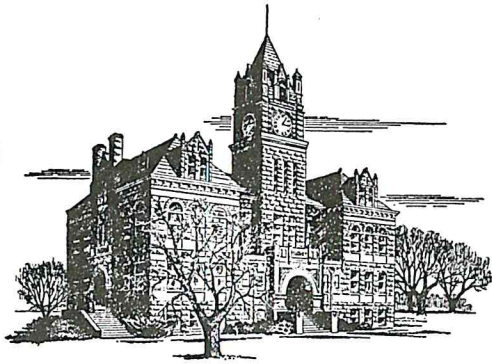


Marion County Planning & Zoning/Environmental Health

To: Marion County Commissioners
From: Sharon Omstead
Date: 3/16/20
Re: Vacation Petition – a portion of Schlotthauer and a portion of Patricia/214th Terrace and all building setbacks on Block G of the Eastshore Plat

Comments: This vacation request was filed by Rural Water District #2. Please refer to the attached packet regarding this vacation petition.

On March 5th, 2020, a motion passed by the Marion County Planning Commission to recommend approval of the requested vacation of this portion of Schlotthauer north of Patricia/214th Terrace between Block D and Block G, and; the portion of Patricia/214th Terrace east of Schlotthauer between Block G and Block H, and; the triangle-shaped area connecting the center points of those two named road rights-of-way up to the southwest corner of Block G, and; the building setbacks on Block G, of the Eastshore Plat, Marion County, Kansas. It was recommended that all utility easements continue, and that new building setbacks; being 10 feet along the west boundary (abutting Block D), 30 feet across the front boundary (abutting road right-of-way), 6 feet along the south boundary (abutting Block H), and 10 feet along the north rear boundary, and 20 feet along the east rear boundary of Block G, of the Eastshore Plat, Marion County, Kansas, be enforced. The motion was amended to include a utility access easement on both sides of the centerline of the vacated road between Block G and Block H (totaling 12 feet between the two Blocks)



MARION COUNTY, KANSAS

PLANNING COMMISSION/BOARD OF ZONING APPEALS

203 SOUTH THIRD
MARION, KANSAS 66861
PHONE: 620-382-2945

March 5, 2020

TO: MARION COUNTY COURTHOUSE Marion County Planning Commission

FM: Sharon Omstead, Director of Planning and Zoning

SUBJECT: PC-20-01 Vacation of a portion of Schlotthauer and a portion of Patricia (214th Terrace) and all platted building setbacks on Block G of the Eastshore Plat, in the Unincorporated area of Marion County, Kansas

Background: This request was initiated by Marion County Rural Water District #2, owners of Block G, Eastshore Plat. There are two property owners with land adjacent to the rights-of-way proposed to be vacated. One of these property owners also owns the property on the opposite side of Block G. The vacation petition was signed by all three parties, thus beginning the vacation process. This vacation petition relates only to the portion of Schlotthauer north of Patricia/214th Terrace between Block D and Block G, and; the portion of Patricia/214th Terrace east of Schlotthauer between Block G and Block H, and; the triangle-shaped area connecting the center points of those two named road rights-of-way up to the southwest corner of Block G, and; the platted building setbacks on Block G, of the Eastshore Plat, Marion County, Kansas. Further discussion concerning the background and other factors in the area are outlined below.

Under the provisions of K.S.A. 58-2613 et seq, a petition for a vacation of any item shown on the face of a plat requires a public hearing. The public hearing is to be held by either the Board of County Commissioners or the Planning Commission having jurisdiction. The public hearing for this vacation request has been set for the Marion County Planning Commission in accordance with the provisions of the controlling statutes.

The Marion County Planning Commission is to review the request and make a recommendation regarding the vacation and submit such recommendation to the Board of County Commissioners in the same manner provided by K.S.A. 12-752, and amendments thereto, for submission and approval of recommendations regarding plats. The Board of County Commissioners must determine that the public will suffer no loss or inconvenience by such vacation and that no private rights will be injured or endangered thereby. Ultimately, if the vacation is approved, the Board of County Commissioners will act upon an order that such vacation be made.

