

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

November 4, 2019

Commission met in regular session at 9:00 a.m. in Commission chambers at the Marion County Courthouse with Chr. Kent Becker, Comm. Randy Dallke, and Comm. Dianne R. Novak present. Also present was Co. Clerk Tina Spencer. Present for portions of the meeting were Co. Counselor Brad Jantz, Ashley Herpich, Cherry Miller, Tom Britain, Henry Ethem, Amy Soyez, Gerado Mendoza, Amy Stutzman, Dave Crofoot, Mindy Kepfield, Jonah Gehring, Randy Savage, Joel Suderman, Ed Heili, Cody Nelson, Randall Eitzen, Nancy Tharp, Michelle Butts, Shawn Crabb, Mary Crabb, Blair Tharp, Charles Loewen, Marlene Eitzen, other members of the public, and members of the press.

ADMINISTRATIVE: Becker moved to approve the minutes of October 25th as written. Dallke seconded and motion carried 3-0. Novak moved to approve the minutes of October 28th as written. Becker seconded and motion carried 3-0. Dallke moved to approve the minutes of October 31st as written. Becker seconded and motion carried 3-0.

- The premium charged by KCAMP for the County's liability insurance will increase by 5% for 2020.
- A salary sheet was signed for Lanell Hett from \$12.88/hour to \$13.63/hour effective 10/21/19 per previous Commission action.

Diamond Vista discussion: Tanner Yost of Kirkham Michael joined the session. Post-construction inspection is underway, but Kirkham Michael does not agree with the construction completion date EGP indicated in their letter dated October 22nd. Yost will review written notes and determine a more appropriate date. Co. Counselor Brad Jantz will be asked to write a letter to EGP, indicating that the County disagrees with the date stated in their letter.

- Spencer indicated that Attorney Pat Hughes has been in contact with EGP to remind them of their obligation to keep a security bond in place until the project is released by the County, and that the project acknowledged that they intend to follow that requirement.
- After discussion, the Board did not take action to pursue issuance of fines against off haul-route trucks hauling rock from the laydown yard to Abilene several weeks ago.

Laptop bids from CDWG were reviewed. The quotes were for six laptops (five for Commissioners and one for the County Clerk). The recommendation of the County's IT provider was the 16GB unit:

*HP ZBook 15U Mobile Workstation – Core i7 6500U 16GB RAM	\$822.00 each = \$4,932.00
HP ProBook 450 G6 – Core i5 8265U – 8GB RAM	\$754.71 each = \$4,528.26
Lenovo ThinkPad T580 – Core i5 8250U – 8GB RAM	\$775.07 each = \$4,650.42
Lenovo ThinkPad E490 – Core i7 8565U – 8GB RAM	\$915.74 each = \$5,494.44

After discussion, Dallke moved to purchase six of the units recommended by (IT Provider) Lloyd Davies at \$822.00 each. Novak seconded and motion carried 3-0.

ROAD & BRIDGE: Co. Engineer Brice Goebel presented the only bid received for transport fuel:

	Tank #3	Tank #1	Unleaded	Total
	4,500 gals.	1,000 gals.	2,500 gals.	
Coop Grain, Hillsboro	2.5640	2.3080	2.9670	\$18,763.50

Dallke moved to accept the bid from Cooperative Grain in the amount of \$18,763.50. Becker seconded. Motion carried 3-0.

TRANSFER STATION BID OPENING: Dir. Bud Druse and Randy Purdue of Kaw Valley Engineering were present for the bid opening for phases II and III of the transfer station project. Two bids were opened and reviewed:

Nelson-Fowles, LLC, Marion	\$1,761,019.70
Walters-Morgan Construction, Inc., Manhattan	\$2,320,551.00

Purdue will review the bids for completeness and will present a recommendation to the Board at a later date.

PLANNING/ZONING/ENVIRONMENTAL HEALTH: Dir. Sharon Omstead and Consultant Russ Ewy presented a **Zoning Regulation text amendment**, recommended for approval by the Planning Commission. Novak said she disagreed with the text amendment, and expressed concern about the timing of the amendment being addressed by the Commission. Due process was discussed and Ewy clarified the difference between the processes for text amendments vs. land use applications/changes.

- Amy Soyez questioned why the item was being addressed now instead of November 12th. She said that the November 12th date was given at the Planning Commission meeting where the topic was discussed and it was made to sound like the amendment was subject to a protest petition period.

