

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

**RECORD OF PROCEEDINGS**

**March 8<sup>th</sup>, 2018**

**Members  
(Present)**

Marty Dalke  
Brad Vannocker  
Derek Belton  
Jim Schmidt  
Mel Flaming  
Kathy Inlow  
Jeff Bina  
William Kroupa

**Members  
(Absent)**

Dwight Flaming

**Staff  
(Present)**

Emma Tajchman  
Sharon Omstead  
Russ Ewy  
Katherine Young

1. **CALL TO ORDER & ROLL CALL**~ In the absence of the Chairman and Vice Chair\*, Secretary Tajchman called the meeting to order at 7:00 p.m. and declared a quorum with 6 members present. Also in attendance were 4 staff. D.Flaming, absent. Pat Hughes, attorney representing Marion County, present for a portion of the meeting. Newly appointed members, Jeff Bina and William Kroupa were sworn into office by the PC/BZA Board. (\*Note- Kraus, previously serving as the board Chairman, tendered his resignation to the Board, Jeff Bina was appointed by the Board of County Commissioners to serve the remainder of Kraus' term, and William Kroupa was appointed to represent District #2. See Dec. 18, 2017, Dec. 29, 2017, and Jan. 8, 2018 Record of Proceeding, Board of Commissioners, Marion County, KS)
2. **Reorganization of the Board**~ Belton nominated Jeff Bina to serve as Chairman. Inlow seconded the motion, carried (7-0-0, Bina recused). Bina made a motion to nominate Belton as Vice President. The motion was seconded by Schmidt. Motion carried (7-0-0, Belton recused).
3. **APPROVAL OF MINUTES**~ Consideration of the December 7<sup>th</sup>, 2017 Record of Proceedings. Schmidt motioned to approve minutes as presented. Belton seconded. Motion carried unanimously (8-0).
4. **New Business~ Discussion concerning amendments to Marion County Zoning Regulations, Article 27-Wind Energy Conversion Systems (WECS) Overlay District.** Bina introduced Pat Hughes, Attorney representing Marion County. Hughes stated he practices in Wind Energy and Zoning Issues. He helped draft the letter to the Planning Commission requesting an amendment to the WECS regulations. Prior to updating the WECS Regulations in December 2016, there was no 'end date' in regards to applying for a construction permit. Regulation amendments since 2016 give a two-year period for which construction permits must be applied for and commenced, or the CUP becomes non-existent/not valid. Quoted from the letter to the Planning Commission, "(1) 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 built. (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 which 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 BOCC has issued the letter requesting an alteration to WECS regulations in effect prior to 2016 (affecting all WECS CUPs approved prior to December 2016), requiring a construction permit to be applied for on or before April 1, 2020. If construction cannot be commenced promptly upon approval of the permit, a one-year extension may be granted upon submission of a written report to the Zoning Administrator. The BOCC's wish is to not tie up land indefinitely. If the CUP holder does not apply for a construction permit by the deadline, the CUP is no longer valid. Bina opened discussion to the public. Dan Baffa from Salina, asked for a siting map for the proposed wind towers. Tajchman -those maps are available at the Planning & Zoning office during business hours. It was reiterated that the issue at hand is making revisions to Article 27 WECS. Nick Peter stated he lives in the area of a proposed wind farm. He has been waiting for 7 years to see if the project is going to go in or not. He is interested in building a new house at that location, but not if the project proceeds. Tom Britain- there are people that want to move here, but they worry about whether they can even sell their land, if they will have to take a loss. Britain has no desire to live by turbines. Britain expressed an issue with the officer that was appointed to the Board. He feels like it was a self-appointment. Rex Savage, Windborne Energy- tendered a letter to the Marion County Planning Commission. We were surprised at the county's wish to revisit this issue. Even though the timeline is a downgrade, we can comply with that. Savage will confess as a taxpayer and citizen, he doesn't like the additional language and the tens of thousands of dollars that have been spent discussing circles around land use. You have talked around the issue, micro-management type conversations, and then worked your way back to the land use issue. If you wish to continue with the 'shelf life', we will go along with you. Bina offered discussion to the public again. (none) Bina closed the public hearing and opened discussion to the Board. Bina asked about the evidence of a market. Vannocker said he would like to see a timeframe put on previous CUP's. M.Flaming asked Mr. Hughes about his insight on putting the evidence of purchase into the letter provided to the board. Hughes said he did not know for sure the intentions of the BOCC. (Discussion amongst the board) The Planning Commission would prefer to not have a requirement for the evidence of a market, such as a PPA (Power Purchase Agreement). Hughes said he can speculate what the BOCC was interested in. If a CUP owner shows a PPA, they have a very strong intent to build the project. The problem with that requirement is, once that "box is checked" during the initial review process, you have no way to check on it again after that. Savage -at the time the initial regulations were written, it was a valid point to have a PPA. Now, electricity is treated like a commodity. Financiers put a lot of consideration into the viability of a Project before investing a lot of money. It is no longer necessary to show proof of a PPA because of all that goes into that process. That marker was done with the IRS when our project began. We have no problem in a regulatory change to deal with the end date issue. I recommend that you have a letter or attachment signed and placed with the existing CUP instead of changing the regulations. Inlow asked how it affects landowners if the county puts an end date on CUPs prior to Dec. 2016. Ewy- the governing body has the authority to go back and review an existing CUP and take the CUP away if they have good merit. The proposed letter is a middle ground- allowing a CUP that may be reviewed and (ended), a chance to apply for a permit and continue the CUP. Bina clarified that if the Planning Commission approves to recommend the revisions, the BOCC has the final decision. Tajchman said that from an administrative point of view, she does not see the value of keeping the first sentence of the recommended revisions pertaining to an evidence of a market for the electricity. As Mr. Hughes said, we have no way of enforcing or monitoring it. Belton moved to recommend the amendments as presented by Mr. Hughes, and, striking the first line of the revisions (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). The motion was seconded by Vannocker, and passed unanimously (8-0).

