

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

RECORD OF PROCEEDINGS

July 28, 2016

**Members
(Present)**

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

**Members
(Absent)**

Brad Vannocker

**Staff
(Present)**

David Yearout
Emma Tajchman

1. CALL TO ORDER & ROLL CALL

Chair Kraus called the meeting to order at 7:31 p.m. and declared a quorum with eight members present.

2. NEW BOARD MEMBER

Dwight Flaming was sworn in by Emma Tajchman, Secretary, as a member of the Marion County Planning Commission and Board of Zoning Appeals. Flaming will fulfill the remainder of Dan Mount's term.

3. APPROVAL OF MINUTES – Consideration of the May 26, 2016 Record of Proceedings.

Bina moved to approve the May 26, 2016, meeting minutes with edits. Edits consisted of correcting the members present to include Kathy Inlow. Belton seconded the motion and it carried unanimously.

3. OLD BUSINESS ~ None

4. NEW BUSINESS

a) Case No. PC-16-02, the application of Westar Energy, agent, on behalf of Blair R. Tharp and Nancy C. Tharp, Co-Trustees of the Blair R. Tharp Revocable Living Trust, owner, requesting a Conditional Use Permit for the construction of an electrical substation.

First date of publication for the notice occurred on July 6, 2016. The notice was published for one week. No conflicts of interest or outside contact with the applicants were reported by PC/BZA members. Tajchman reviewed the staff report, requesting a

Road Maintenance Agreement during the time of construction. This should be made between Marion County and Westar and approved by the Board of County Commissioners. Westar representative, Katie Walbridge, reported. The existing Florence Junction Substation does not have breakers. Breakers increase reliability and are included in the proposed project. Anticipated construction would begin in 2017 and continue through 2019. The existing substation would be demolished upon completion of the new project. The site area will be slightly larger than described on the Development Plan submitted with the application, but still contained within 4 acres. Westar intends to purchase approximately 40 acres at this location. The remaining acreage will continue to be used for agricultural purposes. Kraus inquired as to why so many acres were needed. Walbridge explained that it is Westar policy to buy as much property as possible at a location, so that any future expansions can be made. There are no current plans for such expansion. Avery inquired whether an expansion would require a CUP. Yearout explained that this type of situation would be brought back to the Planning Commission to modify the existing CUP. Walbridge resumed her explanation of the current plans, stating that one transformer is proposed; however two additional transformers could be added within the proposed fence line. Yearout noted that any future construction within the fence line as shown on the site plan would be approved at this meeting. Zoe Drury, Westar representative, noted that their design standard includes 100 foot property line setbacks. Tajchman recommended approval of a conditional use permit for an electrical substation. There were no further comments and the public hearing was closed. Bina moved to approve. Belton seconded and it carried unanimously. This will be taken to the BOCC for final approval on August 15, 2016.

b) Review of recommendation for amendments to the zoning regulations concerning wind energy development standards.

Yearout presented Planning Commission members with a memo proposing updated definitions, and removal of the overlay district. The memo also provided examples of WECS regulations that apply in other counties. Yearout noted two main items to address: overlay district and WECS regulations. The overlay district was created in 2004. Since then, technology and the availability of transmission lines have changed. Our current regulations require extensive documentation. It is reasonable to request some documentation in advance, but other items are difficult to provide prior to project approval. The information requested can be expensive to obtain, and Marion County may not have anyone on staff qualified to evaluate the data once collected. The process should, simply put, consist of land owner approval, some data, zoning, then design and marketing. Investors will request data. Yearout would recommend removal of the the overlay district and simplification of WECS regulations. Avery stated that the overlay district was developed based on wind energy at the time. Due to technological advances, it is no longer relevant. Regarding regulations, how would a red flag in any of the reports be addressed if data were collected after permitting of the project? Yearout explained that the permit conditions can be written to address environmental laws. Belton inquired as to the next step in the amendment process. Yearout explained that a public hearing may be called for at the August meeting. Since this is a text amendment, a legal notice is published, but no land owners are notified. Bina stated that he was in favor of changing the overlay district, and Schmidt noted that it is logical to update the regulations. Yearout will provide proposed language that can be reviewed in my office prior to the August meeting. It will be a live document and the Planning Commission will have the ability to further modify the language. Bina noted that Dickinson's regulations are very minimal.

