

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

RECORD OF PROCEEDINGS

August 2nd, 2018

**Members
(Present)**

Jeff Bina
Dwight Flaming
Derek Belton
Jim Schmidt
Mel Flaming
Kathy Inlow
Brad Vannocker

**Members
(Absent)**

Marty Dalke
William Kroupa

**Staff
(Present)**

Emma Tajchman
Sharon Omstead
Russ Ewy

1. **CALL TO ORDER & ROLL CALL**~ Bina called the meeting to order at 7:03pm with 6 members and 3 staff present. Schmidt joined at 7:04pm. Dalke and Kroupa absent.
2. **APPROVAL OF MINUTES**~ Belton made a motion to approve the May 24th, 2018 Record of Proceedings as presented. D.Flaming seconded, motion carried unanimously (7-0).

Bina opened the public hearing, announcing that the Planning Commission will serve as the Board of Zoning Appeals (BZA) pursuant to Article 1, Section 2 of the Marion County, Kansas, Planning Commission/ Board of Zoning Appeals Bylaws for the following BZA items.

3. **New Business~ Case No. BZA-18-01 Variance Request, filed by Wiebe Siding and Construction, Inc., on behalf of Mitchell L. and Janet L. Garner, for a side yard setback requirement at 53 Lakeshore, Kansas.** Notice of Public Hearing was published on July 11, 2018. Notification letters were sent to property owners within 1,000 feet of the affected area. Some public concern has been expressed. The neighboring property owners are concerned about drainage issues and were present to speak on their own behalf. Mitchell and Janet Garner, and Jake Wiebe were also present for this portion of the meeting. Tajchman gave a brief background of the case, stating that the issue was initially reported by an anonymous source, and addressed as a violation. A copy of the violation letter was provided to the board. Tajchman- This application was submitted post construction for an addition onto the front porch of the existing structure. The residence at 53 Lakeshore was constructed prior to the implementation of zoning in Marion County, and considered "grandfathered" from the height, area, and bulk regulations detailed in Article 7-Marion County Lake Lot Residential District, of the Marion County Zoning Regulations. The structure did not comply with the side yard setback requirements prior to the addition being built (keep in mind, the existing nonconforming structure was grandfathered). The house is not square with the property lines. When the addition was built onto the front of the home, lot lines were not verified and a building permit was not obtained. Survey pins were located during a post construction assessment of the project. It was determined that the newly constructed porch extended onto the property south of the residence. The applicant removed the encroachment; however, the side yard setback requirement of 8 feet remains to be met. An application for a post construction building permit is on file with the Marion County Planning and Zoning department, but cannot be approved as constructed. This application is requesting a variance for a zero-foot side yard setback from the south property line. Bina opened the floor to the applicant, Jake Wiebe, on behalf of Mr. and Mrs. Garner. Wiebe introduced himself -I've been remodeling for 25 years. These folks asked me to build onto their porch. I saw that the address was a Marion address, 66861, so I called the City of Marion. Wiebe reported that a city employee, Marty Fredrickson, told him the city does not do any zoning or permitting at the lake. Wiebe reported that the city employee told him that no permits were needed, you can do whatever you want out there (at the lake). So he called Dig Safe, and began the process of extending the porch. They put gutters on the house and porch to help with runoff. After receiving the violation letter, Wiebe trimmed back the porch and removed the guttering. Bina asked if Mr. Wiebe obtained a permit. Wiebe reported that Marty Fredrickson told him he didn't need one. Bina questioned as to whether Wiebe has ever applied for a permit for work in the county before. Wiebe said yes, but he didn't know that the lake was part of the (Unincorporated Portion) County's zoned area. I

