

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

September 22, 2011

Chairman David Mueller called the meeting to order at 7:35 p.m.

Roll Call was answered by Mueller, Marquette Eilerts, Mary Avery, Dan Mount, Nick Kraus, Brad Vannocker, Lloyd Funk, and Jim Schmidt. Bob Maxwell was absent. Zoning Administrator Tonya Richards and Consultant David Yearout were both present. Mueller introduced members to the audience.

Mueller asked for corrections or additions to the Record of Proceedings for the August 25, 2011, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Mount moved to approve the Record of Proceedings as written and Vannocker seconded. In favor: 8; Opposed: 0; Motion carried.

Item 1: An application for Windborne Energy, Inc., requesting a Conditional Use Permit (CUP) for a commercial wind energy system "wind farm" generally located northwest of Florence, Kansas, laying West of Sunflower Road, South of 130th, East of Pawnee, and North of 90th, in Marion County, Kansas. Mueller reminded members they are acting as the planning commission to make a recommendation to the county commission for final approval. Mueller noted this application was published in the August 31, 2011, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Mueller explained the application review process to the audience. Mueller explained that he will ask Rex Savage to explain the application, followed by questions from board members, and then the public will be allowed to speak. Mueller asked Savage to begin explaining the project plans. Savage said this is the Doyle North #2 Project. Savage explained that project areas #1 and #2 may be seen on large maps he posted in two areas of the meeting room. Savage said they have 100 percent participate of all landowners in the green area on the maps, which includes approximately 2,500 additional acres. Savage said he has been working on this project for nine years now. Savage said he has spent extensive time and travel to view and learn about other similar projects. Savage prepared a 250 page document which each member received for review prior to this meeting. Savage said he anticipated what information members would want, and he tried to cover all the points that needed to be addressed. Savage said he dealt with 19 landowners within one block and 23 in another. He explained if there is any chance of a turbine being within one mile of someone's house he is trying to get them a little money out of the deal. Savage said he did not approach anyone if their house is not located within one mile of the project. He said the development plan is similar in format as what was used with the other project. Savage said there are three hot spots in the county for wind source. Two other areas are not addressed due to transmission issues. One such area is near Tampa and the other area is by Goessel. He said there are transmission issues however you look at it, but it is improving. Savage

said they will use the same roads and turn-offs as in the first project. He said all this has already been addressed with the first application. He said the blue prints have to be done by the time building permits are applied for, and this is the only way to go about it. Mueller thanked Savage for putting the plan together to match up with the county's regulations. Mueller noted that Vannocker was not present for the first application. Mueller explained the overlay district was established by previous planning commission members and it narrows down where a wind farm may take place. Mueller explained this application is within the overlay district, so that requirement has been met. Mueller highlighted the points that must be met. Savage said land in this new area is all basically agriculture, although there are some commercial rock quarries in the area as well. Savage also addressed utilities and towers located in the area. He said the area does not have a very high population density. Savage showed enlarged computer generated photographs of what the wind farm will look like from U.S. 50 and Pawnee, and also from Sunflower Road just south of Marion. You will see them, Savage said. They are a visible change just like other objects, he said. There will be a visual impact, he added. As for noise, Savage said that clouds, humidity and temperature all can cause sound to vary, but just slightly. Occasionally you will hear them, but only a low background noise, Savage said. Noise is not really a valid concern with the setback requirements, he said. Also, technology has improved the noise issue, he added. Savage said they used premium experts to determine any danger for birds and wildlife in the area. He said there were no specific findings of anything that would be a significant biological impact on wildlife or birds. He said the experts are very comfortable with this site. I can't say there will never be a bird killed, Savage said. Home windows are one of the top bird killers, he said. The turbines are higher than areas where many birds are, he said. He talked about problems in the late 70's and early 80's in California where many birds were killed due to migration and poor system design. Savage said now with industry standards there are few problems. He said there were two creatures of water that were identified as endangered species in the area, but that has no impact. As for the soil in the area, Savage said it is thin with a lot of rock. He said soil erosion plans will be site specific. He said some sites will take very little effort, while others will take a lot of effort due to rock. He said sod will be reestablished as necessary and top soil will need to be segregated. He addressed water quality and said surface water issues are confined to controlling erosion which will be handled by putting sod back. He said turbines will not be sited in bottoms so aquifer issues are not a concern. As for public health and safety concerns, he said construction sites will have security, proper flagging, and signage. All is doable, but need to be addressed, Savage said. He talked about high angle rescue concerns and said this is being addressed with the county commissioners. Savage said the wind company will be bound to put up money for equipment and training. As for infrastructure, Savage said being close to two highways and the railroad is a benefit. He said trucks will gain access by graveling county roads instead of wearing on Sunflower Road. He said there will be on-going funds for road maintenance. Savage explained that some projects are located in tough places to get in and out of, but not here. He added that some corners should be the only possible issue as trucks make turns. Savage addressed the cumulative impact, and said this second project should not make much of an impact compared to the first project. He said there will be some increase in traffic. Savage said during construction the traffic could

