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MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS
RECORD OF PROCEEDINGS

March 2, 2016

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Chairman Nick Kraus called the meeting or order at 6:30 p.m.

Roll Call was answered by Kraus, Jeff Bina, Kathy Inlow, Jim Schmidt, Marty Dalke, Brad Vannocker, Kathy Inlow and Derek Belton. Zoning Administrator Tonya Richards and Consultant David Yearout were both present. Dan Mount and Mary Avery were absent.

Kraus asked for corrections, or additions, to the Record of Proceedings for the April 2, 2015, meeting of the Marion County Planning Commission/Board of Zoning Appeals. It was noted Secretary Margo Yates has resigned her position as secretary. The future plan is to have the new planning and zoning assistant will be responsible for future minutes. Bina moved to approve the Record of Proceedings, and Belton seconded. In favor: 8; Opposed: 0; Motion carried.

Item 4: Application number PC-16-01. Applicant is requesting a conditional use permit for the installation of six one hundred ninety seven foot temporary meteorological (MET) towers in the "A" Agricultural Zone District. This application was published in the February 10, 2016, issues of the *Marion County Record*, *Hillsboro Star Journal*, and *Peabody Gazette Bulletin*. Kraus asked members if anyone had a conflict of interest with this application, or if any member had any outside communication concerning this application, and no one did. Brice Barton with Tradewind provided a powerpoint explaining what Tradewind is and what they've done as a company. He explained they're a developer. They develop projects from inception to construction. They manage through construction, the next step is to own and operate the windfarm. Tradewind does not own or operate windfarms after construction. They partner with Enel Green Power (EGP), who have bought all but one of Tradewind's projects. All the projects Tradewind is currently building, Enel owns. They are the owner/operator of the largest renewable supplier in the world. Enel is the second largest utility in the world with an 80 billion dollar market cap. What Tradewind does is very expensive, so it's important to have a partner with deep pockets, Barton said. There's a 97% chance of the owner of Diamond Vista being EGP. EGP is responsible for 1800 megawatts of wind generation currently and have 1252 turbines in the US. Which totals about 1800 mw. Tradewind has 11 projects, totaling more than 1000 mw that span from south TX, all the way to North Dakota. Oklahoma and Kansas have the majority of these projects. Tradewind also has a small solar division but the focus is mostly wind. Kansas projects include the Elk River

project in Elk Co., Smoky Hills, Buffalo Dunes and Minneola. Minneola will be 600 megawatts, the largest windfarm in KS.

The Diamond Vista project in Marion County will have six 197' tall meteorological towers (MET). They will be anchored to ground by eight guy points and powered by a solar panel. No infrastructure or utilities are needed. Red and white alternating marker balls will be located on top and on the guy wires. Wind is the fuel source, which predicts energy production. Barton continued by explaining you can't finance a windfarm without good wind data. This is the energy standard. The turbine manufacturer has to prove it can produce. And in order to obtain financing, the developer needs to prove they can pay the money back. Installation of each MET tower takes about a day. 6 to 12 towers per project is typical. The project locations are included in the development plan. The tower numbers are #0160-0660. Each tower meets the equal distance from the property line as the height of the tower per county zoning regulations. They meet FAA lighting requirements because they're below 200'. Any tower unused for 12 months will be pulled. They will be used daily for wind data collection. Reclamation of the site is removing the tower. Security on a temporary tower is a possibility. Estimates can be obtained to determine what it would take for a third party to take them down for county commission.

The proposed size of the future windfarm could be as large as 300 megawatts. Earliest possible construction would begin in 2017. That would be a super aggressive timeline. The economic impact would create 100 plus construction jobs and flow approximately 45 million dollars through the county. In conclusion, Barton said Tradewind signed 10 year agreements with the landowners. He is confident that this site will work but without wind data they will never know. Diamond Vista is a separate project. He understands Tradewind will have to come back to the PC board to get a CUP to obtain approval for a proposed windfarm. Kraus asked if anyone from the public wished to comment on this application. Kraus made a point that the public is only to speak about MET towers, not a proposed windfarm today. David Mueller, Tampa, said one of the proposed ^{MET} towers is just across the road from where he lives. He has no problem with it. It meets all the requirements. As a local adjoining landowner, he is in favor. Steve Schmidt, McPherson, also Marion County landowner, spoke for himself and the Santa Fe Trail Association. Schmidt said the Santa Fe Trail traverses Marion County from around Lost Springs through Tampa, Durham and into McPherson County just north of Hwy 56. This trail is a National Historic Trail designated by Congress. The National Park Service and Santa Fe Trail Association work collaboratively to promote the history and heritage of the trail and to protect trail resources. There have been five projects completed in Marion County. In reviewing these types of projects their number one goal and request is to prevent building something on top of the trail where the trail is still visible. Marion

