



MARION COUNTY COURTHOUSE

MARION COUNTY, KANSAS
OFFICE OF THE COUNTY CLERK

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COUNTY COMMISSIONERS
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January 3, 2018

Dear Planning Commissioners:

In 2016 we amended Article 27 of the Marion County Zoning Regulations with respect to WECS. In part those amendments changed the prior practice of having open-ended Conditional Use Permits with a structure under which a WECS project had to be commenced within two years of the approval of the CUP (allowing for one one-year extension in appropriate circumstances).

Requiring a timely commencement of a use approved by a Conditional Use Permit achieves several important public purposes:

- (1) The pending potential construction of a WECS project may impact the uses of neighboring properties and alternative development approaches. Therefore a CUP for a project that has not yet been commenced and the viability of which remains uncertain imposes a burden on the public in that it may prevent other desirable land uses from being implemented even when a WECS project is not actually going to be constructed. Providing a deadline for the commencement of the WECS project means that this public burden exists only for a limited period of time rather than indefinitely.
- (2) Over time land uses and development patterns change. Changing circumstances through the passage of time may mean that conditions to a CUP that were not necessary at the time it was granted have become important by the time construction commences. The longer the delay between the approval of the CUP and the commencement of construction, the greater this potential problem becomes. Limiting the time period after the approval of the CUP within which the WECS project must commence gives the County the ability to build protections into the CUP that best fit the circumstances and land use planning goals as they exist at the time the project is actually going to be build.
- (3) Over time as more WECS projects are developed, both the industry and local governments gain greater experience with the operation and effects of WECS projects. As a result best-practices in the industry and in the regulation of the industry through CUPs evolve. An open-ended CUP impairs the County's ability to follow, or require the developer to follow, best-practices as they exist at the time the project is actually developed.

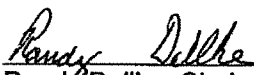
The Marion County Commission recognizes that altering the Marion County Zoning Regulations after the issuance of a CUP can be burdensome for the holder of the CUP when the changes impose new limitations or burdens. Consequently, we believe that it is important for policy reasons both to provide a deadline for commencement of construction under all WECS project CUPs and to set that deadline far enough into the future to provide existing CUP holders a reasonable opportunity to meet it.

As a result of these considerations, the County Commission, pursuant to Section 24-101 of the Marion County Zoning Regulation, hereby submits to the Planning Commission for public hearing, recommendation and report the following amendments to the Marion County Zoning Regulation, Article 27, Section 27-106:

27-106 Special Regulations Applicable for Conditional Use Permit for WECS: Evidence of a market for the electric generating capacity of the WECS shall be submitted to the Zoning Administrator prior to turbine construction and the issuance of a construction permit. Developmental rights, and any other rights granted by the issuance of the Conditional Use Permit will continue under any extensions, reissuances, renewals or assignments of the original lease as long as the Zoning Administrator is provided with documentation that a lease for the project was continuously maintained in effect. Also, as noted elsewhere in this Article, the "timeline" restrictions in Article 12 and Article 19 are not applicable to a WECS project because of the overall time for the development and construction thereof. With respect to a WECS project approved prior to December 2016, a construction permit must be applied for, for the installation of one or more wind turbines, on or before April 1, 2020. If construction cannot be commenced promptly upon the approval of the construction permit, the applicant may obtain a single one-year extension upon submission of a written report to the Zoning Administrator setting forth the reason(s) for a delay and the plan for commencing construction within the one-year extension period. With respect to a WECS project approved after the adoption of this section, ~~1- For all Conditional Use Permits approved for a WECS project,~~ a construction permit must be applied for within two (2) years of the approval of the CUP. If construction cannot be commenced within that two (2) year period, the applicant may obtain a single one-year extension upon the submission of a written report to the Zoning Administrator setting forth the reason(s) for a delay and the plan for commencing construction within the one-year extension period. A failure of the holder of a Conditional Use Permit approved for a WECS project to timely apply for a construction permit or to timely commence construction shall result in the automatic termination the right to a WECS use under the CUP and of the CUP.

~~2-~~ Subject to the previous provision, for For all Conditional Use Permits approved for a WECS project, such permit shall be allowed to continue, as long as all conditions placed on it are met. However, if the WECS project use ceases to exist for a period of two (2) years, the CUP will forfeit its Development Plan and will not be allowed to exist again unless a new application is made, a public hearing held, and a new Development Plan approved. However, the applicant may obtain a single one-year extension upon the submission of a written report to the Zoning Administrator setting forth the reason for the temporary cessation of operations and the plan of initiating operations. The County may initiate an action to remove the Conditional Use, but must follow the same procedures as followed to establish the Conditional Use originally.

Sincerely,



Randy Dallke, Chairman
Marion County Board of Commissioners