thought I did what I needed to do. I've driven past the Planning and Zoning office several times on a previous job & didn't know it was a Planning and Zoning office. They don't have a sign. Bina opened the floor to the public. Bill Skaer, property owner at 52 Lakeshore Drive, the neighbor most closely impacted by the porch- There has been some damage done to our property as a result of this project. Skaer complimented Director Tajchman, saying she has been very professional, impartial, and very helpful. Skaer- There is a road sign as you are coming off of Highway 256, "This county is zoned". This (violation) would have never happened if a permit was applied for. We came up in May and the structure was already built. We were astonished that it had been built and felt like there was nothing we could do about it. Bina asked if the Skaer's could live with the structure as it is, or if they wanted it torn down? What is your opinion? Skaer said he is not going to speak (poorly) about the neighbors or their contractor for their actions, but he and his wife are not happy about the addition to the porch as it minimizes their view of the lake. Their view is part of the attraction and value of their home. Mr. Skaer stated that they have extensive legal expenses wrapped up in trying to remediate a problem they (the Skaer's) didn't create. He clarified that the damages are financial damages- not property damages. Mr. Garner questioned why the Skaer's got an attorney, and why the city inspector didn't tell Wiebe that he needed to get a county permit. Mrs. Garner pointed out that the new concrete and structure only extend 7 feet further than the existing structure did. Mr. Garner expressed concern about cutting the structure back more; how to make it aesthetically pleasing and how to support it correctly. The gutter on the existing structure originally drained on the north, now it drains on the south, towards the street. He reported that 16 inches of the new addition were taken off so it wouldn't hang over the property line. Wiebe- None of the new addition is closer to the neighbor's property line than the original structure. D.Flaming said he made a trip out to the lake to look at the property and could see that drainage was diverted better than it had been before. Mrs. Garner- they were complaining about our roof obstructing their view of the lake, but their landscaping obstructs our view of the lake on the other side! Bina- we are not going to address other issues at this public hearing, we are only considering the issue at hand. Bina closed the public hearing. Tajchman gave the Staff Report. The Marion County Zoning Regulations provide guidelines for granting a variance. All five of the outlined conditions within the regulations must be met. Staff believes the conditions are not met considering the situation is a self-imposed hardship, there is potential to negatively affect the neighboring properties (drainage), and it is not consistent with the spirit and intent of the regulations. As the BZA, you have the ability to grant a variance with conditions, in order to make the structure compliant. In this case, I would recommend denial. This is simply a recommendation; the board will need to make the decision. Bina- if they would have got a permit first, they would have requested a variance, correct? Tajchman- yes. The original structure was grandfathered because it was in existence before zoning regulations were in place. D.Flaming- New construction is subject to the regulations. Existing structures before zoning was implemented are grandfathered. Bina- If we deny this case in front of us, does it require the County to require the structure to be torn down/removed? Ewy- It would require action by the county counsel and the governing body. If you look at the variance request by itself, aside from the other issues (not being permitted prior to construction, and being built over the property line to begin with), what would you do? This would go to district court if the BZA's decision is appealed. The Board briefly discussed the principal of granting or denying variances and how this has been handled in the past. If they approve this request, does it set a precedent for future requests. Or do we approve this request with conditions? What would the conditions be? The structure could be cut back or redesigned. Tajchman -if it were redesigned to meet setbacks, it could be approved administratively. Belton -It's not necessarily fair to the people who do come in and get a permit and meet zoning regulations, for us to let someone who didn't apply for a permit or meet zoning regulations be allowed to have whatever they want. Vannocker made a motion to deny the variance requested by Wiebe Siding and Construction, Inc., on behalf of Mitchell and Janet Garner, for a zero-foot south side yard setback requirement in the "LL" Marion County Lake Lot Residential District at 53 Lakeshore, Marion, Kansas. Schmidt seconded. The motion passed unanimously (7-0). Bina suggested the applicants meet with Tajchman at a later date to make plans for remediating the situation.

