

**RECORD OF PROCEEDINGS
BOARD OF COMMISSIONERS
MARION COUNTY, KS**

September 30, 2020

Commission met for payday and other business at 9:00 a.m. in Commission chambers at the Marion County Courthouse with Chr. Jonah Gehring, Comm. Kent Becker, Comm. Randy Dallke, Comm. Dave Crofoot, and Comm. Dianne R. Novak present. Also present was Co. Clerk Tina Spencer. Present for portions of the meeting were Co. Counselor Brad Jantz, County staff, members of the public, and members of the press.

PUBLIC COMMENTS: None.

SALES TAX: Sales tax for the month of July was received in the amount of \$69,070.56.

PAYDAY: A detailed list of expenditures by fund was reviewed. Reports showing payments to Western Associates and Elcon Electric were reviewed.

- Gehring moved approve payment to Western Associates in the amount of \$50.05. Dallke seconded and motion carried 5-0 with Crofoot abstaining (abstention counted with majority prevailing).
- Becker moved to approve payment to Elcon Electric in the amount of \$364.06. Dallke seconded and motion carried 4-1 with Novak opposed and Gehring abstaining (abstention counted with majority prevailing).
- Becker moved to issue a directive to department heads that major repairs be brought to the Commission for approval prior to those repairs being made. Dallke seconded and motion carried 5-0.
- Gehring moved to approve the grand total payday figure of \$1,977,146.34 (including payroll at \$545,247.73). Becker seconded and motion carried 5-0. (Checks #49675-49905.)

ADMINISTRATIVE: Novak moved to approve the minutes of September 14th as written. Dallke seconded and motion carried 5-0. Becker moved to approve the minutes of September 21st as written. Crofoot seconded and motion carried 5-0.

- Budgeted transfers were presented for approval: \$93,542.34 from Gen. Fund R&B Sales Tax to Capital Improvement and \$327,397.00 from Gen. Fund Road Maintenance to Capital Improvement. Gehring moved to approve the budgeted transfers. Crofoot seconded and motion carried 5-0.
- A petition to attach land to Rural Water District #1 has been received. Gehring moved to set the hearing date for the land attachment for October 13, 2020 (at 10:00 a.m.). Becker seconded and motion carried 5-0.
- Spencer reported that a \$5,000.00 grant has been awarded to Marion County from the Center for Tech and Civic Life to assist with COVID-19 expenses pertaining to elections. Gehring moved to accept the grant funds. Novak seconded and motion carried 5-0.
- **Roofing bids** for several County-owned properties were opened and reviewed. Bids were received from:
 - Yutzy Roofing Service, LLC, Partridge, KS
 - Stanfield Roofing, El Dorado, KS
 - Trust Roofing, Newton, KS
 - Wray Roofing, North Newton, KS

All bids will be verified and presented for approval on October 5th.

ATTORNEY/CLIENT DISCUSSIONS: Co. Attorney Brad Jantz and attorney Pat Hughes joined the session. Gehring moved to recess into executive session to discuss potential litigation pursuant to K.S.A. 75-4319b (2) for attorney/client consultation with Jantz, Hughes, and the Board present for 30 minutes. Dallke seconded and motion carried 5-0. Open session resumed with a motion by Gehring to recess into executive session to discuss potential litigation pursuant to K.S.A. 75-4319b (2) for attorney/client consultation with Jantz, Hughes and the Board present for 10 minutes (until 10:40 a.m.). Dallke seconded and motion carried 5-0. Open session resumed with no action. Hughes left the meeting.

Gehring moved to recess into executive session to discuss matters of litigation pursuant to K.S.A. 75-4319b (2) for attorney/client consultation with Jantz and the Board present for 10 minutes (until 10:51 a.m.). Becker seconded and motion carried 5-0. Open session resumed with no action.

ROAD & BRIDGE: A budgeted transfer from the Road & Bridge fund to the Special Machinery and Equipment Fund in the amount of \$133,333.34 was presented for approval. Becker moved to approve the transfer. Crofoot seconded and motion carried 5-0.

