivers.

Chairman Kopitzke stated he did not understand why Mr. Franksain had been told the waiver only applied to one type of tower because the ordinance read all towers.

Maggie Stone noted there was a section of the ordinance which outlined regulations for both commercial and non-commercial wind generators.

Discussion was held on the ordinance.

Chairman Kopitzke stated as far as he was concerned the section in the ordinance stated all towers and that it didn't differentiate between commercial and non-commercial.

Further discussion was again held on the setback requirements and how the zoning ordinance was written.

Rebecca Shivvers stated Franksain was zoned Ag and had a farm number. She questioned why they were even discussing the need for a variance she stated he should just be able to get a building permit.

Chairman Kopitzke stated that was all he should need.

Franksain noted he did have a farm number from the FSA, and that he had 3 acres of land and that he was listed as a farm.

He stated the county attorney was reviewing the application for an agricultural permit. He noted since he had originally submitted his petition for a variance he had received his farm number.

Franksain noted he had submitted an agricultural permit which was being reviewed by the County Attorney Jim Robbins.

It was noted the original application which was submitted was for a Zoning permit, not an agricultural permit, which would be exempt from the setback requirements.

Franksain noted he had originally applied for a Zoning permit and submitted waivers. He again indicated he had recently obtained an FSA number.

It was indicated that a variance had not been granted but tabled at the Board of Adjustment meeting to allow Franksain's installers additional time to come up with written documentation to support the granting of a variance.

Chairman Kopitzke stated "if you are listed as a farm, I don't see what the problem is." Just go in and ask for a permit.

Franksain again stated the Ag permit was being reviewed by the County Attorney.

It was questioned as to whether all properties in the A-1 district were exempt because they were agriculturally zoned.

Rebecca Shivvers stated they would have to have a farm number.

Chairman Kopitzke stated the Ordinance did not apply to farms.

It was questioned whether anyone with 5 acres of land in the county should be considered a farm and exempt from zoning.

Rebecca Shivvers stated a farm was a farm.

Chairman Kopitzke stated "no one was going to tell you what a farm is". Kopitzke stated if they were in a rural residential area and had 10-acres of land they were not a farm.

Robert North questioned whether Franksain raised hay on his property.

Franksain stated he had put in his application to harvest wind, and that the FSA approved the application and had issued the farm number.

Franksain noted he did store grain on the farm, didn't raise it but did store it for somebody else. He stated the buildings on his land were still being used for agricultural purposes.

Robert North asked whether Franksain had explained to the Board of Adjustment that the installer had recommended this location.

Franksain noted the installer was present at the Board of Adjustment meeting.

North noted we did not want to run him around in circles.

Franksain noted the ordinance should be clarified in the future.

Chairman Kopitzke stated he believed the Supervisors needed to get another ordinance defining where towers could be located on farm ground and have setbacks for them. He stated you could not apply the zoning ordinance to something which is exempted by state law.

Shivvers indicated that was the problem she had, and that she had a farm number and had been farming since 1994. She stated she did get a permit, but that she was told she would need to get a variance and that the Board of Adjustment couldn't understand why she was there because she was a farm.

She stated she was zoned Ag, she is Ag and has been farming corn and soybeans since 1994.

Chairman Kopitzke questioned Franksain as to whether he had applied for an Agricultural Permit.

Franksain stated he had.

Kopitzke stated that permit should go through.

Franksain said he wasn't doing this for himself but for other people in the future.

Robert North questioned whether the electricity was going to be used for a fan on the grain bin.

Franksain stated it would not be used for a fan.

It was questioned whether the excess electricity would go on the grid.

Franksain noted it would go on the grid and he would be credited kilowatt hour per kilowatt hour.

Chairman Kopitzke questioned whether Franksain had recorded the waivers.

Franksain stated he was told he could not use them.

Kopitzke told him he would record them anyway.

North noted when the wind farms with huge towers go in the proximity to a property line would be much more important on something that is very big.

#### **IV. OPEN PUBLIC HEARING(S) AND CONSIDERATION OF APPLICATION(S)**

Public Hearing opened by Chairman Kopitzke at 7:18 p.m.

Chairman Kopitzke discussed the 3 acre minimum lot size for a farmstead. He stated the Board of Adjustment could grant a variance if the property owner did not want to give up 3 acres of land. He did not believe they should be treated differently than non-farm properties.

Maggie Stone questioned why the minimum lot size should be changed to 3-acres; she stated we were trying to preserve the prime Ag land. She believed this to be counterproductive.

Kopitzke noted this may discourage some of the old farmsteads from being sold.

Further discussion was held on the proposed ordinance amendments.

- A. Ordinance No. 101: Proposed text amendments to the Boone County Zoning Ordinance, Article 2 Definitions. Definitions of Section 2.02.208 Home Base Business and Section 2.02.209 Home Occupation to ensure compliance with the performance standards specified for residential and agricultural zoning districts
- B. Ordinance No 102: Proposed text amendment to the Boone County Zoning Ordinance, Section 4.15 Bulk, Regulations Tables – Accessory Buildings in TA-1, R-1, and R-2 Zoning Districts to reduce front, back, and side yard setbacks to compliment residential setbacks.

- C. Ordinance No. 103: Proposed text amendment to the Boone County Zoning Ordinance, Article 4, Section 4.04 A-1 Agricultural Conservation District concerning the administration of the overall maximum density and minimum lot size requirements for non-farm residential dwellings, as principle permitted uses.

Robert North moved to recommend Board of Supervisor approval of the amendment to the Zoning Ordinance No. 101, Ordinance No 102. and Ordinance No. 103.

*Seconded by Rebecca Shivers*

Thomas Ross—yes  
Robert North—yes  
Lawrence Bice—yes  
Pam Prouty—yes  
Rebecca Shivers—yes  
Maggie Stone—yes  
Duane Haglund—yes  
Herman Kopitzke—yes

**V. CONSIDERATION OF SUBDIVISION PLAT APPLICATIONS**

A. None

**VI. UNFINISHED BUSINESS (OLD BUSINESS)**

A. None

**VII. NEW BUSINESS**

A. None

**VIII. REPORT OF ZONING ADMINISTRATOR AND DIRECTOR OF PLANNING**

A. None

**IX. ADJOURNMENT**

Respectfully submitted,

Wanda Cox  
Secretary