4. **Case No. BZA-18-02 Special Exception Request filed by Brandon S. Vogts to construct an accessory structure greater than 900 square feet in the Marion Reservoir Eastshore Residential District, located at 2122 schlotthauer, Marion, Kansas.** Bina -We will act as the BZA and have the final decision here. Notice of Public Hearing was published on July 11, 2018. Notification letters were sent to property owners within 1,000 feet of the affected area. The neighbor to the south expressed that they do not have a problem with Mr. Vogts building the structure as proposed. Brandon Vogts introduced himself, stated the situation- the lots are currently combined, if it was split he wouldn't need a special exception because the structure would qualify as a residence and not an accessory structure. He intends to have living-quarters in the building as well. Introduced his neighbor, Jim. Jim stated that he has no problem

with the neighbor constructing a building there. Bina opened the floor to the public (no comments). Tajchman gave the Staff Report. The garden shed shown on aerial photos has been removed recently. Water District #2 and Brad Gorsuch (Improvement District #1) do not have an issue with the building being placed where proposed. The BZA has the ability to impose conditions, if necessary. Tajchman suggested that drainage be considered. A storage building as an accessory building for more than four vehicles and /or covering more than 900 square feet is permissible within Article 21-104 of the Marion County Zoning Regulations. However, it requires a Special Exception approved by the BZA. The BZA may approve it as long as such exceptions will not adversely affect the uses of adjacent and neighboring property permitted by these Regulations (refer to Article 21-104 for the full Regulation). Belton -this seems like a pretty straight forward case. D.Flaming is interested in drainage comments from the property owners. Vogts said he will route the drainage so it drains to the back of the property. Schmidt asked about the sewer line. Vogts stated he plans to use the existing sewer line on that lot, and the water routed from his existing house. (There were no further comments) D.Flaming made a motion to approve BZA-18-02, a special exception request by Brandon S. Vogts to construct an accessory structure greater than 900 square feet in the "ES" Marion Reservoir Eastshore Residential District, located at 2122 Schlotthauer, Marion, Kansas, with the following conditions: 1) Guttering and/or landscaping shall adequately direct drainage from the proposed accessory structure into the existing drainage ditch. 2) An agreement shall be made with the Marion County Eastshore Improvement District for public sewer access prior to issuance of a zoning certificate. Belton seconded. Motion carried 7-0. Mr. Vogts stated that Director Emma Tajchman has been a pleasure to work with. You guys have a very good person.

Bina closed the BZA hearings and opened the meeting to the Planning Commission hearings.

5. Item No. PC-18-04 Application for a Conditional Use Permit filed by Expedition Wind, LLC, on behalf of Wait Family Living Trust -Gregory's Share, to install a Meteorological Tower on the SW ¼ of Section 17, Township 21 South, Range 03 East of the 6th P.M., Marion County, Kansas.

Notice of Public Hearing was published on July 11, 2018 and letters were sent to surrounding property owners within 1,000 feet of the affected area. Rex Savage introduced the applicants and gave a brief background of the project. Savage explained that the project is "laced to bear fruit." The existing project (formerly the Doyle Project) has been sold to Expedition Wind, LLC. Expedition is interested in looking a little further north and west to expand the project area. Installing the meteorological towers (MET) is not a huge impact on the area. Jesse Hopkins-Hoel, Director, and Troy Bushman, Project Developer with National Renewable Solutions (NRS) were present. Hoel- we could place the MET towers inside the existing project, but we are looking to expand. It is in our best interest to look outside of the existing Conditional Use Permitted area. MET towers start to lose their useful life within a 4-5 year period. The structures are easily removed, and would be done so when the usefulness is no longer present. The towers are mounted to a concrete slab. M.Flaming asked if there are any power requirements. Hoel- 2 small solar powered batteries are needed. NRS is a national company. It began in a small community in Southwest Minnesota as a 50 megawatt (MW) facility. Now NRS has a combined 770 MW (300 turbines) across the country. Bina asked if this is the first project Hopkins-Hoel and Bushman have managed. Hoel- yes, this is our first project. Bina opened the hearing to public comment. Tom Britain-asked the Board to explain 'quasi-judicial' to the audience. Ewy -Certain communities have a legislative board. They are bound to making decisions based on an objective view and objective facts. When this Planning Commission acts on a zoning or land use issue, they act on a quasi-judicial system. It sets up rights that the property owner and surrounding property owners have. You have to balance the interest of both parties. However, state law has a rather wide interpretation of what 'fair' is. Britain- I've had a tower up near my house for 5 years. I hate it. It pisses me off every time I see it. I read an article in the paper over in Marion; they complained about it (the tower). It's not just about the towers, it's about what's going to happen. Belton asked, can you explain what you mean by 'what's going to happen?' Britain -No, I can't see what is going to happen. I am opposed to the wind project. I'm really not opposed to these towers (Met towers). I don't want to see it. They polarize the community- brothers against brothers, neighbors against neighbors. I don't like to see that, I hate it. What really bothers me about this commission is the turbine setbacks- it used to be a quarter mile, and you guys changed all that for Tradewind. I quit coming to the meeting, it made me mad. You changed it to 500 feet. Bina, in respect of time, asked Britain to make his point short. The issue is about the MET towers, please stay on topic. Britain -Safety manuals say 1200 feet away is acceptable. I think you guys did that (changed the