County is blessed with exceptional visible remnants of the Santa Fe Trail and they'd like to see them protected. Secondary goals are preventing construction where the trail is but ruts are no longer visible. In aerial photos of plowed and cultivated fields, when the moisture conditions are just right, you can still tell exactly where the trail is. Sometimes when you plow the field where the trail used to be, the trail is visible after plowing. The dirt turns up with a different texture and sheen. That's a resource they'd like to see protected. It's unique to have a visual landscape where you can stand where the trail was active from 1821-1866 and get a feel for the prairie. When judging visual impact, the SFA uses SCC 04-222 rules for telecommunication towers as a reasonable request. They understand those rules don't apply to MET towers or wind turbines but believe it to be a reasonable guideline. In reviewing the location of these towers, the SFA does not believe there is any impact to the trail. They are not located on the trail and are more than a half mile from the trail, based on FCC guidelines. There are no objections at this time. Schmidt explained the SFA group are not obstructionists, they believe in these types of projects, economic development and private property rights. They'd just like people to listen to their concerns and base their decisions on the best available information. He'd also like to pledge tonight to the developers that the SFA would love to work with Tradewind in a positive, cooperative manner. They have a lot of cultural resources that would save their cultural resource consultant a ton of money, they'd be happy to share information freely in any way possible. Kraus asked for Richards to give her staff recommendation. Richards reminded members of the factors to consider when recommending a CUP. Richards read her staff recommendation. Richards expressed concern the current CUP is not consistent with the purpose and intent of Marion County's current regulations. The overlay district was created over 10 years ago. The intent was saying if there will ever be wind with Marion County this is the sole location a CUP for wind can be brought to the PC & BOCC board. The overlay district runs north and south of Hwy 50 between Peabody and Florence. Currently, this application is outside that district. Everyone understands these are only MET towers, but it must be noted MET towers are a precursor to a windfarm and the area designated is not appropriate for commercial wind energy at this time. As a board, we need to decide how the county wishes to move forward. Do we want to expand the overlay district or remove the overlay district or retain the current regulations? Richards stated options are; 1) table the application until suggested draft regulations are available regarding the overlay district 2) deny the application based on the current intent of the regulations 3) or approve the application with suggested new language regarding amendments changing the boundaries of the existing overlay district or removing the overlay district in its entirety. Yearout expressed he was not the consultant when the overlay district was created. The county was very thorough developing the overlay district. He doesn't know if it's fair to the applicant or landowners to approve MET towers knowing a windfarm cannot be approved at this time. The overlay district needs to be discussed with the

county commissioners and possibly reevaluated. Yearout stated on the horns of a dilemma with the board, the fairest thing would be to table the application and to request a meeting with the county commissioners to discuss how to move forward. A hearing process is required to amend the current regulations. Richards stated if the county makes it completely clear to Tradewind that if we approve six met towers, we don't have zoning in place to approve a windfarm in the applicants area. If Tradewind were to come forward with a windfarm application, the county does not have regulations in place to approve it at this time. Barton introduced his staff, Briana Bocca, developer assistant. Brad Ford, lease agent. Andria Colby, biologist. Greg Bugle, legal counsel. Barton stated Tradewind knew the risks coming in. They met with Richards prior to applying for the CUP. The overlay district is based on three things; wind, access to transmission and density of homes. What better way to prove it's windy than with met towers. Access to transmission, they've applied for interconnect now that keystone pipeline exists for transmission, and the density of homes is no different than the southern project. As a company, they are willing to put up MET towers and know they may never build a wind farm with the current regulations. They are fine with those conditions and are willing to take the risk. Kraus asked what the success rate in KS for Tradewind is? Barton said close to 90%. Kraus said he doesn't think the PC board will address the regulations until a CUP comes forward for a windfarm. If the towers go up and the data isn't good, why would the board waste their time changing the regulations? Barton said within a six month time frame they should have good wind data available to know whether they will pursue a CUP or not. Barton said they designed their met towers with the understanding of where the Santa Fe Trail is located. A desktop cultural would be done in the future. This includes going to museums and the state historical preservation office (SHPO). SHPO will consult with the Santa Fe trail throughout the process. Barton said they've found remnants, broken glass, pottery, tools and arrowheads in the past on other projects. It becomes a cultural site at that point. Kraus asked if there were other questions. Yearout stated he isn't an attorney, but wants it noted Wabaunsee, Geary and McPherson county prohibit wind, all for different reasons. There are places that have done that. It has gone to court and the decision has come out that counties do have the right to make that decision. Marion County did, not arbitrarily, and the courts decisions support what Marion County has done with the overlay district. However, it's appropriate to discuss whether that's still valid today. The alternative is to let this stand on its own. In spite of whether the wind blows or not, it takes up to two years to know wind patterns fully. Kraus asked if they take the towers down, does the CUP go away? Yearout responded with no, this CUP can be tied to meet only the need of the met tower time frame and would become null and void upon the removal of the towers. A CUP is treated like a rezone, it's good forever, unless tied to a timeline. Kraus closed the public hearing for this application. Kraus reminded members of the factors to consider for a CUP. Belton moved to recommend to the county commission approval of six one

hundred and ninety seven foot temporary meteorological (MET) towers, for Tradewind Energy, Inc. in the "AG" Zone District as presented in the development plan, with the following conditions: 1) The location of the towers must be such that they meet the distance requirements from all property lines. A zoning permit is required for each tower to verify compliance with regulations. 2) These towers are temporary, allowed to collect data for a period not to exceed five years. A progress report is required within one year. 3) This CUP becomes null and void upon dismantle and removal of the MET towers. 4) All state and federal permits be obtained and maintained. Recommend that all antennae and support structures meet or exceed current standards and regulations of the F.A.A. and the F.C.C.; should such standards or regulations be amended, then devices and structures shall be brought into compliance as mandated by the controlling agency. 5) In the case of an "Act of God" event, the towers will be willfully removed and a CUP will be reapplied for. Vannocker seconded. In favor: 8; Opposed: 0; Motion carried.

Kraus asked Richards about the timeline and she said this application will go to the county commission on March 21, 2016.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

Nick Kraus,
Chairman

Tonya Richards,
Secretary