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LISA SMITH, COUNTY RECORDER
MADISON COUNTY IOWA

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Type of Document

Variance for Meteorological Tower

PREPARER INFORMATION:

Zoning Office for Larry Wisecup & Invengergy Wind Development LLC

TAXPAYER INFORMATION:

RETURN DOCUMENT TO:

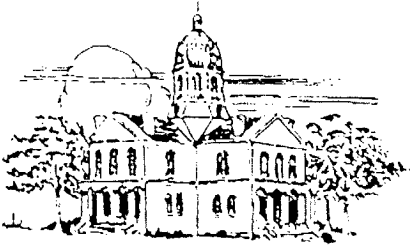
GRANTOR:

GRANTEE:

LEGAL DESCRIPTION:

NE NE Section 20 T74N R26W, Ohio Township
41.2000443, -93.869769

Document or instrument of associated documents previously recorded:
(if applicable)



Courthouse at Winterset
Madison County, Iowa
Built in 1876 of native limestone.

Prepared By:

Return To:

Madison County
Office of Zoning and Environmental Health

C.J. Nicholl, Administrator, Madison County Environmental Health & Zoning

VARIANCE

PERMIT NO: 006-18

DATE: April 4, 2018

After Public Hearing held on April 3, 2016, the Madison County Board of Adjustment hereby grants a Variance to Invenergy Wind Development LLC & Larry Wisecup to allow the construction of a meteorological study tower at a height of 198 ft. This tower may remain in place for a maximum of 6 years from the date of this variance. The variance is required by ordinance and will be located on the following described real estate:

NE NE Section 20 T74N R26W, Ohio Township
Latitude 41.200044, -93.869769

This variance was approved under the provisions specified in Section 14 of the Zoning Ordinance for the Unincorporated Area of Madison County, Iowa.

C.J. Nicholl, Environmental Health & Zoning Administrator
Secretary to the Madison County Board of Adjustment

**BOARD OF ADJUSTMENT FINDINGS OF FACT AND LEGAL
PRINCIPLES UPON WHICH THE BOARD ACTS:**

Section 6-2(a) of the Madison County Zoning Ordinance states the following regarding height:

SECTION 6 – APPLICATION OF DISTRICT REGULATIONS

The regulations set by this Ordinance within each district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, as hereinafter provided:

1. No building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered unless in conformity with all of the regulations herein specified for the district in which it is located except agricultural uses are exempt.
2. *No building or other structure shall hereafter be erected or altered:*
 - a. *To exceed the height;*
 - b. *To accommodate or house a greater number of families;*
 - c. *To occupy a greater percentage of lot area;*
 - d. *To have narrower or smaller rear yards, front yards, side yards, or other open spaces;*
 - e. *In any other manner contrary to the provisions of this Ordinance.*

Section 9-(C) of the Madison County Zoning Ordinance states the following regarding height:

SECTION 9 – AGRICULTURAL DISTRICT REGULATIONS

C. Height Regulations.

No building shall exceed two, and one-half (2 ½) stories or thirty-five (35) feet in height, except as provided in Section 14.

Section 14 of the Madison County Zoning Ordinance defines the Exceptions, Modifications, Interpretations and Conditional Uses that are permitted when authorized by the approval and authority of the Madison County Board of Adjustment.

SECTION 14 EXCEPTIONS, MODIFICATIONS, INTERPRETATIONS AND CONDITIONAL USES

C. Structures Permitted Above Height Limits

The building height limitations of this Ordinance shall be modified as follows:

1. Chimneys, cooling towers, elevator bulkheads, fire towers, grain elevators, monuments, penthouses, stacks, silos, tanks, water towers, ornamental towers and spires, radio or television tower or *necessary mechanical appurtenances may be erected to a height approved by the Board of Adjustment.*

Section 17 of the Madison County Zoning Ordinance defines the jurisdiction and powers of the Board of Adjustment as prescribed by the State of Iowa.

SECTION 17 D JURISDICTION AND POWERS OF THE BOARD OF ADJUSTMENT

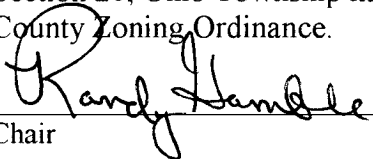
D. Jurisdiction and Powers of the Board of Adjustment.