setback) just for Tradewind. Bina called for any other public comment. Randy Eitzen, land owner in East Branch, Catlin, Liberty, Summit and Fairplay Townships -What Tom is trying to say is all these towers are for is so they can take readings so they can possibly have a wind tower there in the future. I wish I would have found out about this issue earlier. When the very first hearing (years ago), I was too focused on my father's passing and didn't pay enough attention to the issue at hand. What are these things finally going to help? The county doesn't even get tax money for 10 years on anything (green energy tax incentive). We will be looking at the towers and lights forever. There are no incentives for taking them down. Who's going to take up the concrete slabs and big towers? D.Flaming asked for clarification - You're directing your comment towards wind towers and not the MET towers? Eitzen -That is what is going to happen, I hope you folks see this. 15 years from now, you'll all look back to meetings like this. I realize there are only a few of us who are representing the folks who don't want them. I don't know why more of those people don't show up. I think that is the feeling of about half of the people. Dawn Suderman, Joel's wife, landowner of a proposed MET tower location -Technology is a great thing. This data is very valuable to site whatever happens down the road more accurately. I'm for it. Bina called for any other comments. (No further comments were made) Bina closed the floor to public comments. Tajchman reminded staff that they would consider any applications for a wind project separately from this application. None have been submitted at this time. We are only considering the application of the MET tower at this point. Tajchman gave the Staff Report. For intents and purpose of this application, I personally consider them like any other tower; such as cell towers or other communication towers. There were no other outside concerns reported from the public. The County Road and Bridge Department Director has no concerns- no new entrances or culverts would be needed. The Wait application is on a road that is not currently maintained by the county. The Director does not have an issue with approving the application as long as the road is maintained by Expedition during the installation of the MET. The towers would have a life of 2 to 5 years. They would have to be removed at the end of 5 years, or an extension would need to be requested. Tajchman would like to see a condition included that if the MET is not in use for a specific amount of time, (define non-use), it would need to be removed. Belton -If it is damaged by storms, etc., can they rebuilt it without having to reapply for a CUP (Conditional Use Permit)? Tajchman- No, they would not have to reapply. Marion County District 2 Commissioner, Dianne Novak, asked if this project is related to the project Mr. Savage was involved with. It doesn't have anything to do with that project does it? He sold it, it is separate? Vannocker- they can build on the project that he was previously involved with. Expedition bought out that portion of the project. The existing Road Maintenance Agreements transfer with the new owners of the project? Ewy- Yes. And they would transfer to any new owner in the future if they sell again. Eitzen- If this is something that we are starting new, don't you think it is a big enough deal that it should be discussed in more depth and decided on at a later date? Something of this magnitude, would it hurt to wait another 30 days or something like that? D.Flaming- I think we are talking about two different issues. The application in front of us is for a MET tower in a specific area. A CUP application for a wind project in the future would be considered at the time it is applied for. Novak continued to ask about the Doyle Wind Project. Bina reminded the public that comments need to be kept on topic, and not be repetitive. Bina closed the floor to public comment. D.Flaming made a motion to approve PC-18-04, the request for a Conditional Use Permit to construct a temporary meteorological tower, by Expedition Wind, LLC, on behalf of Wait Family Living Trust -Gregory's Share, with the following conditions: 1) Structure is temporary in nature and shall not be in place for a period of more than five years. 2) The permit becomes null and void upon voluntary dismantling and removal of the tower by the applicant. 3) If unused for a period of six months or more, the structure shall be declared abandoned and the applicant shall be required to remove the tower and appurtenances. Effected ground shall be restored to a use compatible with surrounding use. 4) Strict adherence to the development plan of record is required. 5) Adherence to all applicable federal, state, and local regulations is required. M.Flaming seconded. Vannocker asked to address an issue before they move on. What Tom said is a 'fair' hearing- It's pretty evenly divided in this room. Every time we come to this board, we try not to put our personal feelings into it. Every time you talk, we try to listen. Everybody's got a say in the matter. We listen. This crowd is about half for, and half against. Inlow- If you give your opinion to the County Commissioners, they make the final decision. The Planning Commission voted and passed the motion to recommend approval unanimously (7-0).

