

**MARION COUNTY  
PLANNING COMMISSION  
BOARD OF ZONING APPEALS**

**RECORD OF PROCEEDINGS**

**August 25, 2016**

**Members  
(Present)**

Nick Kraus, Chair  
Dwight Flaming  
Marty Dalke  
Brad Vannocker  
Derek Belton  
Jeff Bina  
Jim Schmidt  
Mary Avery  
Kathy Inlow

**Members  
(Absent)**

**Staff  
(Present)**

David Yearout  
Emma Tajchman  
Sharon Omstead

1. **CALL TO ORDER & ROLL CALL**~ Chair Kraus called the meeting to order at 7:31 p.m. and declared a quorum with all 9 members present.

2. **APPROVAL OF MINUTES**~ Consideration of the July 28, 2016 Record of Proceedings.

Bina moved to approve the July 28, 2016 meeting minutes with edits. Edits consisted of correcting the last paragraph to say a Motion to hold a public hearing to discuss amendments to or removal of the WECS Overlay District. Dalke seconded the motion and it carried unanimously.

3. **Appoint Board Recording Secretary**~ Bina moved to appoint Sharon Omstead as Board Recording Secretary. Vannocker seconded the motion and it carried unanimously.

4. **OLD BUSINESS** ~ None

5. **NEW BUSINESS**

a) **Case No. PC-16-03, the application of Gavin Shields, on behalf of James and Linda Green, to operate a salvage yard at 2867 Highway 77, south of the City of Lincolnville.**

First date of publication for the notice occurred on August 3<sup>rd</sup>, 2016. The notice was published for one week. There were two letters received from surrounding property owners stating a conflict of interest. Gavin Shields stated that he has no intension of opening a scrap yard; he plans to liquidate what he has left of his scrap from previous business, no intent to bring scrap business into Lincolnville. Bina questioned as to what is currently on the property and questioned Shields' statement, your intentions are to sell what you have now and not buy more? Shields plans to liquidate what is there and that is all, he does private sales only, no advertising. He says he will not ever have more than 30 vehicles. Shields agrees that people may not like aspects of his current screening and they feel it may be an eyesore. Bina questioned the type of screening required by KDOT. Shields cited KDOT's requirements- uniform, manmade or natural, wood or metal.

The public was offered a chance to speak to the issue. Jane Pigorsch, Lincolnville resident, representing herself and her neighbor, as well as Sherry Pankratz generally spoke against granting a CUP to Mr. Shields. They expressed concern about lots of traffic during late hours, trucks tearing

up the city street, lights shining into windows at night, several used tires laying around (health hazard), use of loud power tools late at night, city streets being blocked by equipment (also making it difficult for a disabled neighbor to get in and out of his driveway). Also saying that the trailers and barn doors that Shields is using for screening are an eye sore. Joe Vinduska asked if the business has to have screen and everything set up before CUP is approved first, or can you get the CUP and then work on those things. Yearout commented that you are supposed to get the permit first, certificate of compliance from KDOT to operate a salvage, and be approved by the Commissioners, and then begin setting up- that was not the case with this- violation letter was sent, then went through the zoning approval process. Shields' rebuttal is that he has no intent to operate business at late hours, he doesn't plan to use any city streets except that one block off the highway (First Street), he will put the tires on racks and tarp them, paint all the semi-trailers he is using for screening so they match. Kraus asked if Shields has a deadline for selling everything off. Shields responded that, once set up, he can use the highway entrance or back entrance, he won't have to use city streets.

Tajchman read the Staff Report, suggesting that the application for a Conditional Use Permit be denied. Kraus called for further questions or comments. Yearout pointed out that using the semi-trailers for storage is in violation of zoning regulations, they also do not meet setback requirements on the property line. This is a violation of the spirit and intent of the zoning regulations and impacts the community as a whole- this is not the location where this type of business should go. Avery asked if Mr. Shields did any research on zoning regulations- Shields said he did not, he only checked into KDOT regulations. It was brought up that the city of Lincolnville does not have zoning regulations. Inlow- so he could have it in the city? Yearout- yes, Marion County regulations would not affect businesses within the city limits. Bina- salvages are needed, the bad thing is, it is a bad location; it is imposing on your neighbors. Bina moved that Case No. PC-16-03, the application of Gavin Shields, on behalf of James and Linda Green, to operate a salvage yard at 2867 Highway 77, south of the City of Lincolnville, be denied because of items stated in the staff report and public concerns. Flaming seconded the motion and it carried unanimously. Yearout and Kraus reiterated that this is only a recommendation, this must still go before the County Commission.

**b.) Item 6: Case No. PC-16-04 Application from Bob Bergkamp Construction Company, on behalf of Ronnie and Susan Carlson, requesting a Conditional Use Permit to operate a rock quarry at the Southeast corner of 290<sup>th</sup> and Zebulon, approximately 4 miles east of Lincolnville, KS.**

First date of publication for the notice occurred on August 3<sup>rd</sup>, 2016. The notice was published for one week. No conflicts of interest or outside contact were reported by PC/BZA members. Bina inquired if any core samples have been taken. Scott Bergkamp stated that he has seen samples from Martin Marietta (previous owners who quarried that parcel). There was general concern from the board that the rock may be too soft at that location to mine. Bergkamp feels that it would make good agricultural lime and road rock. There was also concern about how the land would be reclaimed if the quarry were to be decommissioned. There were no further questions from the board, so discussion was opened to the public. Mike Beneke also stated concern about the quality of the rock from that area, but said it could make good ag lime. Kraus asked if Bergkamp planned to take some more core samples throughout the parcel. Carlson said it is not feasible to blast in two areas to get different rock.

