

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

RECORD OF PROCEEDINGS

December 6, 2016

**Members
(Present)**

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

**Members
(Absent)**

Mary Avery
Jim Schmidt

**Staff
(Present)**

David Yearout
Emma Tajchman
Sharon Omstead

1. **CALL TO ORDER & ROLL CALL**~ Chair Kraus called the meeting to order at 6:33 p.m. and declared a quorum with 7 members present. (7 members and 3 staff present, 2 members absent)
2. **APPROVAL OF MINUTES**~ Consideration of the October 27th, 2016 Record of Proceedings. Vannocker moved to approve the October 27th, 2016 meeting minutes, Flaming seconded the motion and it carried unanimously (7-0).
3. **New Business**~

Case No. PC-16-05, the application of Justin and Brea Hett, and Terry Olsen, for the vacation of "A" Street of the Aulne Plat in the unincorporated area of Marion County, Kansas. Kraus asked for the date of publication, Tajchman responded November 9, 2016. Kraus asked if there were any outside comments? There were none reported to the board or staff. Tajchman gave details of the application. She explained that the Hett's need a new wastewater system. If constructed in accordance with Marion County Sanitation Code, the new system would require usage of the platted right-of-way to comply with the stipulated requirements of the Code. The applicants are the only property owners with land adjacent to the platted "A" Street right-of-way. A home owned and occupied by the Hett's, and the remainder of lots adjacent to "A" Street consist of agricultural ground. Tajchman reports that it is the opinion of staff that vacating the street right-of-way would cause the public no undue hardship. Jesse Hamm, Director of Marion County Road and Bridge Department, advises there is no desire or need for the right-of-way, and there appears to be no need to maintain the right-of-way for any easement purposes. There is an abandoned private water well in the 'street'. Vannocker inquired about asking the Hett's to plug the well. There was further discussion about items in the street already, like the well and a tree row. Tajchman stated that Randy Dallke is in favor of the vacation for the purpose of the placement of a sanitary sewer. Yearout recommended vacating all the alleys and streets (especially east of the railroad tracks) in the Aulne Plat because it would clean up the property lines and allow people to use their whole yard, essentially. Yearout stated that a lot of it is farm ground. It would be a simple process: each owner on either side of the alleys

and streets would gain possession of half the roadway. The center line becomes the new property line. Some members of the board feel it may cause contention if only east of the railroad is vacated. A petition was brought to the board several years ago from another land owner, and the petition was turned down. That particular property was on the west side of the railroad tracks. Yearout said the landowners to the west of the railroad can bring that forward to the Planning Commission if they feel it is necessary. Kraus asked for any more discussion? (none from the board) Discussion from the public? (none) Kraus asked for clarification- so we are only asking for approval to vacate "A" Street at this time? Tajchman- yes. Flaming motioned that Item number PC-16-05, request for vacation of "A" Street be granted, with the request that the Commissioners consider vacating the rest of the Aulne Plat east of the railroad tracks. Bina seconded and the motion carried unanimously.

4. OLD BUSINESS ~

Continued Public Hearing on Proposed Amendments to Marion County Zoning Regulations regarding Wind Energy Conversion Systems. Yearout began the discussion by talking about the Santa Fe Trail. It has a deep history and people are not going to want to build on those areas. The extraordinary approval to say 'you can't build here' is not really necessary. There are many safeguards built into those special areas so that no one would want to build there- regardless of the money factor. Yearout is comfortable with addressing this in Article 27 instead of placing a larger blanket statement elsewhere in the regulations. Bina stated that it seems the Santa Fe Trail Association is asking for oversight privileges of the regulations- so they can tell us how far development must stay back, etc. Yearout feels the Development Plan is where a developer can say what measures they are taking to mitigate preservation of these special areas. Yearout- there is a requirement for public notice of any CUP (Conditional Use Permit) applications. That is the purpose of a public hearing—parties interested should show up or provide written comments if they have concern with development in a certain area. Bina mentioned that a land owner has every right to use their land as they see fit. Several areas of the Santa Fe Trail have been farmed and worked up for agricultural use; and the land owner has every right to do that. Kraus stated that it sounds like Santa Fe Trail Association is petitioning for the Planning Commission/ Board of Zoning Appeals to protect the trails. Yearout- what the Santa Fe Trail group proposed was no different than the Scott Ritchie, TNC, or the Brownback moratorium. There was discussion from the Board about what is a land-use issue, and what is micromanaging? Kraus- who is supposed to protect it (Santa Fe Trail)? It's a National Treasure. Yearout said, it is not the counties responsibility. Greg Musil, Tradewind Attorney, reviewed a few items in Tradewind's draft of Article 27. There are many ways the trail is protected- you still have to go through the CUP process of interest groups coming forward, meetings, etc. Musil stated that they have tried to incorporate some of the things that (interest groups have concern with) into the amendments that Tradewind has proposed. In a way, that does not tie it to one group but addresses those special cases as a whole. He also pointed out that there is a decommissioning agreement. If the owner changes their mind and does not want a tower on their land after initially agreeing. Rex Savage said he agrees with both Yearout and Tradewind's proposals, but suggested that one word in Yearout's amendment proposal be changed. Savage stated, there is a governing body that serves as a checks-and-balance for what is approved and what is not. The County Commissioners are elected by the people, and the Commissioners appoint the PC/BZA Board members. Savage complimented the Board, saying that they do a wonderful job and he doesn't think the control should be handed over to a non-elected /non-appointed body. An elected body has the public to answer to. Musil- Cultural Resource Reviews are something that Tradewind looks at to a great extent. Amber Zuhlke, Tradewind -Most groups have a SHPO (State Historic Preservation Office) statement that says the cultural resources have been reviewed, what the impacts are and how they can be avoided. Musil- we don't oppose Yearout's draft, we just tried to incorporate some of the things that organizations like the Santa