Two homes are adjacent to the area proposed to be vacated, located on Lot 1 of Block D and Lot 1 of Block H. Block G, the corner parcel, was home to Rural Water District #2's water tower, but that tower has since been removed and only a storage shed remains. The parcel directly to the north of the platted area consists of 12.62 acres and is zoned Agricultural. It consists of a residence and agricultural ground. The residence does not utilize any of the platted right-of-way for access. The property owner of this parcel does not have any concerns regarding the proposed vacation. The property owner to the east of the platted area consists of 155.76 acres, zoned Agricultural, and consists of agricultural ground and no structures. This property owner has expressed concern with the portion of Patricia/214th Terrace being vacated because it may cause vehicles to use his property when accessing utilities that serve the residences on the bordering properties.

The intention of vacating the adjacent street rights-of-way and building setbacks on Block G, is to produce a parcel more conducive to building a residence, and therefore bring more value to the neighborhood. The Rural Water District intends to sell this corner tract soon. It is their opinion that the space dedicated to street rights-of-way are not being used as such, and instead being maintained by adjacent property owners. Lot 1 of Block D and Lot 1 of Block H will maintain public road access via remaining platted streets. It is the opinion of staff that vacating the said street dedications would cause the public no undue hardship.

Staff has discussed this request with Brice Goebel, Marion County Road and Bridge Engineer, and he advises there is no desire or need for the right-of-way. Utility easements exist and will remain as such. The current portion of the rights-of-way in question have been maintained voluntarily by the adjacent property owners. There is currently no rock on these portions of the rights-of-way.

Once vacated, the law dictates the land returns to the owners of the adjoining lands within the plat. As such, the adjoining landowners that own property within the plat will become the owners of the vacated street right-of-way adjoining their property. The vacated portion of Schlotthauer and Patricia/214th Terrace will have the rights-of-way split down the middle with the owners on either side obtaining ½ of the right-of-way. Vacating the platted building setbacks for Block G will allow more buildable space; however, this will not remove the building setbacks required by the Marion County Zoning Regulations. The subsequent deeds will acknowledge the vacation and the distribution of lands accordingly.

Staff Recommendation: It is staff's opinion, based on the facts in this case outlined above, the requested vacation of this portion of Schlotthauer north of Patricia/214th Terrace between Block D and Block G, and; the portion of Patricia/214th Terrace east of Schlotthauer between Block G and Block H, and; the triangle-shaped area connecting the center points of those two named road rights-of-way up to the southwest corner of Block G, and; the platted building setbacks on Block G, of the Eastshore Plat, Marion County, Kansas be recommended for approval by the Board of County Commissioners of Marion County, Kansas, based on the finding that the public will suffer no loss or inconvenience by such vacation and that no private rights will be injured or endangered thereby. It is recommended that all utility easements continue, and that new building setbacks; being 10 feet along the west boundary (abutting Block D), 30 feet across the front boundary (abutting road right-of-way), 6 feet along the south boundary (abutting Block H), 10 feet along the north rear boundary, and 20 feet along the east rear boundary of Block G of the Eastshore Plat, Marion County, Kansas, be enforced.

Suggested Motion: I move that Case No. PC-20-01, the request for vacation of that portion of Schlotthauer north of Patricia/214th Terrace between Block D and Block G, and; the portion of Patricia/214th Terrace east of Schlotthauer between Block G and Block H, and; the triangle-shaped area connecting the center points of those two named road rights-of-way up to the southwest corner of Block G, and; the platted building setbacks on Block G, of the Eastshore Plat, Marion County, Kansas, be recommended for approval to the board of County Commissioners of Marion County, Kansas, based on the finding that the public will suffer no loss or inconvenience by such vacation and that no private rights will be injured or endangered thereby, for the reasons stated in the Staff Report and as heard at this public hearing. It is recommended that all utility easements continue, and that new building setbacks; being 10 feet along the west boundary (abutting Block D), 30 feet across the front boundary (abutting road right-of-way), 6 feet along the south boundary (abutting Block H), 10 feet along the north rear boundary, and 20 feet along the east rear boundary of Block G of the Eastshore Plat, Marion County, Kansas, be enforced.