Brice Barton, representative of Diamond Vista Wind Project, spoke in regards to a memo sent by Diamond Vista Wind Project to the Marion County Planning and Zoning

Department. Copies of the memo were provided to all members of the Planning Commission and members of the public present. Barton stated that zoning allows for local authority, but some counties have no zoning or some with zoning may be too lenient (i.e. Dickinson). He then noted specific items within our current regulations that need updated due to changes in the industry. These included definitions pertaining to tip height and how it is measured, and minimum clearance. Is the tip height measured from the edge of the turbine or the center? The minimum clearance in the current regulations is too large. Approximately 70 feet would be more reasonable. Many of today's wind turbines could not be constructed under our current regulations. Rex Savage commented that he would see a benefit in having the clearance at 50 or 60 feet. Barton continued that he would send documents explaining tip height measurements. He then noted concerns regarding the current sound regulations. Sound is difficult to measure and interpret. Barton feels that noise regulations should be removed and responsible setbacks enforced, because if setbacks are met then sound should not be an issue. The primary reason is the means of measurement for setbacks are much easier. There are too many factors that can alter sound measurements. One suggestion was to use tower height plus x feet for setbacks. Kraus inquired about turbine height changes and the potential for increased heights in the future. Barton explained that due to today's cost, it is unlikely that a tower would be replaced once constructed, in most instances it would be repaired. 500 feet is the maximum height allowed by federal guidelines, which is unlikely to be reached in the wind industry. Barton also asked that the term 'residential structure' be defined in more detail. Other items Barton noted as needing addressed included Road Maintenance Agreements (RMA), Power Purchase Agreements (PPA), and inspections requiring a structural engineer. As the regulation read, do we require they obtain an RMA at the state level? Barton understood the need for agreements at the county and township level. He stated that a PPA is often obtained far in advance, and most windfarms in Kansas would not be constructed without this already in place. Structural engineers approve plans initially, but are not on site regularly to approve day to day construction as current regulations request.

Savage then noted some items he would like addressed. He stated that there was no benefit to leave tip clearance requirements as they are, and requested that 'start of construction' be better defined. In regards to historic landmarks, Savage feels that specific setback requirements need to be made very clear. In other conversation, he had been told cell towers use a setback of one half mile per 200 feet vertical. Barton added that they establish areas and/or corridors where the landmark or historical trail is not evident. Savage continued with his comments. He stated that the effective timeframe for a Conditional Use Permit should be modified. He then explained the evolution of the WECS Regulations in Marion County. He noted that changes have been made. The overlay district was initially created due to the transmission line. This was well intended and well planned, but is no longer beneficial. He is still in favor of requiring avian and other environmental studies, as they are not difficult for the lay person to interpret. There are other reports required where that may not be the case.

Greg Musil added that building permits would be another checkpoint for setback requirements.

Kraus inquired of any additional comments. With no additional comments, the next steps of the Planning Commission were discussed. The option to prepare a draft and notice for the August meeting addressing the Overlay District and the WECS regulations was not feasible due to time constraints. Another option would be to prepare a draft to evaluate at the next meeting and schedule a hearing for September. Avery stated that she would prefer a draft to evaluate. Then hold a public hearing with a draft all board members have reviewed. Holding a work session would be another option.

Barton stated that an application from Diamond Vista Wind Project is in progress. They have approximately 35,000 acres leased and would like more. Is there an option to remove the overlay and continue working on the other edits?

Yearout confirmed this is a possibility. The overlay district can be addressed at the August meeting. Avery felt this was a fair compromise. The overlay district has served its purpose but is now outdated.

Avery made a motion to hold a public hearing to discuss amendment of the WECS Overlay District, making the WECS Regulations applicable county wide, subject to a public hearing on August 25th, 2016. Further discussion of WECS Regulations will continue at the August meeting. Bina seconded the motion and it carried unanimously.

6. ADJOURNMENT

Bina moved to adjourn at 9:05 p.m. Belton seconded the motion and it carried unanimously.

PASSED and APPROVED [DATE].



Nick Kraus, Chair

ATTEST:



Emma Tajchman, Secretary