

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

RECORD OF PROCEEDINGS

September 22, 2016

**Members
(Present)**

Nick Kraus, Chair
Mary Avery
Marty Dalke
Brad Vannocker
Derek Belton
Jim Schmidt
Kathy Inlow

**Members
(Absent)**

Dwight Flaming
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.
2. **APPROVAL OF MINUTES**~ Consideration of the August 25, 2016 Record of Proceedings. Vannocker moved to approve the August 25, 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.

David Yearout suggested the Board not rush to conclusions about the regulations. Look over the information, take the existing regulations and amend as necessary. Yearout referenced his proposed amendments (a copy will be on file). He says he modified the first section (27-101) to narrow up the regulations. Did not change 27-102. Section 27-103 was changed to "The WECS Overlay District shall apply to all of the unincorporated portion of Marion County, Kansas." He made no changes to 27-104. Most of Section 27-105 Governing Resolution, is redundant with what is built elsewhere in the regulations and perhaps unnecessary. Yearout states that the Development Plan Submittals (27-106) don't apply to land use, so much. It is a zoning decision. Federal and State agencies have the responsibility to enforce regulations at those levels. Yearout reiterated the portion of 27-107.2 that speaks to participating structures, explaining why it is important. A new house can't come in and not like a tower in their yard. Yearout also touched on 27-107.4, the point that a mandatory Road Maintenance Agreement needs to stay in the regulations. 27-107.8 At no point shall white strobes be allowed (even though it says red, should still include 'only red'). As for 27-107.11 and 27-107.12, Yearout points out that the existing CUP stands, no matter if someone wants to move onto the land later. They have to be okay with what is happening there already. He did not have any proposed changes for 27-107.14, 15, 16 or 17. As for 27-107.18, Yearout is still toying with the 55 decibel limit; that is not very much noise tolerance. 27-108 Power Purchase Agreement (PPA), Yearout says, you don't do this on any other commercial venture; this section should be taken out. Kraus thought that the PPA had been talked about before. Yearout- yes, it was talked about, but there was never a motion made to change it. Yearout discussed 27-109.4. If you ask the windfarm to hire an inspector, the windfarm has to do it. The County is the 'client'. As for 27-109.10, the CUP will stay in effect if

the ownership changes; the agreement still stays in effect. As for Article 27 in general, Yearout doesn't feel like his proposed amendments modify the spirit and intent of the regulations. He asks the board, what special things do we need to be aware of? Maintenance on the roads is a big issue. Floodplain impacts. Something of particular note is culture- the Santa Fe Trail and other historical sites. Yearout received a call from Topeka asking about Marion County opening up for wind, asking if we were promoting it. He suggests that the Board go back and amend to "All of the county that lies west of Highway 77". He points out that there is a range of regulations, or the lack thereof, across the state. Several counties don't have zoning regulations. Some counties prohibit wind energy all together.

Avery -when the regulations were first written, we discussed the moratorium (Gov. Sebilius). Then Governor Brownback extended the moratorium. Can we add in language about "be respectful about the Flint Hills?" Yearout- I don't like to reference the moratorium because it's not a legal issue, it's an agreement. Tom Britain- you guys (Tradewind) signed the moratorium didn't you? Brice Barton, Tradewind- yes, we signed that.

Kraus asked if it would be better to change the language in our Comprehensive Plan than to go through and amend the regulations to include everything that we want to protect? Yearout- the Comprehensive Plan is referenced to make sure your decision is consistent with the regulations. Greg Musil, Attorney for Tradewind -It would be best to state that in your Comprehensive Plan so that if it (a CUP being denied) was ever challenged, then you could go back and show that you suggested to stay out of the Flint Hills. It gives you legal backing and flexibility.

Avery asked if there was any way you could state it respectfully within the regulations? Yearout- it would be best in the Comprehensive Plan. Is there a way to calm the fears without boxing us into something? No. Kraus- you revisit it. That's when you come back to it and make changes as needed. This state has been fundamentally consistent with saying that regulations need to be upheld at a local level. Barton- our Lobbyist got a call from the Governor's office. They wanted to know why we were building a windfarm in Marion County. We showed them a map of our plans in relation to Highway 77. There was never an intention to build east of Highway 77. We are trying to take out a redundant step in the regulations. They just wanted to understand our intentions. Eileen Sieger questioned as to whether someone else could be granted a CUP east of Highway 77 in the future? Barton- reiterated that it should be in the Comprehensive Plan, to prevent future ventures east of Highway 77. Kraus quested about other Tradewind projects and how the moratorium expansion has affected them. Barton showed the Board a map of the Diamond Wind Project Area (copy of the map will be on file).

Yearout did not have changes to Article 12 or Article 19. He feels that the Development Plan in Article 12 is redundant- you're saying it all in Article 27.

Barton countered by saying, they give you flexibility in Article 27, word it so that Article 27 supersedes Article 12. Rex Savage agreed with this statement.