- Becker moved to approve Utility Permit 2020-17 (for RWD #1 to bore at 270th and Limestone). Novak seconded and motion carried 5-0.
- Gehring moved to approve Utility Permit 2020-18 (for Tri-County Telephone to place buried fiber beginning at 290th & Kanza in section 11-18S-2E). Dallke seconded and motion carried 5-0.
- Gehring moved to approve Utility Permit 2020-19 (for Ideatek Telecom to bury fiber along 120th in section 12-21S-4E). Dallke seconded and motion carried 5-0.

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September 30, 2020, Continued

ROAD & BRIDGE, CONTINUED: Area fuel bids were reviewed:

	Area 1 <u>1,400 gals.</u>	Area 2 <u>1,950 gals.</u>	Area 3 <u>1,950 gals.</u>
Epp's Service, Elbing	1.3690 = \$1,916.60	1.4590 = \$2,845.05	1.3490 = \$2,650.55
MVA Oil, Tampa	1.4040 = \$1,965.60	1.3840 = \$2,698.80	1.4140 = \$2,757.30

Gehring moved to accept the bid from Epp's Service for Areas 1 and 3 and the bid from MFA Oil for Area 2. Becker seconded and motion carried 5-0.

PLANNING/ZONING/ENVIRONMENTAL HEALTH: Dir. Sharon Omstead presented Resolution 2020-26, approving text amendments to the Zoning Regulations of Marion County, Kansas, for approval. Crofoot moved to adopt Resolution 2020-26. Becker seconded and motion carried 5-0.

PARK & LAKE: Supt. Isaac Hett presented bids to have outdoor electric receptacles installed at the Lake Hall.

Elcon Services, Hillsboro	\$1,980.00
Sanders Electric, Marion	\$3,100.00
Landmark Electric, Tampa	\$3,698.44

Dallke moved to accept the bid from Elcon Electric in the amount of \$1,980.00. Crofoot seconded and motion carried 5-0 with Gehring abstaining (abstention counted with majority prevailing).

- Hett updated the Board on several subjects including the lack of progress on the reconstruction of the heated dock. Gehring moved to recess into executive session to discuss potential litigation with Jantz, Hett, and the Board present pursuant to K.S.A 75-4319b (2) for attorney/client consultation for 20 minutes. Dallke seconded and motion carried 5-0. Open session resumed with no action.

COVID-19/LONG-TERM CARE FACILITY DISCUSSION: Health Officer Diedre Serene was present via teleconference. Also present were representatives from several of the long term care facilities in Marion County. New guidance from CMS regarding allowing visitors to nursing homes was discussed. Several challenges were outlined, including lack of staff, lack of testing supplies, and financial concerns. Each facility indicated their current status regarding visitors, and how visits are managed. Serene indicated that these facilities should be prioritized to receive County SPARK funding. Spencer noted that the Board has the ability to direct the task force to change the allocation structure, if needed. No decisions were made.

PUBLIC COMMENTS: None.

COMMISSION COMMENTS: Dallke expressed frustration regarding the Postal Service's placement of mailboxes in different areas.

- Becker expressed discomfort with the projected budget shortfall for the transfer station project, and the probability that at least \$100,000.00 will have to be covered by the General Fund.

Session recessed for 10 minutes.

COMMISSION HIRING DISCUSSION: Gehring moved to recess into executive session to discuss applications/hiring pursuant to K.S.A. 75-4319b (1) for personnel matters of non-elected personnel with the Board present for 15 minutes (until 1:15 p.m.). Dallke seconded and motion carried 5-0. Open session resumed with no action. The topic will be discussed again on October 5th.

Dallke moved to adjourn. Gehring seconded and motion carried 5-0. Meeting adjourned at 1:22 p.m.

