



MARION COUNTY COURTHOUSE

MARION COUNTY, KANSAS
PLANNING COMMISSION/BOARD OF ZONING APPEALS
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STAFF REPORT

October 24, 2019

TO: Marion County Planning Commission/Board of Zoning Appeals

FROM: Russ Ewy, AICP, Planning Consultant

SUBJECT: Proposed Amendments to the Marion County Zoning Regulations regarding certain utility exemptions and public rights-of-way.

The proposed amendments under consideration are intended to align the Marion County Zoning Regulations with the County's historic and current interpretation and application of the Zoning Regulations.

The proposed amendments clarify that (1) certain equipment used for the transmission or distribution of communications, electricity, gas, oil, water or sewer, when located within State or Federal right-of-way, State or Federal road easements, County road right-of-way, or private easements, are not considered land uses to be addressed by the Zoning Regulations; and (2) the Zoning Regulations do not regulate a Kansas Corporations Commission jurisdictional entity's use of such transmission or distribution equipment. These proposed amendments are not intended to exempt utility infrastructure, such as communication towers, water and/or wastewater treatment facilities, or power generation facilities as defined in the Zoning Regulations.

In April of this year the Board of County Commissioners adopted a resolution (Resolution #2019-05) consenting to the utilization of County road rights-of-way for transmission lines within the boundaries of a Conditional Use Permit application area, and this amendment would eliminate the need for such actions in the future, but would still require the requisite authorizations or permits to use such property.

Currently, the Zoning Regulations contain conflicting and confusing language regarding the treatment of transmission lines in general. It is staff's experience no jurisdiction in the state actively regulates transmission lines, but only the generating facility, utility substations, or similar infrastructure. The Kansas Department of Transportation issued a letter stating the policy for utilities (e.g. transmission lines) placed within its rights-of-way, provided all appropriate permits are issued.

STAFF RECOMMENDATION:

Staff recommends the following text amendments be approved. Staff's justifications for the proposed changes are they will (1) provide consistency to the zoning regulations; (2) align the Zoning Regulations with the County's past practice of not regulating these uses; (3) clarify that transmission infrastructure use of land is not part of a utility or private power generation use of land; (4) clearly state, federal, and county rights-of-way uses are either exempt under Article 1-106, state/federal law, or local customary practice; (5) be applicable for other users in general and not specifically WECS; and (6) create a uniform policy throughout the county.

The proposed language to be added and/or modified in this action are as follows:

Article 1-106, General Regulations Governing All Zoning Districts, is now 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."

Article 19-105 (5) - Conditional Uses Enumerated, shall be modified to 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, ~~electric transmission lines~~, 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."

SUGGESTED MOTIONS:

1. Move to recommend approval of the proposed text amendments to the Marion County Zoning Regulations as presented.
2. Move to recommend approval of the proposed text amendments to the Marion County Zoning Regulations with revisions.
3. Move to recommend denial of the proposed text amendments to the Marion County Zoning Regulations.