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

November 4, 2019, Continued

PLANNING/ZONING/ENVIRONMENTAL HEALTH, CONTINUED:

- Gerry Mendoza questioned why the agenda items could not be postponed until after the 14 day window elapses, and expressed concern that people may wish to attend, but may not be aware of the meeting. (He then clarified that his comment pertains to the CUP Application, which was the next agenda item to be addressed by the Board.)
- Charlie Loewen indicated that the information discussed about the 14 day protest period at the Planning Commission was not clear in regard to what issues were subject to the protest period.
- Nancy Tharp indicated that the group that is opposed to the project is well organized and information is readily available about all meetings that are taking place on the subject.
- Sean Crabb questioned how Article 27 would keep the requirement to regulate transmission lines if the provision is removed from Article 19. (Ewy clarified that the requirements listed in Article 27 will still stand independently, and electric transmission lines within the footprint of a WECS are still regulated by the County.)

Dallke made a motion to approve the zoning regulation text amendment as recommended by the Planning Commission. Becker seconded and motion carried 2-1. Novak opposed.

Expedition Wind CUP Application: Present on behalf of the project were Pat Pelstring, Jesse Hopkins-Hoel, Blake Johnson, and Attorney Trish Voth. Ewy explained that the CUP was recommended for approval by the Planning Commission, and includes the area for the project's transmission lines. Due process was discussed. Ewy clarified that even if the Commission votes on the CUP application, the 14 day protest period still stands and must be observed.

- Jennifer May asked if a vote of the Commission might possibly impact an individual's decision on whether or not to protest, and suggested that the Commission table the vote.
- Gerry Mendoza said that he was concerned about any citizen's rights being taken away by the vote being taken prior to a potential protest petition being filed.
- Nancy Tharp suggested that the rights of the property owners who want the wind farm should also be considered, and that the comments being made are an attempt to delay the project further. She also indicated the upcoming election of two additional Commissioners may have an impact.
- Charlie Loewen said the Board has not listened to the taxpayers of the County.
- Trish Voth stated that the majority of the property owners eligible to protest have already signed waivers.
- Sean Crabb asked about the legal description of the protest petition area.
- Randy Eitzen indicated that two additional County Commissioners will be seated within the next two weeks, and encouraged the Board to delay the decision for consideration of the five-member Commission.
- Dave Crofoot indicated that, if elected as Commissioner, he would not want to vote on the CUP because he has not been part of the process leading up to approval and doesn't have enough information.
- Amy Soyez commented on an ongoing lawsuit, and indicated that rushing the process might not be in the County's best interest.
- Michelle Butts said that the vote of the Commission will likely sway individuals who may consider signing a protest petition.
- Dallke indicated that there are two sides to the issue, and that ultimately, it will come down to whether 20% of the adjoining landowners decide to protest.
- Nancy Tharp commented that due process will still occur regardless of the date of the vote.
- Tom Britain said that the people that the project affects should have more say, and that there are many unhappy people due to the northern wind project. He said it is unfair to decide before the election.
- Gerry Mendoza said action taken by the Commission may have an effect on landowners deciding whether or not to sign a protest petition.
- Nancy Tharp said that the election of new County Commissioners should not be about the wind project.
- Novak said she thinks the Commission is doing a disservice to the people by voting on the subject prior to the end of the protest period.

Becker moved to approve Expedition Wind Conditional Use Permit #7. Dallke seconded. Motion carried 2-1. Novak opposed.

Expedition Wind Development Plan: Jesse Hopkins-Hoel presented maps and information pertaining to the development plan for the Expedition Wind project and addressed questions from those in attendance (some questions included setbacks from non-participating property owners, drainage, road access for the County as well as for farmers and ranchers).

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

November 4, 2019, Continued

Expedition Wind Development Plan, Continued: Hopkins-Hoel indicated that many of those concerns will be specifically addressed in the development agreement that is currently being negotiated.

- Patrick Pelstring indicated that National Renewable Solutions (NRS) will stay with the project all the way through construction (approximately 18 months) to be sure there is continuity and smooth communication between the County and the project.
- Novak indicated that she would like to read all of the information presented in the project binder prior to voting on the development plan.
- Dallke asked whether the development plan should be approved before the development agreements are negotiated and in place. Ewy indicated that those are separate issues, and both are required to be approved prior to the issuance of any construction permits.
- Gerry Mendoza questioned whether enough time had been spent reviewing the changes included in the project binder prior to the meeting.
- Charlie Loewen asked who had actually read the information, and questioned whether they should vote if they haven't read the entire file.
- Sean Crabb asked whether a sound study has been provided yet. Clarification was given that the sound study is required as a condition for construction permits, not for approval of the development plan.

The decision was tabled until after lunch.