probably be compared to harvest traffic, and after that it will be minimal. As for removal and reclamation, Savage said every piece of the equation has a design. As to the lifetime of a tower, there is no way to predict, he said. It is best to have a plan, he added. Savage explained there will be a bond in place before the project begins. He compared this to oil and gas leasing. Next, he addressed electromagnetic fields and transmission lines. Savage said all lines will be buried and things are better than they were years ago. Mueller asked how many substations there will be, and Savage said no more than one substation per project and they could use one for both. Savage explained he thinks a substation may be located in section nine on the map. Savage explained there will be two separate bonds, one for decommission, and the other for roads and infrastructure. Eilerts asked who holds the bond, and Savage said the county. Next was aviation and FAA (Federal Aviation Administration) considerations. Savage said this project will be further west and out of the flight pattern for Marion, so this is less of an issue than in the first project. Savage said it is also just out of the Department of Defense's interest. He said the only thing is the towers must have red lights on at night, which is better for the birds and the neighbors. Mueller asked about the light requirements, and Savage said the FAA keeps changing the requirements. This is why I wrote it like I did, Savage explained. Richards made a note to check on a white strobe light on a tower at 120th and Timber. She said she got the one on U.S. 56 changed already. Savage briefly addressed interference with television reception, saying the same applies as with the first project, if there is a problem they will address it. Next, Savage talked about cultural heritage. He explained again as with the first project that Marion County has independent people, and he gave the example of farmers growing sunflowers and how that was considered odd at first. We do things different, this is different, Savage said. This is something the county has not experienced before, he added. Self employed people have been the backbone of Marion County, he said. There are risks, he added. We are a small company doing what we hope will be a big thing, Savage said. Doyle North and Doyle North #2 are both under contract, Savage said. He added that he feels they are headed in the right way. He said he thinks this is a positive thing and it will bring positive things to the county. He said this is a cost effective way of providing energy. Savage talked about current purchase prices, and compared Westar with coal and natural gas. He said current prices are 3.6 cents per kilowatt, compared to just under 3 cents for coal and just about 4 cents for natural gas. So, it is competitive, Savage said. Savage talked briefly about 2012 national budget subsidies for wind (126), biofuels (340) and sulfur (457). Savage said 10 years ago wind was too high priced and had to be subsidized. He said he believes it will get a little cheaper, yet. Savage continued by addressing native vegetation and weeds. He said the county has regulations for noxious weeds and sites have to be maintained. It is just like everything else, if you take care of it there are no problems, he said. All the sites I've visited are nicely maintained, he added. Next he addressed company experience, reputation, and financial ability. Savage explained that the recent foreclosure notice people are wondering about was a mistake and it was dismissed by the district court the day before it was published in the local newspaper. Savage showed members court documents of dismissal. Savage offered to go into executive session to give members a further explanation if needed. Members said that was not necessary. Next was the list of conditions required for approval. Mueller read aloud each point for review, and the