There was discussion about where and how the Development Plan should be outlined. One concern with the Development Plan is if a structure was placed in a different location than what was proposed, then the owner would have to request an amendment to the Development Plan (possibly several times during the development period). Inlow and Belton both brought up the issue of the rock quarry that was discussed at the last meeting. Where do you stop with land intent and cross over into micromanaging? Barton- we like the word "conceptual," not "proposed." Yearout agreed, a statement of "intent." When you take it all in total, you could soften the language, but you need to have a certain specificity so that attorneys won't have an issue with it.

Article 12-105 was discussed further. Musil and Barton expressed concern about one year not being a reasonable amount of time for some wind projects. They suggested using a 2-year time restriction, with the option to request an additional year. It takes a lot of time to set up for wind turbines; access roads have to be laid out, etc. Kraus- what is considered "construction?" Barton stated that they have built roads a year in advance, then had to wait for a year before being able to construct anything. "Pouring of first foundation" because then you have a definitive start.

Musil stated concern about (Article 19-106 Continuance of a Conditional Use) a Development Plan being forfeited if use ceases to exist for a period of 6 months. Barton spoke of a generator rewind that went bad, their turbine was out of commission for 8 months. They were still paying the landowner, but not operating. Under the current zoning regulations in Marion County, they would have lost their CUP.

Barton suggested something be written into the regulations –in Article 27-107.2- to allow setbacks to be changed to 500ft if a non-participating owner wishes to become participating. The "Good Neighbor Agreement" was mentioned in regard to property owners who are not participating in the project, but are identified in the CUP. Barton also questioned the meaning of a common agricultural accessory structure in Article 27-107.2. That could be anything from a hay shed to a grain bin, etc. That could mean that turbines would have to be 500 feet away from any of those structures. He suggested that a participating owner should be able to sign an agreement regarding the distance away from agricultural structures on the property. Yearout suggested to delete the last sentence of 27-107.2.

Kraus asked Tradewind what was put into their lease agreements to protect the participating owner, in regard to setbacks. Barton- we put an exclusion area in (around the tower) if the owner wants to build a house in the future, but not exactly sure about the location. He reiterated that they try to protect the land owner too- even though there is a CUP and tower up already, they won't let them build a house 50 feet away. Savage interjected that special considerations are made all the time for land owners within lease agreements.

There was discussion about using the word easement vs. using the word lease. Barton says it is better to start with the lease (as far as owner rights), and then create an easement if you need to. Like in the case of a property owner not wanting to participate in turbines, but okay with transmission lines.

Savage, Windborne Representative, is in favor of eliminating the reference to any PPA requirement. That is purely an economic issue, not land use. However, he would like for the last sentence of Article 27-108 be left in the regulations. It contains language which insures that existing CUP and development rights continue for the life of the underlying leases. He said that deletion of this language and alteration of 12-105 could be viewed as infringing on existing CUP's. He suggests changing the title of Article 12-105 to something like, "CUP Term." With that being said, Savage feels like 12-105 almost creates a "CUP within a CUP," and is in essence, a duplicate system.

Avery asked if there were any issues from the public that need to be brought forth. Eileen Sieger expressed concern about opening the whole county to wind energy. She asked if other areas have done that? Yearout- 3 counties have banned wind completely. Other counties don't have zoning. Marion is the only county that narrowed it within the county. Sieger expressed concern about leaving the Flint Hills out only on a volunteer basis. She would like to see something written into the regulations to protect the Flint Hills. Musil- you can put it in the regulations, or you can put it in the Comprehensive Plan and deal with it when it comes up. Yearout agrees that there should be some acknowledgement put on the Flint Hills. Sieger inquired as to what the timeframe of a wind project is? What happens if the towers wear down, do you just keep putting up new parts? Barton- that hasn't happened in Kansas yet- none of the towers have reached their end life. He referenced the decommissioning process if that happens. Sieger feels the term WECS (Wind Energy Conversion System) should be used, and not wind "farm." Barton says Tradewind uses the term wind "project."

Kraus asked for any more comments from staff; there were none.

Barton expressed appreciation for Marion County. He stated that Tradewind spends a lot of time going through county regulations, and then the counties don't include any of their suggestions. Tradewind really appreciates the opportunity to have dialog and be invited to the table to discuss these issues with Marion County.

Musil requested that the legal notice be published in the paper about the October meeting so that people have a chance to look over things. Also because the proposed amendments were not technically available in the Planning & Zoning office until yesterday. Kraus asked for any other comments from the public; there were none. From the Board? Yearout said he would work on amendments to update the Comprehensive Plan, boundary of properties, etc. Discussion regarding WECS will continue at the October meeting.

5. **NEW BUSINESS**~ None.
8. **Off Agenda Items**~ None.
9. **Adjournment**
Avery motioned to adjourn, Vannocker seconded. The motion carried unanimously. Kraus adjourned the meeting at 9:33pm.

PASSED and APPROVED [DATE].



Nick Kraus, Chair

ATTEST:



Emma Tajchman, Secretary