6. **Case No. PC-18-05 Application for a Conditional Use Permit filed by Expedition Wind, LLC, on behalf of Joel Suderman Trust, to install a Meteorological Tower on the NE¼ of Section 33, Township 20 South, Range 03 East of the 6th P.M., Marion County, Kansas.** Notice of Public Hearing was published on July 11, 2018 and letters were sent to surrounding property owners within 1,000 feet of the affected area. Staff Report was given by Tajchman (combined with Item PC-18-04) Comments from the public (none). Belton made a motion to approve PC-18-05, the request for a Conditional Use Permit to construct a temporary meteorological tower, by Expedition Wind, LLC, on behalf of Joel Suderman Trust, with the following conditions: 1) Structure is temporary in nature and shall not be in place for a period of more than five years. 2) The permit becomes null and void upon voluntary dismantling and removal of the tower by the applicant. 3) If unused for a period of six months or more, the structure shall be declared abandoned and the applicant shall be required to remove the tower and appurtenances. Effected ground shall be restored to a use compatible with surrounding use. 4) Strict adherence to the development plan of record is required. 5) Adherence to all applicable federal, state, and local regulations is required. D.Flaming seconded, and the motion carried 7-0. This item will go before the Board of County Commissioners on August 20th and will be recommended for approval by the Planning Commission.

Bina called for a brief recess. Meeting reconvened at 8:51pm.