5. **Discussion concerning amendments to Marion County Subdivision Regulations, Article 3- Lot Splits and Boundary Shifts**~ Tajchman explained that the maximum acreage defined in the zoning regulations for Agricultural Lot Splits is not consistent with the intent of land use at this point. Agricultural Lot Splits have become more common lately for purposes such as refinancing. An 11-acre lot split cannot be approved administratively. We have to go to the BOCC every time a rule exception is needed. Bina called for public comment. (None) The public hearing was closed. Inlow asked if the minimum would stay at 3 acres for existing houses. Tajchman -yes, the minimum will stay the same. We are only interested in

striking the maximum. Sometimes, due to the layout of a farmstead, it only makes sense to split off 10 acres or more. You don't want to exclude a building, for instance, to stay under the 10 acre-maximum. Inlow asked if utilities (wastewater system, etc) have to be on the tract containing the house. Tajchman -yes, the utilities would remain on that parcel. In rare occasions where there is not a good way to fit the wastewater system in with the Lot Split, we then require an easement. M.Flaming asked if the land could be split again after it has been split once. Tajchman- you cannot split a 40-acre tract more than once. The intent is to keep the land rural/agricultural. Ewy- you would have to plat the land if you want several smaller tracts in a predominately agricultural area. If there is a need to have several small lots in an area like that, then you may need to look at developing a subdivision. Inlow made a motion to strike the maximum. Belton seconded. The motion carried unanimously (8-0).

6. **Recommendation for approval of amendments to the Marion County Comprehensive Plan~** Ewy- the last draft of the Comprehensive Plan (Comp Plan) was produced on Dec. 7<sup>th</sup>, 2017. A few 'house-keeping' items have been cleaned up. For instance, we explained the item about Centre school district enrollment being significantly higher than other area schools. Also, a map that was referenced in the Comp Plan was not included. As a board, it was discussed at a previous meeting that it was not relevant under the current zoning regulations. Bina asked for any comments or questions from the board or public. (None) Belton moved to recommend adoption of the Comp Plan as presented. Seconded by Kroupa, motion carried unanimously (8-0).

7. **Old Business~ (None)**

8. **Off Agenda Items~**

There will still be a regular March meeting on the 22<sup>nd</sup>. Revisions to the floodplain regulations, and a CUP application will be considered.

Tajchman expressed gratitude to the Board members for their time and involvement with the Planning Commission. Kraus commended William Kroupa and expressed confidence in his abilities to serve on this board.

Discussion about Planning Commission Bylaws- This will more than likely be a discussion item at the April meeting. Items such as a 'force majeure' clause, an At-Large board position, and rules of order need to be discussed.

9. **Adjournment~** Vannocker motioned to adjourn, Dalke seconded. The motion carried unanimously (8-0). Bina adjourned the meeting at 8:02pm.

**PASSED and APPROVED (Date)** March 22, 2018



Jeff Bina, Chair

**ATTEST:**



Emma Tajchman, Secretary

