

2021

Invenergy Utility Scale Wind Energy Proposal



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11/2/2021

Utility Scale Wind Energy and Hardy County Zoning

Currently, the Hardy County Zoning Ordinance does not contain any provisions to clearly allow or prohibit a utility scale wind energy project. Typically, when a zoning ordinance does not explicitly allow a use, it is considered to be prohibited. The County is aware that the ordinance does not sufficiently address current issues and we are working diligently to update the Hardy County Comprehensive Plan. An updated plan is required in the planning process to set policies that guide the regulatory processes and documents, such as amendments to the zoning ordinance.

Until the county completes this Comprehensive Plan update, which includes a large public input campaign, we hesitate to revise any ordinances. The Comp Plan update process should be complete next summer; however, we understand that you may wish to move forward with a utility scale wind energy project application prior to the completion of that process.

Current Conditions

The site proposed by Invenergy for a utility scale wind project is currently zoned “residential”. In our opinion there is no path forward for zoning approval for such a project in an area zoned “residential” due to the potential conflict of the two uses. It is the belief of the Planning Commission that based on the current ordinance, this project application can only move forward if the proposed project area is rezoned. However, as previously noted, there is no zoning district that implicitly allows application for such a project; there are only provisions that outline a potential path through amendment. So, the question becomes what zoning district would be most appropriate for such a project, and what current language would allow for a path to application.

Path Forward

After much analysis and discussion between the Planning Commission and staff concerning the language, purpose, and intent of the various zoning districts, the Planning Commission (at a special meeting called for Oct. 28) came to the conclusion that if the applicant (Invenergy) intends to immediately submit an application, the proposed project would be most suitable in the Industrial District.

The primary reason for this decision is that the Industrial District currently allows *“Any extractive type industry that extracts and or processes non-renewable resources”*. We believe this use is closer in character to utility scale (renewable) energy projects than any other use in the ordinance.

Based on the current language in the ordinance, the Planning Commission believes the most efficient and logical way to move this process forward is as follows:

1. Applicant would petition the Hardy County Commission for a text amendment that would create a path for application in the Industrial District. Recommended path is that utility scale energy projects be added to the list of “Conditional Uses” in the Industrial District. The Planning Commission maintains that such projects should always be “Conditional Uses” due to the fact that each site is unique and requires individual consideration to sufficiently address issues presented.
The final proposed text amendment must go through the legal public hearing process for an ordinance text amendment as stated in the Zoning Ordinance and WV State Code.
2. Once the text amendment is adopted as part of the ordinance, the applicant must then ask the Planning Commission to grant a re-zoning to the Industrial District. The rezoning must go through the legal public hearing process as outlined in the Ordinance. This includes a PC public hearing and a CC public hearing to officially amend the ordinance and map.
3. If the re-zoning is granted, the applicant must follow the application process outlined by that district/amendment. This process would include specific conditions to be set by the Board of Zoning Appeals during a Board of Zoning Appeals public hearing.

Future

This solution is designed to create a clear path to application not only for the utility scale wind energy project application from Invenergy, but also for any future “utility scale energy” projects proposed in Hardy County.