response from the checklist Savage compiled. In reference to #5, Savage pointed out that under 31-106, concerning the power purchase agreement, the county's regulations do not jive with the requirements. Mueller noted that perhaps this can be cleaned up before they get to the permit stage of the process. Mueller said it will eventually be cleaned up in the regulations. In reference to #15, Savage suggested including requirements from the Flint Hills Smoke Management Plan. Mueller questioned the use limitations in 31-106, and wondered if it could be summarized. Mueller continued to review the regulations. Some do not apply and some have already been addressed, he said. Mueller asked, and Savage said they have a road agreement for Doyle North and he would guess they will have a very similar agreement for this project, as they plan to work with landowners concerning access roads. Savage talked about fire safety, saying the first concern is the construction danger from cutting and welding, and the second concern is a ground level transformer fire. Savage said they will remove any possible hazards during construction to help prevent grass fires, and if there is a fire in a cell it will not be an issue except for possible grass fires. Next Savage addressed requirements under 31-110, saying full design documents for all aspects of the project will be submitted with the building permit applications. Savage explained that each site's specific information will be submitted when applying for the permit. Savage talked about setback requirements, including the minimum of 500 feet plus 50 feet, and being 1,320 feet from any occupied structure. I think we are just concerned that setbacks are met, Mueller said. Savage explained that in lieu of taxes, there will be a community contribution agreement, with funds going to the county, area school districts, and fire safety equipment and training. Savage said the towers are tax exempt but it is only fair for money to come back in to offset the expenses. Savage explained they call it PILOT payments. PILOT stands for Payment In Lieu Of Taxes. Mount asked, and Savage explained they will use national electric contractor's specifications, and everything will be according to code. Eilerts asked where Peter's property is located, and Richards showed where the property is on the large map. So, there is no issue, as it will not be near there, Eilerts said. Mueller asked Richards to give her staff report, saying we should not stray away from the conditions, and we should stay with the same requirements as with the first project. Yearout questioned if there are too many other buried lines in the area to allow for new lines to be buried. I don't know if that will be a problem here, but that is the only new thing recently that I have heard, Yearout said. Given the situation here, the only issue may be that the Keystone line might need to be jumped, Savage said. Mueller reminded members of Bob Maxwell's written comments for their review. Richards asked about the time element question in Maxwell's letter. If the lease expires, the CUP dies with it, Savage said. Yearout reminded members that a CUP needs an action to go away. Mueller asked about other written comments and Richards read a letter from Nick and Lorrie Peter, 1374 Quail Creek, Marion. Next Richards read an e-mail from Paul Morse, Salina, which was in favor of the project. Savage said there is a set of written responses in the packets that members received. Mueller asked the public to limit comments to three minutes. Nick Peter said he will need 15 minutes to comment, and Mueller asked him to proceed. Mueller explained members are glad to listen to new comments, so he asked the audience to please try and not repeat the same information. Peter said he appreciates the job everyone is doing and the ability for him to speak about this matter. Peter questioned the computer

generated photographs, and Savage agreed they were not to scale. Peter read a prepared speech. He expressed concern about the open landscape and that the land is zoned for agriculture, not industry. He said this project is only for personal profit and gain. He said he is concerned about birds and bats, the environment, and health issues. He said 100,000 birds die each year because of wind turbines. He said it will not benefit residents with low electricity bills. He said residents will be unable to sell their homes. He is concerned about reclamation and decommissioning. He called it a pyramid ponzi scheme. Peter said he has never done anything like this before but he is dedicated to this struggle. He showed photographs of wind turbines and bird killings. He had copies of the photos, and passed them around, along with copies of articles written by doctors. He said there is not going to be that many jobs created, and those who do work for the company will not live in Marion. He talked about realtors not taking homes for sale. He said the Prairie Chickens will not breed due to the vibrations. I'm a citizen of this county and I'm scared to death, Peter said. I pray you give me more time, he told members. I know there are more people out there, he said. My wife and I moved here and we worked hard to make our home, Peter said. Mueller thanked Peter for his comments and said he understands Peter is very passionate about this, but the planning commission is concerned about land issues. Mueller said he understands the concern about the visual impact, and Peter agreed that is a big concern. Mueller made sure that Peter got all the information that is available from Richards. Mueller asked Peter to please not make it personal, but rather to just look at the project and the impact in Marion County. Savage apologized to Peter and explained he was not trying to interrupt Peter while he was speaking, but that Savage was simply nodding in agreement to one of the points Peter was making. Peter apologized about the comments he made about Savage. Savage explained about the blades being slower than in the past and the results have been positive for preventing bird kills. Savage explained they have spent money to be sure this is an acceptable site in accordance to the experts. Savage said he lives here, too, and he would not want things handled any other way. Savage responded to the resale value concerns by referring to a national study of 7,500 single family residential sales. Savage told Peter he is correct that the project is tax exempt, and that is why they are setting up a program with the county. Savage said ice coming off the blade tips is an older concern, as now they put in heating elements to keep this from happening. Savage said the 67 Golden Eagles that were killed occurred in California. There are places to put them, and places to not, and that is why the company did the research, Savage said. Peter asked Savage if he will give him access to the towers to take photographs of dead birds, and Savage said yes. Savage said the guy wires are a problem. Mueller said he does not want a debate, asking the discussion be kept to questions and answers. Peter said the purpose of zoning is protection and he feels like zoning should protect us. I'm just asking for consideration, Peter said. Mueller went around the room asking audience members if they wished to comment. Lee Leiker, USD 408 Superintendent, said this year in our school district I am encouraging all our employees to read, "Generation iY." Leiker said this book is about how this generation is different than others and how this generation views things. Leiker said his school district is trying to teach students about alternative energy sources and how the world is changing concerning career opportunities, etc. This is an educational opportunity in our county, he said. If this is coming about we would like to capitalize on it