BEFORE THE MARION COUNTY PLANNING COMMISSION

IN THE MATTER OF THE VACATION OF

A portion of Schlotthauer and a portion of Patricia
(214th Terrace) and all platted building setbacks on
Block G of the Eastshore Plat, Marion County, Kansas

GENERALLY LOCATED AT

Section 23, Township 19 South, Range 3 East of
The 6th Prime Meridian, Marion County, Kansas

CASE NO. PC-20-01

VACATION PETITION

COMES NOW your petitioner(s), Rural Water District #2, and pray(s) for the vacation of the following described portion of platted streets and platted building setback lines, to wit:

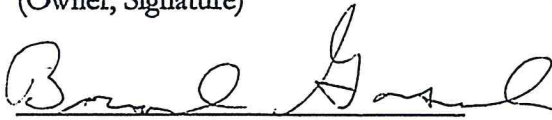
All of the right-of-way for Schlotthauer north of the intersection of Schlotthauer and Patricia (214th Terrace) between Block D and Block G, and; all of the right-of-way for Patricia (214th Terrace) east of the intersection of Patricia (214th Terrace) and Schlotthauer between Block G and Block H, and; the triangle-shaped area connecting the center points of those two named road rights-of-way and the southwest corner of Block G, also; all platted building setback lines on Block G in the Plat of Eastshore, Marion County, Kansas.

1. That the petitioner(s) is/are owner(s) of real property adjacent to and abutting the herein described portion of platted streets and platted building setback lines.
2. That no private rights will be injured or endangered by the vacation of a portion of platted streets and platted building setback lines, described herein, and that the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner(s) hereof, the prayer(s) of the petitioner(s) for the vacation of a portion of platted streets and platted building setback lines should be granted.
4. Petitioner(s) pray(s) the establishment of new building setbacks for Block G, being 10 feet along the west boundary (abutting Block D), 30 feet across the front boundary (abutting road right-of-way), 6 feet along the south boundary (abutting Block H), 10 feet along the north rear boundary, and 20 feet along the east rear boundary of Block G.

WHEREFORE, petitioner(s) pray(s) that this petition be set for hearing before the Marion County Planning Commission, that notice of said hearing be given as provided by law, and that at such time and place and at such hearing, the Marion County Planning Commission recommends the governing body having jurisdiction orders the vacation of the above described portion of platted streets and platted building setback lines.

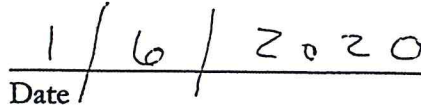
(Signature page follows)

(Owner, Signature)



Petitioner(s) or Agent of Petitioner(s)

(Owner, Signature)