Text Amendment Resolution: Becker moved to adopt Resolution 2019-14 approving text amendments to the Zoning Regulations of Marion County, Kansas. Dallke seconded and motion carried 2-1. Novak opposed.

Meeting recessed until 1:00 p.m.

Expedition Wind Development Agreement: Consulting Attorney Patrick Hoffman joined the session. He stated on the record that he has no conflict of interest in representing the County on the Expedition project. After discussion, Becker moved to recess into executive session for the purpose of contract negotiation and evaluating legal obligations and requirements to be comprehensively considered and included in any development agreements along with the ramifications of each regarding the Expedition Wind project pursuant to K.S.A. 75-4319b (2) for consultation with our attorneys regarding matters deemed privileged in the attorney client relationship with the Commission, Brad Jantz, and Patrick Hoffman present until 1:30 p.m. with open session to resume in Commission chambers following the closed session. Dallke seconded and motion carried 3-0.

Open session resumed with a motion by Becker to recess into executive session for the purpose of contract negotiation and evaluating legal obligations and requirements to be comprehensively considered and included in any development agreements along with the ramifications of each regarding the Expedition Wind project pursuant to K.S.A. 75-4319b (2) for consultation with our attorneys regarding matters deemed privileged in the attorney client relationship with the Commission, Brad Jantz, and Patrick Hoffman present until 1:43 p.m. with open session to resume in Commission chambers following the closed session. Dallke seconded and motion carried 3-0. Open session resumed with no action.

Becker moved to approve the Expedition Wind Development Plan. Dallke seconded and motion carried 2-1. Novak opposed.

PUBLIC COMMENTS: Tom Britain asked whether Comm. Becker and Comm. Dallke favor wind farms in the Flint Hills. Michelle Butts asked whether any environmental studies have been completed now that the Diamond Vista project is operational. She also commented that it would be good to see the actual environmental and economic impact of the first project before voting on any new projects. Planning/Zoning/Environmental Health Dir. Sharon Omstead joined the meeting. She indicated that she has not received any new information to date.

- Environmental studies were discussed in regard to the Expedition project. Hopkins-Hoel and Pelstring indicated that the required environmental and biological studies are being submitted, and that if any of the regulating agencies have concerns, they can require post-construction monitoring.
- Jonah Gehring asked whether the operations building in the city of Marion will be tax exempt. Hopkins-Hoel was not sure.

Becker made a motion to adjourn. Jantz asked whether they might move forward with the development agreement discussion since Mr. Hoffman was present. Becker rescinded his motion.

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

November 4, 2019, Continued

Expedition Wind Development Agreement, Continued: A draft development agreement (including the road maintenance agreement and PILOT agreement) was discussed at length in open session. An additional meeting was tentatively scheduled for November 11th at 1:00 p.m.

Conditional Use Permit Resolution: Becker moved to adopt Resolution 2019-15 approving a conditional use for a wind energy conversion system for certain lands located within the unincorporated area of Marion County, Kansas, under the authority granted by the Marion County Zoning Regulations Articles 12, 24 and 27 (specifically the transmission lines). Dallke seconded and motion carried 2-1. Novak opposed.

Becker moved to adjourn. Dallke seconded and motion carried 3-0. Meeting adjourned at 3:03 p.m.

Kent Becker, Chairman

ATTEST: _____
Tina D. Spencer, County Clerk

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

November 4, 2019, Continued

RESOLUTION NUMBER 2019-19

**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 October 2, 2019; and

WHEREAS, on the 24th day of October, 2019, the Marion County Planning Commission held a public hearing to address proposed amendments to the Marion County Zoning Regulations concerning modifications to Article 1 - Title, Purpose, Definitions, District and General Regulations; and Article 19 - Supplementary Use Regulations; Conditional Uses; Accessory Uses; Prohibited Uses; 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 1 by defining the use of county, state or federal road right-of-way for uses other than road use, and Article 19 by the elimination of "electric transmission lines" as a defined conditional use.

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

Section 1. Article 1-106, General Regulations Governing All Zoning Districts, is hereby expanded to include new subsection 1-106 (3) to read as follows:

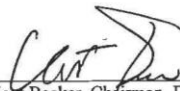
"Notwithstanding any provision in these Regulations to the contrary and to the extent of any conflict, this sub-section 1-106 (3) controls: these Regulations shall not apply to poles, wires, cables, conduits, vaults, laterals, pipes, mains, valves, transmission lines, distribution lines, or similar equipment, for the transmission or distribution of communications, electricity, gas, oil, water or sewer, that are either: (1) located on, under or within a private easement, State or Federal right-of-way, State or Federal road easement, or other real property dedicated as road right-of-way; or (2) owned, operated, maintained, or constructed by a Kansas Corporation Commission jurisdictional entity."