with our school district for the educational opportunity, Leiker said. There may even be an educational value for students who do not agree with it, he said. Leiker said his goal will be to work with Savage to expose students to something their generation is interested in. Randy Robinson, Wichita, said he commends the board and Savage for providing things to help communities in the county survive. He said farms now days have to get big in order to make it. There is no reason why not to allow wind turbines to come in, and with a lot of study and work, Savage has done his job, Robinson said. He is not out to make a lot of money, but it will help all of us, Robinson said. There are very few Prairie Chickens in Marion County until you get to the west side (of Chase County), Robinson said. This location here is one of very few that will work, he added. Peter again asked for more time, saying he thinks he can make a pretty good case if he is given more time. Mueller said the notification was in the newspaper a month in advance. Avery told Peter the planning commission makes a recommendation to the county commission, and they have the final approval, which will give you more time to make a presentation. Mueller asked if there were other questions. Funk asked if they intend for this to become one project. Savage said it currently is under two projects and that is all he can say unless members want to go to executive session. Mueller asked Funk if he wants an executive session, and Funk said no. Savage told Peter he is sorry he did not talk to him before but the reason is Peter will be one mile, or more, from any turbines. When you had not commented on the other project, I felt I would have been bringing you something on a false pretense, Savage told Peter. I understand Peter wants more time, but if you change the process now, where do you stop?, Savage asked. You have a protest period in place, Savage added. It is an emotional issue with me, Peter said. I am happy to visit with you, Savage told Peter. We may never agree, but at least we can understand where each is coming from, Savage told Peter. Mueller closed the public hearing for this application and asked members to begin deliberations.

Mueller asked if members had any questions. Mount said he would like to see something in place where we can make sure the underground lines can be located so we will know for the future. Kraus said he agreed. Even guys pumping oil don't know where lines are and I can see it could be a problem, Kraus said. Savage said they will mainly deal with Keystone. Savage asked where TEEN (Technology Excellence in Education Network) fiber is located. Mueller reminded members they have reviewed all the regulations under Wind Energy Conversion Systems (WECS), and he asked if any items have raised an issue. Any issue with the development plan that did not meet requirements?, Mueller asked members. Setback requirements?, Mueller asked. Infrastructure or road agreement?, he asked. Any questions on decommission?, Mueller asked members. Avery asked about the bonds for decommission. Mueller said it will be \$1 million. Savage and Richards explained there will be a \$1 million base, plus \$30,000 per turbine. Mueller asked Eilerts what her bond question was, and she wondered where is it filed, and Savage said with the county. Savage said it would be a performance or cash bond on decommission, but he was not sure as the bond market has been squirrely. The bond is filed with the county clerk, Savage said. Eilerts said two parties asked her about the lease with them and if in the lease agreement it says the company will restore the land to as is. Yes, Savage said, it is in the lease agreement and the bond agreement. Mueller asked Eilerts if she is satisfied, and she said yes.