Date

Adjacent Property Owner Signatures

Alan D. and Lois J. Peters, Trust
10 Buckskin Rd.
Inman, KS 67546



Alan D. Peters, Trustee

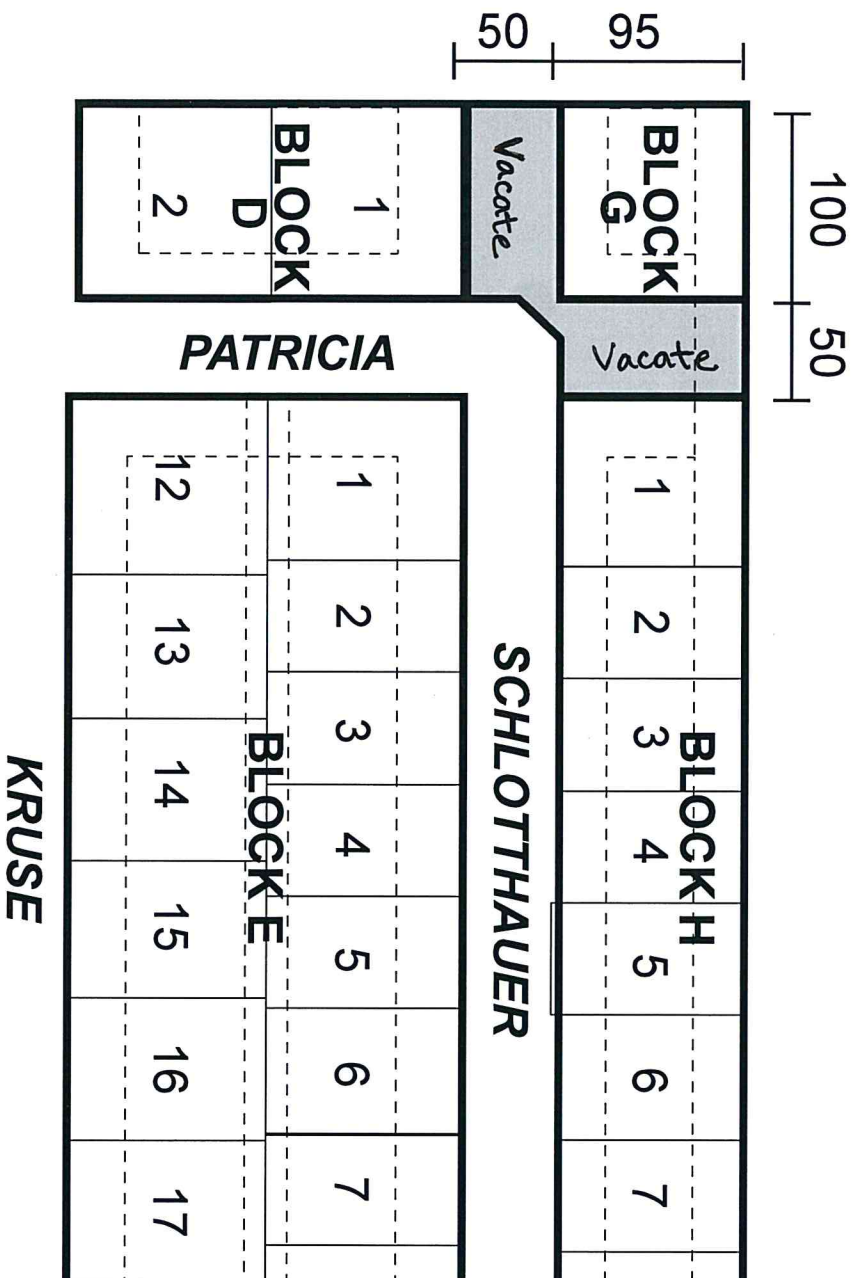


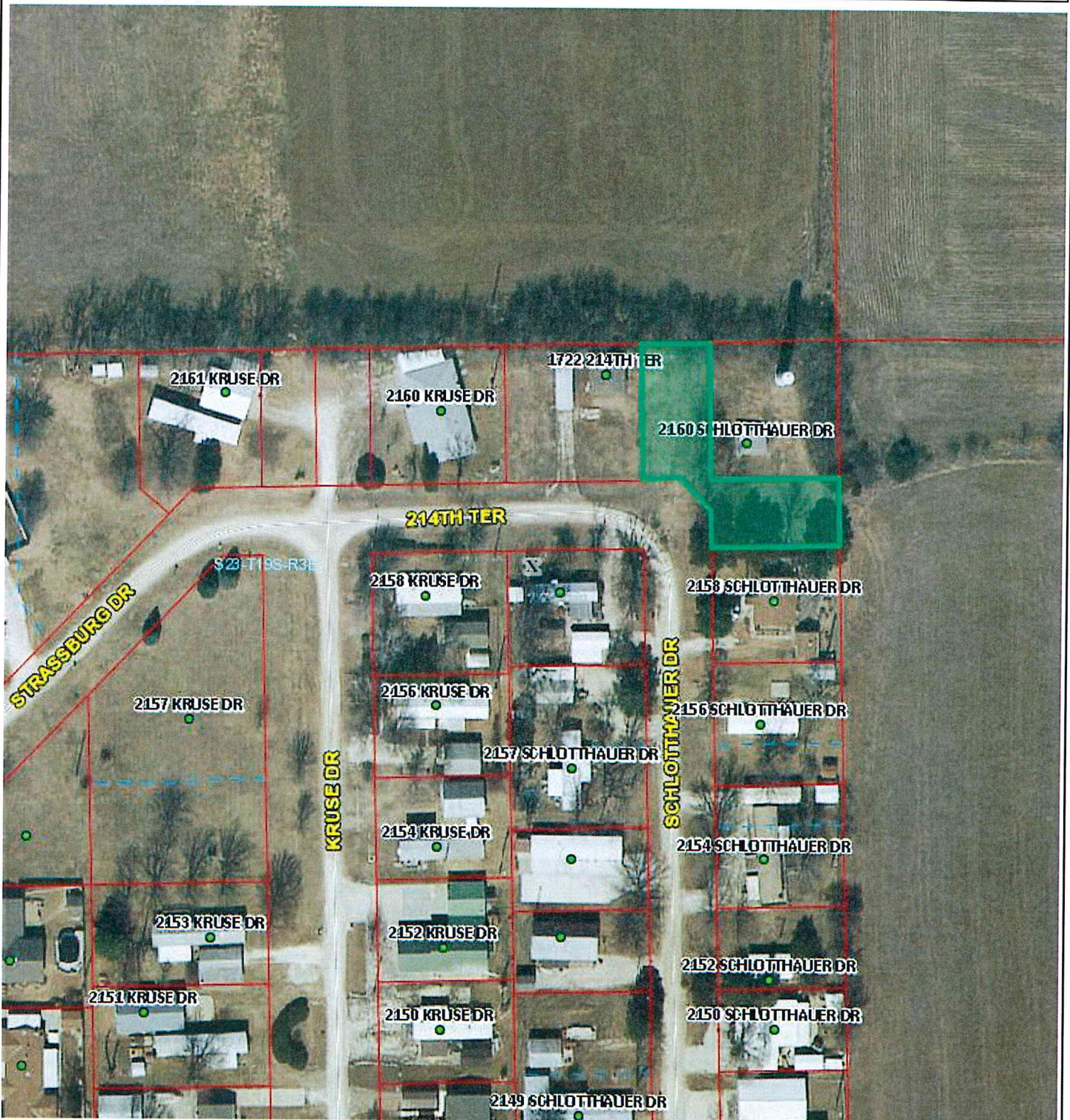
Lois J. Peters, Trustee

Janice F. Meliza
2158 Schlotthauer
Marion, KS 66861



Janice F. Meliza





200.0 0 Distance / 2 200.0 Feet

NAD_1983_StatePlane_Kansas_South_FIPS_1502_Feet

Notes

✕ Diamond Vista Wind Towers
- Diamond Vista Access Roads

1:1,200



- City Boundary
- Section Line
- Parcels
- LOTS
- ROAD ROW
- Windfarm Conditional Use
- Res 10-19
- Res 11-22
- Res 2014-13
- Res 2014-22
- Res 2015-5

This map is a user generated static output from an Internet mapping site and is for reference only.
Data layers that appear on this map may or may not be accurate or current.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

DatePrinted: 12/17/2019
© R&S Digital Services, Inc.



6 ft setback on south boundary
10 ft setback on west boundary
30 ft front setback
20 ft rear setback on east side
10 ft rear setback on north side

***Diagram not to scale**

100.0 0 Distance / 2 100.0 Feet

NAD_1983_StatePlane_Kansas_South_FIPS_1502_Feet

Notes

This map is a user generated static output from an Internet mapping site and is for reference only.
Data layers that appear on this map may or may not be accurate or current.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

- ✕ Diamond Vista Wind Towers
- Diamond Vista Access Roads
- City Boundary
- Section Line
- Parcels
- LOTS
- ROAD ROW
- Windfarm Conditional Use
 - Res 10-19
 - Res 11-22
 - Res 2014-13
 - Res 2014-22
 - Res 2015-5

DatePrinted: 2/4/2020
© R&S Digital Services, Inc.