Jonah Gehring, Chairman

ATTEST: _____
Tina D. Spencer, County Clerk

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September 30, 2020, Continued

RESOLUTION NUMBER 2020-26

**A RESOLUTION APPROVING TEXT AMENDMENTS TO THE ZONING REGULATIONS OF
MARION COUNTY, KANSAS.**

WHEREAS, a public notice calling for a public hearing by the Marion County Planning Commission on proposed text amendments to the Marion County Zoning Regulations was properly given by publication in the official County newspaper on September 2, 2020; and

WHEREAS, on the 24th day of September, 2020, the Marion County Planning Commission held a public hearing to address proposed amendments to the Marion County Zoning Regulations concerning modifications to Article 19 – Supplementary Use Regulations; Conditional Uses; Accessory Uses; Prohibited Uses; and Article 27 – Wind Energy Conversion Systems (WECS) Overlay District Regulations; and

WHEREAS, the Marion County Planning Commission, by a majority vote of the Commission, has recommended approval of amendments to the zoning regulations concerning said Article 19 and Article 27.

NOW THEREFORE BE IT RESOLVED that the Marion County Zoning Regulations shall be amended as follows:

Section 1. Article 19-106 Continuance of a Conditional Use, shall read as follows:

“A Conditional Use Permit shall be allowed to continue as long as all conditions placed on it are met, unless: (a) specified otherwise as a condition of its original authorization, (b) the Conditional Use Permit is suspended or revoked pursuant to this section, or (c) otherwise provided in these Regulations. However, if that particular use ceases to exist for a period of six (6) months, it will forfeit its Development Plan and will not be allowed to exist again unless a new application is made, a public hearing held, and a new Development approved in conformance with the requirements of these Regulations.

1. The Zoning Administrator, the Governing Body or the Planning Commission may initiate an action to revoke or suspend a Conditional Use Permit. Except as otherwise provided in Section 27-106 with respect to the automatic termination of the right to a WECS use under a CUP and of the CUP, the procedure for the revocation or suspension of a Conditional Use Permit shall be as follows:
 - (a) The Planning Commission shall hold a public hearing on the revocation or suspension of the Conditional Use Permit and shall cause a written summary to be made of the proceedings. Notice of such hearing shall be published once in the official county newspaper at least 20 days prior to the date of the hearing. Said notice shall fix the time and place for such hearing, shall identify the Conditional Use Permit by number, give the name and address of holder of the Conditional Use Permit as shown in the records of the Zoning Administrator, and identify the land use permitted by the Conditional Use Permit. In addition to such publication notice, written notice of such proposed revocation or suspension of a Conditional Use Permit shall be mailed by First Class U.S. mail, postage prepaid, at least 20 days before the public hearing to all owners of record of those tracts of land within the area covered by the Conditional Use Permit as to which the Conditional Use Permit is proposed to be revoked or suspended and to the holder of the Conditional Use Permit as shown in the records of the Zoning

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(Resolution 2020-26 Continued)

Administrator. When the notice has been properly addressed and deposited in the mail, failure of a party to receive such notice shall not invalidate any subsequent action taken by the Planning Commission or Governing Body.

- (b) The Planning Commission shall hold the public hearing at the place and time so stated within the legal notice. The hearing may be adjourned from time to time, and at the conclusion of the same, the Planning Commission shall take action by preparing a recommendation that the Conditional Use Permit either remain unchanged, be revoked, or be suspended, on such terms as the Planning Commission includes in its recommendation, by a majority of the members of the Planning Commission present and voting at the hearing. When the Planning Commission fails to make a recommendation, the Planning Commission shall be deemed to have made a recommendation of leaving the Conditional Use Permit unchanged.
 - (c) When the Planning Commission submits a recommendation and the reasons therefore, the Governing Body may: 1) adopt such recommendation by resolution; 2) override the Planning Commission's recommendation by a 2/3 majority vote of the membership of the Governing Body; or 3) return such recommendation to the Planning Commission with a statement specifying the basis for the Governing Body's failure to approve or override. If the Governing Body returns the Planning Commission's recommendation, the Planning Commission, after considering the same, may resubmit its original recommendation giving the reasons therefore or submit a new and amended recommendation. Upon the receipt of such recommendation, the Governing Body, by a simple majority thereof, may adopt, may revise or amend and adopt, or may disapprove such recommendation by resolution, or it need take no further action thereon. If the Planning Commission fails to deliver its recommendation to the Governing Body following the Planning Commission's next regular meeting after receipt of the Governing Body's report, the Governing Body shall consider such course of inaction on the part of the Planning Commission as a resubmission of the original recommendation and proceed accordingly. The revocation or suspension of a Conditional Use Permit, if approved, shall become effective upon publication of the adopting resolution.
 - (d) Any suspension of a Conditional Use Permit shall set forth the requirements for the termination of the suspension. Those requirements may provide that the termination of the suspension is self-executing upon the satisfaction of specific conditions or may provide a procedure for the termination of the suspension.
2. In evaluating whether to revoke or suspend a Conditional Use Permit, the Planning Commission's recommendation shall contain a statement of the factors on which the recommendation of the Planning Commission is based using the following guidelines:
- (a) The degree to which actual use of land for the use allowed by the Conditional Use Permit has been established and is ongoing;
 - (b) The degree to which the requirements placed on the Conditional Use in its original authorization have been and remain satisfied;
 - (c) Whether revocation or suspension of the Conditional Use Permit would be consistent with the intent and purpose of these Regulations;
 - (d) The degree to which the conditions supporting a revocation or suspension of a Conditional Use Permit are the result of an event of *force majeure*.
 - (e) The degree to which any justifications for the revocation of the Conditional Use Permit can be addressed by a suspension of the Conditional Use Permit;