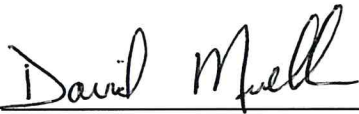
Mueller asked if there are other concerns, with the public hearing, or fire concerns. Savage read from page two of the lease agreement. Mueller asked if anyone had any questions or concerns about visual impact. I think we went through an extensive process, Avery said. When we started with Savage eight years ago we had regulations in place. We traveled to view wind farms, Avery said. It has been a matter of public record when we began this, she said. We are in the process of rewriting our regulations, but they do serve us and we need to continue with this process, Avery said. I'm sorry not everyone knew about it, but it is a matter of public record and it has been going on, Avery said. We're not talking about the first action of this matter in this county, Yearout said. This is the second action and the same objections were made to the county commission in the past, so I think those matters have been taken care of, Yearout said. So, to do something different would be very difficult to defend, Yearout said. If your recommendation is to approve, go with existing agreements, Yearout said. Mount's question about a stipulation being placed on file to have a set of records showing where underground lines are located can be done, Yearout said. You have the opportunity to table if you wish, but you also have the ability to send it on to the county commission, Yearout said. The protest period starts the day after you take action, so if you pass it tonight, the 14 day window begins tomorrow, Yearout said. Only those who own land within 1,000 feet of the green area may sign a protest, Yearout explained. That will trigger a vote of the governing body, and it would take a 3-0 vote, Yearout said. Savage asked if members decide to pass on the recommendation to please pass it as a separate agreement, as a second project. Mueller asked if there was a motion to continue the application. There was none. Mueller asked if there was anything further.

Mount moved to recommend approval of application #PC 11-07 for Windborne Energy, Inc., for a Conditional Use Permit (CUP) for a wind energy system located in the Marion County Overlay District with the following conditions: obtain qualified personnel for inspections; install intermittent red strobe lights as required by FAA (Federal Aviation Administration); have a timeframe in place in case of bankruptcy for decommission or reoccupation; have a bond agreement for roads with the following: 1) All roads not part of the primary highway system of the State of Kansas intended to be used by the applicant as a means of ingress and egress to the proposed facility shall be designated on the application. 2) Final approval of the designated roads to be used shall be made a part of the CUP. 3) A maintenance agreement between the applicant and the county responsible for road maintenance shall be required, designating the applicant and/or successor thereto responsible for the maintenance of the designated roads that provide the ingress/egress to the operation. 4) Such agreement shall specify the standards to which such roads will be reconstructed prior to development, if necessary, and the standards to which such roads will be subsequently maintained by the owner/operator of the Wind Energy System (WES). 5) In addition, such agreement shall specify the form, manner, timing, and frequency of maintenance and upkeep, and will also include training for local Emergency Medical Service (EMS) and fire protection personnel due to project risks. 6) The responsibility of determining sufficiency of compliance with the road agreement shall be with Marion County or its designee; all conditions must be met as required for approval, including, but not limited to, Article 14-103 for the Development Plan, and Article 31-108 through 31-111 for placing the turbines; a vegetation free

barrier of 20 feet must be constructed around the base of each tower; a Payment In Lieu Of Taxes (PILOT) agreement will in place; and underground lines must be located; and this action is separate from the first original project. Funk seconded. In favor: 8; Opposed: 0; Motion carried.

Mueller asked Richards for the timeline. She said this application will go to the county commission on October 10, 2011, at 10 a.m. Richards explained the protest period ends on October 7, 2011. Mueller thanked everyone. Savage thanked members for reading all the information sent to them. Mueller asked if there were any off agenda items. Richards said there is one application for next month's agenda for a singlewide manufactured home on a lake lot. Mueller reminded members the next meeting is scheduled for October 27, 2011. Members decided to begin next month's meeting at 6 p.m., and work on the regulations until time for the regular meeting to begin. Kraus moved to adjourn and Mount seconded. In favor: 8; Opposed: 0; Motion carried and the meeting adjourned at 10:28 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yales,
Secretary