Marion County Planning Commission & Board of Zoning Appeals

Record of Proceedings

March 5, 2020

DRAFT

Members

(Present)

Derek Belton
Dwight Flaming
Glenn Thiessen
Kathy Inlow
Jim Schmidt
William Kroupa
Brad Gorsuch
Chasen Gann
Larry Cushenbery

Members

(Absent)

Mel Flaming

Staff

(Present)

Sharon Omstead, Secretary
Brandon Meierhoff, Recording Sec.
Russ Ewy, Consultant

1. **Call To Order**~ Belton called the meeting to order at 7:01 p.m. with 9 members and 3 staff present, 1 member absent.
2. **Approval of Minutes**~ In review of the February 13th, 2020 minutes, Inlow states “new” should be stricken from the record in Item 3 on the first page. There should be a comma after “Ewy states” on the second page, about 2/3 of the way through Item 4. Inlow made a motion to approve the February 13th, 2020 Record of Proceedings with corrections. D.Flaming seconded, motion carried (9-0).
3. **Case PC-20-01 Vacation Petition**~ **A portion of Schlotthauer and a portion of Patricia (214th Terrace) and all platted building setbacks on Block G, of the Eastshore plat in the unincorporated area of Marion County, Kansas, filed by Rural Water District #2, owners.** Notice of the public hearing was published in the official newspapers on February 5th, 2020. Property owner notification letters were mailed on February 5th, 2020, and again on February 21st, 2020 to notify of the rescheduled meeting. Gorsuch recused himself due to a direct conflict of interest. He serves on the Rural Water District #2 Board; who is the applicant in this case. Omstead presented the Staff Report. Gorsuch explained the reasoning for the proposed setbacks: the west side setback is proposed at 10 feet due to the building on Lot 1, Block D being used as a garage. Ten feet will give the owner enough of a driveway to turn in to. There is a 20-foot easement that runs along the east side of Block G and Block H. The board discussed how that easement is already encroached upon (based on the aerial photograph provided to the board). Gorsuch stated that happened way before Omstead and his self were involved with Eastshore. The water tower shown in the aerial photograph has been taken down and removed. The water tower lot (Block G) will be sold and become a part of the tax base for the county. A storage building remains on the property and will be the responsibility of the buyer. Belton opens the floor for public comment. Richard Meisinger, property owner to the east, raised concern about the easement on the east side of Blocks G and H.

He reported that a utility company drives their vehicles into his field when trying to access the Eastshore properties. Ewy recommended a 20-foot access easement between Blocks G and H. Gorsuch pointed out that changing the easement to 20 feet wouldn't change the situation because the encroachments are already present. A utility company would not be able to get through the existing easement because of a tree that has grown in the middle of the road. Jan Hoffer, resident at Lot 1, Block H, Eastshore, and owns the property on the south side of the area to be vacated. Hoffer stated she has been mowing the 'road' for the last 11 years. Most of the tracks on Meisinger's property are from local people on four-wheelers. Hofer would work with Meisinger if they ever needed access for utility maintenance. Gann asks what would happen if Meisinger doesn't allow utilities to access from his property? A 12-foot easement should be enough to get a utility vehicle through (6 feet on either side of the center vacation line). If they don't abide by the easement, who enforces it? Ewy states, it would become a civil issue. Gann motions to make the setback on the south side a utility easement and everything else as presented in the recommendation by staff, outlined in the Staff Report. Kroupa seconds the motion. Gann amends the original motion to make it a "utility access easement." Kroupa seconds and the motion passes (9-0). Original motion carries (9-0). Omstead reports that the Vacation Petition will be presented to the County Commission on March 23rd, 2020.