7. **Discussion concerning Marion County Subdivision Regulations Article 3- Lot Splits and Boundary Shifts.** Ewy provided proposed amendments to the board for discussion. Ewy -At the May meeting, we struck the 10-acre maximum. In the subdivision regulations, we are simply proposing to change the number of lots allowable from a parent tract to be 4 instead of 2. This issue has come up many times recently in the Planning and Zoning office. The current regulations are contrary to 'wanting to foster new growth' in Marion County. We have to find a way to balance. We have looked at different ways to regulate lot splits. We limit the amount of tracts because we don't want to cut up the landscape too much. Are 4 lots a reasonable amount of density in Marion County in order to not create an over density, yet balance the welcoming of new homes? Yes, I feel it is. Tajchman explained a recent situation with a 70-acre lot that has 3 homes on it. An existing residence, then a mobile home that was allowed, and then a special exception for another home. Mom & Dad, Grandma, and Son all live on the 70 acres. The Mom & Dad have filed for divorce. I am not allowed to grant a lot split within our current regulations. The divorce is now on hold because the land cannot be sold off separately (allowing the son and grandma to remain). Ewy- the original justification for lot splits was that we were trying to protect prime agricultural land. But now, there has been a change in philosophy. Lenders prefer smaller tracts. And it is an impediment for the County. By limiting these smaller tracts, you are possibly losing out on growth by a few new homes per year. At no expense to the surrounding land- sanitary sewer, infrastructure, all of that is sufficient. Tajchman reported that she has been contacted by the attorneys on both sides of this legal issue (mom & dads divorce), needing the land issue to be resolved so their case can move forward. D.Flaming noted that he sees where this is a real issue. He needed to sell off 5 acres of land in the past, but would have been unable to do so with the current regulations. Preserving agricultural ground is really counter-productive to some situations. You end up losing more trying to fit issues into the current regulations. Tajchman- on a good gravel road, and a tract that doesn't have prime farm ground, it is counter-productive to not allow a person to sell 5 acres for someone to build a new house on. Also, for financial purposes, a lender does not want a house on 40 acres. They want to finance 5 acres with a house because the bank can sell the 5-acre tract with a house to someone (if repossessed) a lot easier than the 40 acres (it reduces the clientele). Ewy- in the last 3 months, we have seen a very pragmatic need for this. A court system can order that a piece of land be broken up however they see fit- and that supersedes anything the county zoning department or planning commission can regulate. That works, but we decided it may be easier to just change our regulations due to the amount of these issues we have been seeing. (general discussion about the proposed amendments). Ewy suggested we strike proposed amendment 3-104.1. concerning new streets and easements, because the zoning administrator would already have the discretion to require easements as necessary, as a condition of a lot split. D.Flaming asked if this would put the burden of the easement on the County. Ewy- No, that is a private responsibility. We cannot prevent people from selling sub-

standard lots, but we can have the ability to remediate the lots and rectify these situations so that building permits can be issued for those lots. Homestead Lot Splits- do you want to look at that? Tajchman has heard a lot of complaints from surveyors, register of deeds, and others about the specific requirements on the survey. It isn't feasible to follow certain requirements. We need to review those and possibly change them. M.Flaming -So 3 acres would still be the smallest lot that could be created? Ewy- Yes, currently, 5 acres is the smallest that can be created for a new residence. The 3-acre minimum is for an existing homestead. We have to allow space for the wastewater system, separation distances, setbacks, etc. Bina- asked about the requirement for frontage on public roads. Ewy explained a situation where a 'flag lot' would make sense, but the requirement for a large amount of road frontage makes the lot impossible. Ewy- we need to base regulations on what is permissible. Zoning Administrators can change, so the regulations need to allow for accurate interpretation of the intent when setting the regulations. Allowing flag lots would be more desirable than easement situations. The homestead lot splits seem to be (related to flag lot). Ewy will prepare a draft amendment of Article 3 to be considered at the August 23rd meeting.

8. Old Business~ (None)

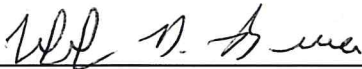
9. Off Agenda Items~

Ewy commended the planning commission for their decisions today- Your job is to make valid decisions, based on regulations, decisions that will hold up in a court situation. Your job is not to make decisions based on who the applicant is or isn't, emotions, relationships, political pressure, etc. You made the right decision on the BZA applications tonight. Kudos to you (the board) for making a denial based on the considerations outlined in the regulations.

Tajchman- The Planning & Zoning office now has a sign on the building stating that it is the Planning & Zoning/ Environmental Health Department. We had envelopes printed that say "Marion County is zoned" on the back of them in an effort to make people more aware of zoning. Also, a letter and questionnaire have been sent to contractors on the county resource list. The questionnaire reiterates that the county is zoned and asks contractors to refer clients to the county for any applicable permits.

10. Adjournment~ Motion to adjourn made by Belton, seconded by D.Flaming. Motion carried unanimously (7-0). Bina adjourned the meeting at 9:52pm.

PASSED and APPROVED (Date) Aug. 23, 2018



Jeff Bina, Chair

ATTEST:



Emma Tajchman, Secretary