

# Marion County Planning Commission & Board of Zoning Appeals

## Record of Proceedings

October 24<sup>th</sup>, 2019

### Members (Present)

Derek Belton  
Glenn Thiessen  
Jim Schmidt  
Mel Flaming  
Kathy Inlow  
William Kroupa  
Dwight Flaming  
Brad Vannocker  
Duane Bair

### Members (Absent)

### Staff

#### (Present)

Sharon Omstead, Secretary  
Brandon Meierhoff, Recording Secretary  
Russ Ewy, Planning Consultant

1. **Call to Order~** Belton called the meeting to order at 7:02p.m. with 9 members and 3 staff present.
2. **Approval of Minutes~** The October 23, 2019 Special Meeting minutes will be considered at the next regular meeting.
3. **Discuss amendments to the Marion County Zoning and Subdivision Regulations pertaining to the use of county road right-of-way for transmission lines and other purposes other than road use, the potential elimination of “electric transmission lines” as a defined conditional use, and also consider the use of transmission lines throughout the county~** Notice of the public hearing was published on October 2, 2019. Notification letters to all incorporated cities and townships within Marion County were mailed on October 2, 2019. Ewy distributed a letter from Kansas Department of Transportation (KDOT) regarding utility use of KDOT right of way. KDOT requires permits for utility use in the right of way but do not require any other zoning approvals. Across the state of Kansas, electrical transmission lines are excluded from any type of zoning action. The other question is whether the county has any interest in regulating transmission lines within the county road right-of-way. The third issue is to clarify our existing regulations. Ewy also distributed a map of existing electric transmission lines across the county. Marion County has not regulated these types of overland lines. In the zoning regulations, electrical transmission lines is listed as a conditional use. The question we need to consider tonight is whether it should be considered a conditional use and whether we want to regulate them going forward. The proposed regulations before you tonight seek to exempt any type of transmission lines, utility transmissions, pipelines, etc., from going through a zoning approval process. Article 1-106 talks about what is exempt, and it mentions communication lines, telephone lines, sewer pipes, water pipes, cable, public utilities, etc. Ewy presented the Staff Report. Bair states that in conversation with some private attorney's, he was advised we shouldn't even be touching this since the county is under suit (referring to a lawsuit naming the county as a defendant). D. Flaming asks if this would do anything to change past actions or conditional use permits (CUP's) if the suggested amendments are adopted. When will it come into effect and what are the effects. Ewy states this is a fundamental difference in our

regulations. It has no bearing on past CUP's. Bair motions the proposal be 'shelved' for this time and recommend that they contact the proper state authorities. Kroupa seconds the motion. Motion fails (2-7). Belton reminds the board that the reason this item is on the agenda is because we received direction from the commissioners to look into it. Ewy states that he, among others, were tasked to see where there was conflicting language in the zoning regulations. Article 1 states we are not regulating transmission lines. Article 19 states that we need a CUP for transmission lines. Bair states there is a difference between a public utility and a private carrier. Public utilities are exempt. We can't touch them, but a private company is a totally different subject. Kroupa asks that the initial windfarm that came into Marion County did not have to be accommodated by this. Ewy states Diamond Vista is a little unique in that the parameters touched Dickinson County and the transmission line came north out of the CUP application area. Once it left Marion County, it was out of our jurisdiction. Omstead states the CUP encompassed the entire border around Marion County, so it was never brought up. Kroupa states he understands that the state doesn't have regulations on transmission lines. We could have that in Marion County. Especially private transmission lines. Ewy states I don't see anything that disallows local jurisdiction from controlling private transmission lines. If the commission sees validity in regulating overland transmission lines, then we can eliminate that from the proposed text amendment. Kroupa states that the road rights of way are what he is most concerned about. D. Flaming has issues with this board trying to regulate transmission lines. I struggle trying to see the value in that and how it will be managed. It is an excepted use. Belton opens the floor to public comment. He states that everyone will have five minutes to speak, talk only about the amendments at this time, and state your name for the record. Linda Peters, Jeff Soyez, Martha Berner, Faye Russel, Nancy Tharp, Jerry Mendoza, David Marsh, Michelle Butts, Cheryl Marsh, Randall Eitzen, Tom Britain, Ron Savage, Joel Suderman, Charles Loewen, Diane Novak, Jeremy Loewen, Rex Savage, Linda Kroupa and Ed Robinson spoke. When no others wished to speak, Belton closed the public comment portion. Belton called for recess at 8:24 and resumed at 8:36. Ewy mentioned the county could regulate transmission lines over a certain kilovolt level. The overall question is if this is something that needs to be regulated. If so, what is the best form of regulation? Is it all or nothing? Is there a certain standard? Is the 115-kilovolt line obtrusive and killing property values? Is it something we have never talked about before because it has been completely irrelevant to county citizens? I gave some recommended motions but if you want to strike some of the language as it relates to providing consistency. We can eliminate the overland *private* utility easement exemption. This is not just for transmission lines but for all public utilities. If you feel the need for CUP's on every utility in the unincorporated portions of the county, we can. Every zoning code that I have dealt with except this one has exempted these from the discussion. Inlow states the county can regulate anything it wants, but the State and Federal government can override us. Belton states if we have to regulate every utility that comes in here, we are going to be very busy. D. Flaming states we have had errors in our regulations before. We recognized them and fixed them. This is a conflict that needs to be addressed. I support we address it by eliminating the electric transmission lines as indicated in 19-105(5). Vannocker pointed out that transmission lines are already partly regulated through the road and bridge department. Belton reminds everyone that this is just a recommendation; the County Commissioners will have a chance to discuss and make a final determination on this. M. Flaming states that we hear complaints when we have regulations and people don't want to follow them. Now, we are hearing complaints that people want more regulation. Kroupa states he is concerned about opening up the county roads to high energy power lines going down them. I don't have a problem with anything underground, but when you are talking about something that is looming