4. **Continued Discussion Concerning Marion County Zoning Regulations, Article 27- Wind Energy Conversion Systems~** Omstead handed out a packet depicting 500-foot and 2,000-foot residential buffers, remaining buildable turbine sites after consideration of the buffers, and a graph of setbacks from roads depicting 'usable' acres. Thiessen was in favor of changing the setbacks to 1,000 feet from the property boundary or 1,500 feet from residential structures of non-participating property owners. Inlow states, in her research, she found Marion County has the tallest turbines in the state. Setbacks differ from state to state. Inlow wanted to look at setbacks that change with the size of the turbine. The bigger the turbine, the greater the setback; and the smaller the turbine, the lesser the setback. And also set a minimum setback for non-participating properties. Ewy states that Pratt County has a 3,000-foot setback because their county is less populated. Cushenbery asks what would happen if someone wanted to build a residence on their land after wind turbines are constructed? Ewy stated, it is a first-come basis. Gann asks why the setback from the road is 500 feet or 1.1 times the height of the turbine? Ewy answered, that is an industrial standard. Cushenbery asks if railroads are included to have setbacks? The board agreed they are in favor of setbacks from turbines to railroads being 500 feet or 1.1 times the height of the turbine. D. Flaming stated, we need to protect both sides (proponents and opponents). Nothing will affect the visual effect of the turbines. What a setback will affect is the noise and shadow flicker. Omstead noted that posing a 1,000-foot-setback-from-property-boundaries-could-make-it-impossible-to-site-a-turbine-on a 40-acre tract. Gann states wind companies would have to offer more of an incentive to the landowners to participate in the project. More participation would make it less of an issue. Money is the driving factor for everyone. Ewy states the current setback regulations are a minimum for any wind farm project -the last two wind applicants volunteered to increase their setbacks. Belton reiterated, that is one of the reasons we decided to look at amending the current regulations. The board agreed they are in favor of changing the setbacks to 1,000 feet from property lines or 1,500 feet from an existing

non-participating residence. Omstead states once the Planning Commission finalizes the Article 27 draft amendments, a public hearing will be set and the public will be able to comment on the proposed amendments. Gann asks what is meant by 'reasonable measures' in Section 27-105(12). Omstead explains that this portion of the regulations is helpful during the initial development plan phase (on paper). The WECS developer will strive to mitigate certain issues before the project is even built. Then if there is an issue with a turbine after construction, they must work to remediate the issue. Gann states in Section 27-105(13), "in accordance with a written prescription" should be changed to "in accordance with County rules and regulations." Omstead also suggested the following changes: in 27-105(1)(B) a line should be added to include, "All setbacks shall be certified in writing by a licensed professional land surveyor." In 27-105(8) add, "Applicant must apply for an Aircraft Detection Lighting System, and if granted by the FAA, such system shall be used." This way the lights on top of the turbines are not always blinking. It will have proximity lighting that activates when aircraft, detected by radar, come into the proximity. 27-105(14) adding, "Clearing and grading within a Special Flood Hazard Area requires special permitting from the County, State and other affected agencies." Changing the decibel level in section 27-105(18) to an A-weighted decibel measurement. Ewy states that 55 decibels is the average and this helps developers to select the turbine make and model. Kroupa states there should be more regulations concerning the decommissioning of towers. Belton states that decommissioning is covered in a separate agreement. The County Commissioners make all of the ancillary agreements with the applicant. Kroupa states we don't want someone to be stock piling turbine blades on their property. Omstead states, they would need a Conditional Use Permit to have a junkyard on their property. The Board agreed to look at the rest of Article 27 at the next meeting. A redlined copy of what was discussed at the meeting tonight will be provided for the board members to look over at the next meeting.

5. **Adjournment**~ Motion to adjourn made by Cushenbery, seconded by D. Flaming. Motion carried (9-0). Belton adjourned the meeting at 9:26 p.m.

Passed and Approved (Date) _____

Derek Belton, Chair

Attest:

Sharon Omstead, Secretary