feasible" in the amendments (Tradewind, Article 27-105.14.c.), because it is subjective. Musil said that leaves flexibility for detail in the Development Plan. Savage reminded the group of the multi-state public Buffalo Commons proposal. The proposal was to create a nature preserve over 139,000 square miles, affecting 10 states. Savage's point is that it is not feasible to put a 'blanket' regulation over a large area that would restrict development to that extent. Musil -having a specific setback from a trail may cause some people to intentionally go rip the trail up on their ground because they want the wind towers. You see that when setback requirements for a structure interfere with a landowner being able to get a wind tower, they tear down the structure so they can get a tower. Kraus asked how the new president elect (Donald Trump) may affect the Wind Energy scene. Musil -tax credits will phase out in 2022. At this point, the wind industry is competitive enough without the tax credit, so they (tax credits) are proving to not be necessary due to new advances in technology. Musil asked if there were any quarrels with Tradewind's draft? Yearout said the MET (Meteorological Tower) towers are things that become a part of the system over a long term basis. He doesn't want anyone to construe that if you are approving the MET towers, you are approving a wind system. Kraus- a MET tower doesn't mean construction. Zuhlke- Temporary METs and Permanent METs are a totally different type of structure; they are built differently. They are written into the Development Plan. Kraus asked if the term can be changed in Yearout's amendments to "Permanent" MET? Discussion led to the term "Associated Ancillary Operational Meteorological Towers" (Tradewind amendments, Article 27-101). Musil and Savage added that new law states the ownership must transfer with CUPs. A new owner must sign, saying that they accept the responsibility and they take over the bond responsibility as well (for Wind Energy Conversion Systems on their property). Yearout asked Savage if there were any concerns with his amendments. Savage said he would prefer to see the words "user or consumer" replaced with "market for" in Article 27-106. After discussion from staff and the public, it was decided to accept Tradewind's proposed amendments with two specific edits. The first edit being in Article 27-101, to replace "associated meteorological towers" with "associated ancillary operational meteorological towers". The second edit in Article 27-106, replace "user or consumer of" with "market for" in the first sentence. Kraus asked for a recommendation from staff- Tajchman is comfortable moving forward. Kraus asked for any other comments. Inlow suggested adding "as" to the last sentence in Article 27-105.1a. Correcting Article 27-105.8 to say "installation" of red lights. Add the word "by" in the last sentence of Article 105.13 (burning is conducted "by" the procedures stated above). Kraus asked for a motion- Belton made a motion to send Tradewind's draft, as edited this evening by the board with recommendation from Yearout and Tradewind, to the Commissioners for approval. The motion was seconded by Flaming. The motion carried unanimously (7-0). December 19th is the next Commissioner's meeting.

8. Off Agenda Items~

a.) 2017 Marion County PC/BZA Meeting Schedule & Submittal Deadline Calendar- Yearout suggested that a meeting be set for January 26th and make an Agenda item to amend the by-laws. If the motion passes, then changes to the calendar can be made as needed.

b.) Amendments to the Marion County Comprehensive Plan- Tajchman suggested the board discuss the issue of respecting the Flint Hills, within the Comprehensive Plan. Will be added as a discussion item on the next agenda.

c.) Mobile Home permitting in Marion County- Yearout, a single wide can be placed on zoned land to be used as a second dwelling, but it is intended to be temporary. Flaming asked about "tiny homes". They are the same classification as an RV (recreational vehicle). They are titled as an RV, the regulations are the same. Kraus stated that if it is for agricultural use, it has to be totally Ag exempt. Yearout agreed. He says it is hard to discriminate about what is agricultural use and what is not, the regulations are already discriminating by segregating a

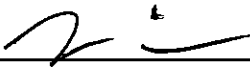
mobile home from any other type of home. Kraus asked how the continuation of agricultural use can be monitored- was for Ag initially, but after a time, the need wasn't there so they use the mobile home for another purpose. Yearout- someone has to complain about it, then the zoning director has to investigate. Kraus- if someone wants to use a trailer for calving purposes? Yearout- you give them an Ag Exempt permit. They have to sign the Ag Exemption form saying that they are using it for Ag purposes, and that if the purpose ever changes, it must be permitted appropriately. Yearout commended Tajchman for doing a good job as the Marion County Zoning Director.

d.) Planning Commission Annual Dinner- Kraus suggested having the dinner at the Elgin House. McGreggors was also mentioned. Tajchman will get bids for catering and check on a facility to have the dinner at.

9. Adjournment

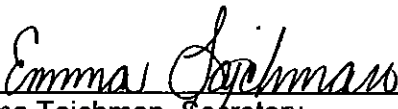
Inlow motioned to adjourn, Vannocker seconded. The motion carried unanimously. Kraus adjourned the meeting at 8:14pm.

PASSED and APPROVED [DATE].



Nick Kraus, Chair

ATTEST:



Emma Tajchman, Secretary