1. The Board of Adjustment shall have the following powers and duties.
 - a. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in enforcement of this Ordinance.
 - b. To hear and decide applications for conditional use permits and exceptions upon which the Board is required to address by other sections of this Ordinance.
 - c. To grant a variance from the terms of this Ordinance when a property owner can show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or where by reason of exceptional topographical conditions of other extraordinary or exceptional situation, the strict application of the terms of this Ordinance actually prohibits the use of his property in a manner reasonably similar to that of other property in the same district, and where the Board is satisfied under the evidence before it that a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship, and so that the spirit of this Ordinance shall be observed and substantial justice done. To establish unnecessary hardship, a property owner must show all of the following elements:
 - i. The land in question cannot yield a reasonable return from any use permitted by the regulations of the district in which the land is located. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the land in question. It is not sufficient merely to show that the value of the land has been depreciated by the regulations or that a variance would permit the owner to maintain a more profitable use; and
 - ii. The plight of the owner is due to unique circumstances not of the owner's own making, which unique circumstances must relate specifically to the land in question and not to general conditions in the neighborhood; and
 - iii. The use to be authorized by the variance will not alter the essential character of the locality of the land in question.
2. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable under Section 16 of this Ordinance.
3. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

4. Under no circumstances shall the Board grant a variance unless and until the Board shall be satisfied that granting the variation will not:
 - a. Merely serve as a convenience to the applicant and is not necessary to alleviate demonstrable hardship or difficulty so great as to warrant the variation.
 - b. Impair the general purpose and intent of the regulations and provisions contained in this Ordinance.
 - c. Impair an adequate supply of light and air to adjacent properties.
 - d. Increase the hazard from fire and other danger to said property.
 - e. Diminish the value of land and buildings in the County.
 - f. Increase the congestion and traffic hazards on public roads.
 - g. Otherwise impair the public health, safety and general welfare of this inhabitants of the County.
5. Every variance, exception or conditional use permit granted or denied by the Board shall be supported by testimony or evidence submitted in connection therewith.

After careful consideration of all the information that has been presented, and for the factual reasons set forth in the above noted and Section 17 both of which are incorporated by this reference herein, the Board of Adjustment hereby finds:

The applicant, Invenergy Wind Development LLC regarding the Larry Wisecup Property in Section 20, Ohio Township has X / has not met the requirements of the Madison County Zoning Ordinance.


Chair


Secretary

Original Filed with the Secretary of the Board of Adjustment on April 4, 2018.

MADISON COUNTY BOARD OF ADJUSTMENT

Application for Variance
Invenergy Wind Development LLC/Larry Wisecup

DECISION

Date: 4-4-18

On April 3, 2018 at 7:00 p.m., pursuant to the rules of procedure of the Board of Adjustment, a public hearing was held and conducted on the Application for Variance filed by Invenergy Wind Development LLC/Larry Wisecup on February 8, 2018 regarding the property described as NE NE Section 20 T74N R26W, Ohio Township. At the hearing the Board of Adjustment, reviewed the completed application form(s), relevant provisions of the Madison County Ordinances, all documents constituting the record from the Zoning Administrator, documents received from the Applicant, heard the statements, remarks and comments by the Zoning Administrator, the Applicants, as well as statements, remarks and comments by others in attendance. After all information had been received and all interested parties heard by the Board of Adjustment, the hearing was closed pursuant to the rules of procedure of the Board of Adjustment.

Following the close of the hearing a motion was made by *Carrie* to *Approve* the Variance application *Randal* seconded this motion. A roll call vote was conducted on the motion to *Approve* the Variance with the following votes:

Randy Gambal –	<u>Yes</u>
Mindy Nelson –	<u>No</u>
Randall Johnson –	<u>Yes</u>
Carrie Larson –	<u>Yes</u>
Mary Terry –	<u>No</u>

The motion to Approve the Variance was Passed.

A motion was then made by *Carrie* to approve as written the “Board of Adjustment Findings of Fact and Legal Principals Upon Which the Board Acts,” which is attached hereto and incorporated herein by its reference. *Randal* seconded the motion and a roll call vote was conducted with the following votes:

Randy Gambal –	<u>Yes</u>
Mindy Nelson –	<u>No</u>
Randall Johnson –	<u>Yes</u>
Carrie Larson –	<u>Yes</u>
Mary Terry –	<u>No</u>

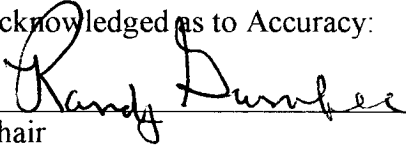
Accordingly, the “Board of Adjustment Findings of Fact and Legal Principals Upon Which the Board Acts” was approved as written and approved and adopted by the Board of Adjustment.

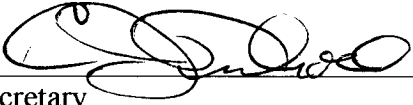
DECISION:

As the motion to approve the Variance was Passed,
the Variance application is Approved.

Dated this 3rd day of April 2018

Acknowledged as to Accuracy:


Chair


Secretary

Original Filed with the Secretary of the Board of Adjustment on April 3, 2018.

Written Notification of Decision sent to:

Invenergy Wind Development LLC
1 South Wacker Dr. Ste. 1800
Chicago, Il. 60606