over your house; if we could regulate them from being over a certain energy level. I don't have a problem with it on private property. It is in people's own right if they want to have a high voltage pole. I am more worried about having them across every square mile in the county. Ewy states the 115 kilovolt line has an 80 to 100-foot easement. All of our pipelines are the same, you need the same 100-foot easement across a quarter section. Belton states if we don't fix it then we are going to be the only county in the state to regulate them. D. Flaming motions to approve the recommendations as presented. Schmidt seconds, and the motion passes 6-3, Belton, Inlow, D. Flaming, M. Flaming, Schmidt and Thiessen in favor, and; Bair, Kroupa and Vannocker opposed.

4. **Case No. PC-19-04 Application for a Conditional Use Permit, filed by Expedition Wind, LLC, on behalf of Cedar Springs Trust, and Randy and Kelli Savage, for overhead transmission lines transmitting electricity generated from a Wind Energy Conversion System (WECS), for a collection of properties in Part of Section 13, Township 21 South, Range 4 East of the 6<sup>th</sup> P.M., Marion County, KS; TOGETHER WITH Part of Section 18, Township 21 South, Range 5 East of the 6<sup>th</sup> P.M., Marion County, KS~** Publication of the notification of the public hearing for item PC-19-04 was on October 2, 2019. Notifications were mailed on October 3, 2019. Pat Pelstring, Expedition Wind, states that this will be the seventh CUP (in addition to 6 previously approved CUP's for this WECS project) and is to be consistent with our planning throughout this whole process. We have seven miles from our substation to the KDOT right of way. We had 6.25 of those miles covered in CUP's. This final CUP will put the remainder of that right of way in CUP's. We do not have any authority for eminent domain. Any party that we have worked with, we have a compensation agreement in place. Lindsey Ransom, Expedition Wind, states they now have a 20-year power purchase agreement signed for 100% of the power from this project. Jesse Hopkins-Hoel states this development plan has about 55 acres of land and includes about 1,900 feet of transmission line, from the generating project to the KDOT right of way, to the point of interconnection in Butler County. Expedition presented a slide show. Belton asks if any board member has a conflict of interest. M. Flaming recuses himself. Inlow asks if the proposed infrastructure is on KDOT rights-of-way and not the county. Pelstring states there is no place in the county that we have our transmission lines on. We have some crossings that were pre-approved by the County Commissioners, and some underground wires that are in previous CUP's. Hopkins-Hoel states every bit of the transmission line from the point that it leaves the project boundary to the interconnecting site is on KDOT right of way. Omstead states they will still need to get a permit from road and bridge to cross those county road rights of way. Belton opens to public comment. Jeff Soyez, Michelle Butts, Faye Russel, Randall Eitzen, Jerry Mendoza, Joel Suderman and Dawn Suderman spoke. After no others wished to speak, Belton closed the public comment portion. Belton called for a recess at 9:34 and resumed at 9:39. Expedition was allowed to respond to the questions and comments provided during public comment. Hopkins-Hoel states that National Renewable and Expedition Wind has no affiliation with Next Era. We have done a study on nesting sites for bald eagles and any other endangered or threatened species. None were found and the study was submitted to you. We have nice big maps at our office; the door is always open for anyone to come in and look at them. A common question with transmission lines is about stray voltage. There is no issue with it on transmission lines. We are figuring for approximately 35 feet of clearance at the highest point. It won't affect farming or road crossings. In some areas, there will be 120-foot poles. Power is interesting; a lot of people will compare it to water systems. It is also not discriminatory and it will go wherever the load is. If I am producing it here, and there is someone using an outlet three miles away, it

will be supplied by that immediate system. Ewy presents the staff report. Vannocker motions to approve PC-19-04 as presented. D. Flaming seconds, and the motion passes (7-1), Belton, Inlow, Kroupa, D. Flaming, Schmidt, Thiessen and Vannocker in favor, and; Bair opposed. (M. Flaming recused)

5. **Off Agenda Items~** Inlow states she would like to address the setbacks in Article 27. Ewy states the statutes says that either the Planning Commission or Governing Body can generate request for text amendments. If we wanted to debate any of the regulations in Article 27, we can. Do we need to lessen or beef up any of the requirements? We can just put it on the agenda for debate. They typically come from the governing body, but the Planning Commission can take up those on their own volition. We can put it on the agenda to discuss the parameters of what those would be and have me draft a starting point. Then come back and take a look at it at a future meeting. Ewy states there would need to be a consensus that we want to talk about it at the next meeting. Once we feel comfortable with the direction we want to go as a Planning Commission, Sharon would send out a notification to the proper entities. There was a consensus from the board to put it on the December 5<sup>th</sup> meeting agenda.
6. **Adjournment~** Motion to adjourn made by Bair, seconded by Vannocker. Motion carried (9-0). Belton adjourned the meeting at 10:11 p.m.  
**Passed and Approved (Date)** \_\_\_\_\_

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Derek Belton, Chair

**Attest:**

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Sharon Omstead, Secretary