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September 30, 2020, Continued

(Resolution 2020-26 Continued)

- (f) Whether the holder of the Conditional Use Permit has agreed to the revocation or suspension of a Conditional Use Permit based on a failure of conditions or requirements other than those in the original authorization;
 - (g) The materiality of any failure to comply with any requirements which form the basis for revocation or suspension of the Conditional Use Permit;
 - (h) The recommendations of permanent or professional staff; and
 - (i) Such other factors as may be relevant from the facts and evidence presented in the public hearing.
3. Following the revocation or suspension of a Conditional Use Permit, any use of the affected land for a use that had been permitted by the Conditional Permit shall be a violation of these Regulations, enforceable in accordance with Articles 22 and 25 of these Regulations, except when the requirements for the removal of a suspension of a Conditional Use Permit have been satisfied.
 4. No land use permitted as a conditional use shall be considered a Nonconforming Use upon revocation or suspension of the Conditional Use Permit."

Section 2. Article 27, Wind Energy Conversion Systems (WECS) Overlay District Regulations, is hereby expanded to include new subsection 27-108 Incorporation of Provisions of Construction and Decommissioning Agreements, to read as follows:

"The holder of any approved CUP for a WECS shall comply and remain in compliance with the terms of any agreement with Marion County with respect to (a) the use and improvement of roads, bridges or other infrastructure owned or maintained by the county in connection with the construction, operation or decommissioning of the WECS, (b) the decommissioning of a WECS or (c) providing a form of financial security to the County with respect to decommissioning the WECS. A failure to so comply or to remain in compliance shall be deemed a failure of compliance with the conditions and requirements of the Conditional Use Permit."

Section 3. This Resolution shall be in full force and effect from and after its publication once in the official county newspaper.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS of Marion County, Kansas, this 30th day of September, 2020.

BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, KANSAS

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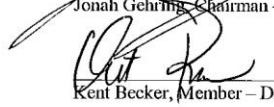


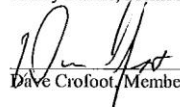
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September 30, 2020, Continued

(Resolution 2020-26 Continued)

RESOLUTION 2020-26 SIGNATURE PAGE

BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, KANSAS

	<input checked="" type="checkbox"/> Yea <input type="checkbox"/> Nay <input type="checkbox"/> Abstain
Jonah Gehring, Chairman – District 5	
	<input checked="" type="checkbox"/> Yea <input type="checkbox"/> Nay <input type="checkbox"/> Abstain
Kent Becker, Member – District 1	
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Dianne Novak, Member – District 2	
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Randy Dallke, Member – District 3	
	<input checked="" type="checkbox"/> Yea <input type="checkbox"/> Nay <input type="checkbox"/> Abstain
Dave Crofoot, Member – District 4	



ATTEST:

Pina D. Spencer, County Clerk