Tajchman reviewed the Staff Report, recommending that Case No. PC-16-04 be continued until the September meeting and the applicant be directed to provide the detailed information at least two weeks before that meeting so adequate time is provided for evaluation by all departments, agencies and advisors to the County.

A road maintenance agreement would have to be a condition of a CUP. The general consensus of the board and public was that the quality of the product needs to be addressed. Tajchman- need to determine if this is an appropriate land use at this location. Yearout feels that Bergkamp is lacking information, and good business is having more information. Bergkamp feels that the business risk of the quarry is his concern and shouldn't determine whether or not he is granted a CUP. He is willing to absorb the loss if the business is not successful and would make sure the

land is reclaimed appropriately. He also stated that MSHA regulations are very strict and would be on top of any safety concerns. Avery asked if the board continues this, would it cause a hardship for Bergkamp? The rest of the permitting required from state and federal agencies would take another 3 months after a CUP is issued; Bergkamp would like to begin operating by November 1<sup>st</sup>. Belton- I agree with giving them a CUP on the 40 acres as long as they are meeting regulations. There was further discussion from Kraus about the general location of the proposed quarry. Flaming motioned a recommendation of approval to the Commissioners, contingent on additional information (Road Service Agreement and details of the site plan). Belton seconded and the motion carried unanimously. Case No. PC-16-04 will go to the Commissioners on September 12, 2016.

Kraus called for a brief recess.

Meeting was reconvened.

**c.) Item 7: Amendments to Marion County zoning regulations regarding Commercial Wind Energy Systems, specifically, elimination of Overlay District, or other topics on the same general subjects.**

First date of publication for the notice occurred on August 3<sup>rd</sup>, 2016. The notice was published for one week. There was outside contact with Board Members, generally in conflict with amendments to the zoning regulations, specifically, elimination of the Overlay District and with allowing wind generation in general. Discussion began with Yearout stating that we are here today to discuss amendments to the Commercial Wind Energy Conversion Systems regulations, not to approve a CUP today. Yearout pointed out three basic alternatives for the issue: leave the Overlay District as described; eliminate the Overlay District completely and allow the WECS regulations to apply to the entire county; or change the description of where the Overlay District applies. Eileen Sieger spoke to the issue, saying that transmission line proximity was the big issue when the Overlay District was established. She pointed out that the wind towers were noisy- but that was 10 years ago. Sieger asked about decommission of towers, and if they are self-sustaining (not tax dollars). Brice Barton with Tradewind said that the new blades are a lattice construction, less insulation, and the technology in the cells has changed a lot; most of the noise you hear now is from the wind going thru the turbines. He says wind is the cheapest form of generation next to natural gas. No money is taken before and no money taken after- they have to produce in order to get the tax credit. Kraus brought up the issue of aerial sprayers. It was reported to him that most companies will not spray on properties that contain a wind tower. Sieger thought that, at one time, the Governor ordained the Flint Hills off-limits. Yearout pointed out that the statement never had legal authority, the Governor said to 'please stay out of this area'. Barton says that Tradewind intends to respect the Flint Hills and does not plan to build east of Highway 77, nor do they intend to build around the Marion County Reservoir. They are also concerned about nature conservancies- they have moved back a couple miles from original plans based on information from prairie chicken surveys. David Mueller said that the Overlay was based on 3 main criteria: wind maps, transmission lines, and low population area. Conditions, technology, and situations have evolved over the last 16 years. He suggests staying west of Highway 77 (out of respect of the Flint Hills). When the TransCanada line came through, it changed the whole complexion of the transmission expense (don't have to purchase lines). Wind potential is good- MET towers are running. Mueller pointed out that thin population, poor ground, and a change in transmission availability make the area a good candidate for wind generation. There was discussion about whether wind generation should be allowed or not. David Rziha states there is close to a 40 acre threshold- land owner interest is good- hopefully we can deliver a project for them. Kraus reminded the Board that a decision needs to be made because of the regulations- not because there is a pending project (Diamond Vista Wind Project). Greg Musil, lawyer for Tradewind, points out that the comprehensive plan on page 60 addresses wind; the Overlay District is contradictory with the current regulations. Rex Savage believes the height requirement needs to be addressed- there is not a safety benefit to having a 100 foot minimum height requirement. To use an 80 meter tower leaves you with a ground clearance of roughly 64 feet. The 3.3 megawatt towers take about a 50 foot clearance. Kraus feels that if the Overlay District is removed, the boundary of the Flint Hills and the Santa Fe Trail need to be

respected. Bina points out that a CUP is a good way to control issues- can approve for good use of the land in one case and not approve in other cases that are not feasible. Bina made a motion to eliminate the Overlay District completely and allow WECS in the entire county, subject to CUP. Vannocker seconded and the motion carried unanimously. Kraus clarified that the motion is to remove the Overlay District completely in the Marion County zoning regulations. Kraus asked if there was a motion on height requirements. Tradewind representative said that to make every turbine on the market today viable, 60 feet would be necessary. Flaming made a motion to amend the minimum height requirement to 50 feet. Vannocker seconded and the motion carried unanimously.

Flaming made a motion to continue discussion with respect to amendments to the WECS regulations at the September meeting. Belton seconded and the motion carried unanimously.

8. **Off Agenda Items~** None.

9. **Adjournment**

Bina motioned to adjourn at 10:27pm, Inlow seconded, and the motion carried unanimously.

**PASSED and APPROVED [DATE].**



Nick Kraus, Chair

**ATTEST:**

  
Emma Tajchman, Secretary