

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

**RECORD OF PROCEEDINGS**

**October 27, 2016**

**Members  
(Present)**

Nick Kraus, Chair  
Mary Avery  
Dwight Flaming  
Brad Vannocker  
Derek Belton  
Jim Schmidt  
Kathy Inlow

**Members  
(Absent)**

Marty Dalke  
Jeff Bina

**Staff  
(Present)**

David Yearout  
Emma Tajchman  
Sharon Omstead

1. **CALL TO ORDER & ROLL CALL**~ Chair Kraus called the meeting to order at 7:33 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 September 22<sup>nd</sup>, 2016 Record of Proceedings. Avery moved to approve the September 22<sup>nd</sup>, 2016 meeting minutes, Belton seconded the motion and it carried unanimously.
4. **OLD BUSINESS** ~ Amendments to Marion County Zoning Regulations regarding Commercial Wind Energy Conversion Systems.

Chairman Kraus called for discussion on the proposed amendments to WECS regulations, Article 27. The board will only be discussing Article 27 today; any other amendments to any other Articles would need to take place at another meeting. Yearout began by going through the proposed amendments from last month's meeting. Flaming asked if there is a down side to saying "West of 77 Highway?" in reference to Article 27-103. Avery suggested making a change in the comprehensive plan instead of wording it specifically in Article 27. There was discussion about surrounding counties, and their regulations regarding Wind Energy. Some have strict regulations, some do not have any. Yearout stated that the reason we modified the "Overlay District" is because of factors that have to do with transmission, and current situations. Yearout pointed out that you could leave it the way it is (less restrictive), but you never know what the future holds (referring to the possibility that a future Planning Commission Board, Governor, or other regulatory board, may not be as concerned with sensitive areas within the county, such as the Flint Hills, and may not base their land use decisions on those areas). Tajchman reported that The Nature Conservancy stated they would have an issue with development being done east of Highway 77. They are concerned that the Overlay was opened to the entire unincorporated portion of the county. Yearout- the County doesn't have a regulating board or regulatory laws to review specific studies. The county should only choose the best land use; the only regulatory gap that allows a choice. All you're doing is looking at the location and mitigation as to environmental impacts. Belton countered by saying, the board feels like we want to respect the Moratorium (set forth by the Governor). The question is not "whether or not we want to state it", it's "where" do we want to state it? In the regulations, or in the Comprehensive

Plan? Yearout said, the Moratorium has no 'teeth'; there is nothing legally that can be done if a county issues a CUP (Conditional Use Permit) there. Brice Barton, Tradewind- it's when a group of landowners get together and want to challenge the Moratorium and claim the land, that's when there would be an issue. Yearout mentioned that putting it in the Comprehensive Plan shows that it is accepted by the County. You are identifying things that are permitted. Kraus agreed that would be a discussion for another time if we are going to put it into the Comprehensive Plan. But for now (to put it into Article 27), it is hard to make a general statement in regard to land use east of Highway 77. Some areas would be good for development, some would not. Avery feels that using generic wording is good; it lets the developer decide on a good area for their particular project. She believes developers will show respect about where they decide to build. At the time, it was a good decision to place the Overlay District where it was; because it was something new and there were a lot of unknowns. Now, she feels it was not a good idea to restrict development to just that area. David Mueller, also on the Board at that time, agreed. Yearout emphasized that the time was different then, and it was based on the needs then. The current situation is different. Avery asked if the intent tonight was to go through the regulations and make a motion to approve what has been discussed. Yearout- the intent tonight is to review the amended portions of Article 27 (from his document), and then he will draft another document. It is a working process- we can come up with a final draft before any changes are voted on.

Barton asked about 27-107.2 "agriculture/residential accessory structure." That could be basically anything- a hay shed, a barn etc. Barton feels that could be taken to an extreme. Technically, a mailbox is considered a structure. He suggested that sentence be eliminated, or make the distance shorter. Flaming asked what the original intent of that verbiage was. Yearout- felt it was intended to eliminate buildings that were not being used. If you are offered a lease that says you cannot have structures within 50 feet of a turbine tower, you will gladly tear down an old shed that is not being used. Barton suggested another solution may be that the property owner has the right to waive that distance for non-residential structures. Yearout pointed out that if the 'Good Neighbor Agreements' are not recorded, how is the County going to know about them? Barton said they (Tradewind) would get a copy of agreements to the County. Rex Savage said that the County has theirs recorded (Land Owner Agreements with Windborne). Greg Musil, Tradewind Attorney- the second paragraph of Article 27-107.2 may cover the issue of what structures. It defines "participating" pretty well. Musil asked what defines "existing?" Yearout said, upon zoning approval. Yearout- I will come up with a draft (of amendments to Article 27) and bring it back to the board for review. Kraus agreed that continuing discussion would be a good idea.