Section 2. Article 19-105 (5) - Conditional Uses Enumerated, shall read as follows:

"Buildings, structures or premises for public utility services or public service corporations; including but not limited to, water treatment plants, wastewater treatment plants, pump stations, filter beds, water towers, substations, reservoirs, and utility maintenance shops and yards; but no Condition Use Permit is required for infrastructure otherwise permitted, allowed or not regulated pursuant to Article 1-106 (1) (I), Article 1-106 (3), or as expressly allowed by right in the applicable Zoning District."


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 4th day of November, 2019.


Kent Becker, Chairman, District 1

Attest:


Tina Spencer, County Clerk


Dianne Novak, Commissioner, District 2

Refused to sign


Randy Dalke, Commissioner, District 3



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

November 4, 2019, Continued

**MARION COUNTY, KANSAS
RESOLUTION NO. 2019--15**

A RESOLUTION APPROVING A CONDITIONAL USE FOR A WIND ENERGY CONVERSION SYSTEM FOR CERTAIN LANDS LOCATED WITHIN THE UNINCORPORATED AREA OF MARION COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE MARION COUNTY ZONING REGULATIONS ARTICLES 12, 24 AND 27.

WHEREAS Cedar Springs Trust, and Randy and Kelli Savage, by and through Expedition Wind LLC, applied for a Conditional Use for overhead transmission lines transmitting electricity generated from a Wind Energy Conversion System (WECS) upon property legally described in the Expedition Wind LLC application for a Conditional Use, #PC-19-04, specifically:

PART OF SECTION 13, TOWNSHIP 21 SOUTH, RANGE 4 EAST OF THE 6TH P.M., MARION COUNTY, KS; TOGETHER WITH PART OF SECTION 18, TOWNSHIP 21 SOUTH, RANGE 5 EAST OF THE 6TH P.M., MARION COUNTY, KANSAS.

WHEREAS in connection with the application Expedition Wind LLC submitted a Development Plan for the property covered by the application;

WHEREAS the real property that is the subject of the Conditional Use application is in the "A" Agricultural District of the Marion County Zoning Regulations and a WECS land use is not permitted by right in that zoning district but may be allowed as a conditional use;

WHEREAS the Marion County Planning Commission conducted a public hearing on the application on October 24, 2019 following the satisfaction of all notice requirements for such hearing pursuant to the Marion County Zoning Regulations;

WHEREAS at the public hearing all interested parties in attendance were provided an opportunity to be heard and the Marion County Planning Department Staff presented recommendations which discussed the application of the facts to the factors set out in the Marion County Zoning Regulation as guidelines for the evaluation of Conditional Use applications.

WHEREAS at the same hearing the Marion County Planning Commission, reviewed a development plan for the proposed Conditional Use; and

WHEREAS following the conclusion of the public hearing the Marion County Planning Commission, by a majority vote of the Commission, has recommended approval of the Conditional Use application with conditions and proposed development play by a vote of 7 to 1 with one member recusing;

WHEREAS on November 4, 2019 the Board of County Commissioners of Marion County reviewed the recommendations of the Marion County Planning Commission and, after due consideration of the factors set out in Section 24-105 (2) of the Marion County Zoning Regulations, by majority vote, to approve the recommendation of Marion County Planning Commission by approving a Conditional Use and accompanying development plan for the reasons set forth in the Zoning Administrator's and Expedition Wind LLC's analysis of Section 24-105 (2) of the Marion County Zoning Regulations presented to the planning commission;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, KANSAS, that the recommendation of the Planning Commission is approved and that a Conditional Use for overhead transmission lines transmitting electricity generated from a WECS with respect to the real property described above, is approved with the following conditions:

1. The location of the transmission lines shall conform with the approved site plan as submitted.
2. Prior to the development of the transmission lines within the subject property, all required local, state and federal permits shall be obtained and copies submitted to the County.

This Resolution shall subject to receipt of any properly executed and valid protest petition subject to K.S.A. 12-757 (f)(1).

Absent such petition, 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 4th day of November, 2019.



ATTEST:

Tina D. Spencer
Tina D. Spencer, Marion County Clerk

BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, KANSAS

Kent D. Becker
Kent D. Becker, Chairman, District 1

Dianne R. Novak
Dianne R. Novak, Commissioner, District 2

Randy Ballke
Randy Ballke, Commissioner, District 3