Tradewind shared their red-line document from the last's months meeting with the board. In regard to total tip height, Yearout says he is comfortable with 27-107.1B (not specifying a height of the tower). Barton asked about 27-107.3 He said Tradewind rarely puts lines above ground at public rights-of-way. Musil- we won't use an easement, we use a 'lease' because they cover the entire property. Barton- an 'easement' is a portion of the CUP area, where a lease is the entire property. Using the term "Or other legal document" would give clarity for us (Tradewind). Yearout asked about minimum rotor blade height: what is feasible? Savage and Musil say 50 feet is good enough- our towers would meet that. Inlow mentioned that 27-107.9 wording in the last sentence is not grammatically correct. Savage- The FAA (Federal Aviation Administration) has started to allow perimeter lights instead of lights on all towers (27-107.8). Barton says the FAA suggests that tower lights be synched together even with other company's towers. Barton- In 27-107.11 you added 'occupied' and in 27-107.12 you didn't; was wondering if you want it to be consistent. There was discussion about 27-107.18, 55 decibels may be unreasonable. Tajchman- a Dickinson County resident contacted our office wanting to make Marion County residents aware of negative effects of vibrations and decibels. Musil and Barton- Are the regulations saying that you cannot add more than 55db to the ambient noise? If ambient is 50db,

you add 55db with the turbine- that's 105db. Quoted from 27-107.18 "audible noise created by the WECS shall not exceed 55 decibels." Some people are under the misconception that they can be under a tower and should not hear more than 55db. There was further discussion about 27-108 Power Purchase Agreement (PPA). The CUP follows the life of the lease. There was a suggestion to take out the first sentence of 27-108. Also suggested that the section be renamed, "CUP Term". Avery stated that the county needs copies of the leases in order to monitor validity. Kraus- it's hard for the County to 'police' leases. Barton suggested that recordation could be a requirement put into the CUP, which would make the owner responsible for communicating with the Zoning Administrator. Musil- whoever holds the CUP should have to determine whether the lease is still valid. That shouldn't be the County's job. Savage- The specifics of the lease have to be made of record before construction can begin. Yearout- you could reserve the right to review the operation. Revisit in a year to say that everything is still happening like it should (construction has started). Musil- leaving time and flexibility to do a project of this extent is best. It could be put up to the company to come back to the County in 5 years and explain how their project is doing. Yearout- once the operation is going, it's not the job of the County to go poking around the financial issues. Yearout agrees with only going around the first year to see if things have started like they need to. Barton- give the Zoning Administrator the authority to bring it back to the Planning Commission if, after a year/ or 2 years, they feel construction has not begun, or has halted for an extended period? Avery- for public's sake, it is better if the Zoning Admin brings a report to the board to make the decision. That way the burden is not just on the Administrator. Barton stated that they would like to see the regulations say 2 years instead of one, with the option of a 1-year extension (Article 12-105). He stated that CUP's are a risk to them, because you can't build without a CUP. We try to get CUP's two years in advance so we are ready (on a business/ financial level) when it's time for the project to come to fruition. Savage- financiers get nervous when it becomes political. Yearout plans to go through and incorporate what has been proposed (in the draft that he will offer to the Board). Inlow asked if the new document would be renumbered, or if the existing numbers would stay (for reference) and say "deleted" if that section is removed. Yearout- we would just rewrite Article 27, it would be simpler. Kraus pointed out a grammatical error in 27-109.10. Kraus requested that Yearout's draft come to the Board as an email first, so they each can review it before it goes to the Commissioners.

Kraus asked for any other comments from the public. (None)

Yearout- we are not going to vote on anything, just continue the discussion until we have a final draft. It does not have to be closed and then re-opened for discussion, we just need to continue it. Belton motioned to continue discussion on Amendments to Marion County Zoning Regulations regarding Commercial Wind Energy Conversion Systems, at the next regularly scheduled meeting. Flaming seconded, and the motion carried unanimously (7-0).

5. **NEW BUSINESS**~ None.

8. **Off Agenda Items**~ Need to reschedule the next meeting because of a scheduling conflict with staff. After discussion, it was decided that December 6<sup>th</sup> at 6:30pm is the preferred date and time. 7:00pm is the preferred time of all meetings going forward with the 2017 schedule. Kraus- the change needs to be published in the newspaper.

9. **Adjournment**

Avery motioned to adjourn, Belton seconded. The motion carried unanimously. Kraus adjourned the meeting at 9:25pm.

**PASSED and APPROVED [DATE].**



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Nick Kraus, Chair

**ATTEST:**



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Emma Tajchman, Secretary