

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

April 23, 2009

Chairman David Mueller called the meeting to order at 7:33 p.m. Mueller asked members of the public to please sign in. Mueller welcomed new member Jim Schmidt, newly appointed from District Three, by County Commissioner Randy Dallke.

Roll Call was answered by Mueller, Bob Maxwell, Kent Becker, Mary Avery, Schmidt, and Jeff Bina. Marquette Eilerts and Dan Mount were absent. Zoning Administrator Bobbi Strait was present. Consultant Dave Yearout was also present. Mueller noted there was a quorum present with six members.

Marion County Clerk Carol Maggard was present to read the Oath of Office to the members. Maggard also presented members with certificates.

Mueller asked for additions, or corrections, to the Record of Proceedings for the March 26, 2009, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Maxwell had a correction on page one, where "page" 95 should read "Item" 95. There were no other corrections or additions. Becker made a motion to approve the Record of Proceedings with one correction, and Bina seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Item 5: Variance request from Tim and Mindy Richmond, at 1489 Kanza, for single private wind turbine requirements. Mueller opened the public hearing for this application, and reminded members they are acting as the Board of Zoning Appeals for a variance request for set back requirements for a single wind turbine. This is a final action. Mueller asked members if anyone had a conflict of interest for this application, or if anyone had any outside communication regarding this application. No one did. Mueller noted this application was published in the April 1, 2009, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Tim and Mindy Richmond were present to speak about their application. Tim explained they wish to install a single wind turbine for their home. It is about a 50 foot tower, probably a little less than 50 feet, and 12 feet in diameter, Tim said. Tim said their property includes five acres. He said it is 1,000 feet to the nearest residence. He said there are two residences within 1,000 feet. A letter was written by one neighbor, Michael Klose, saying he is okay with it. The other neighbor is Tonya Richards, who is Strait's secretary, and Strait said Richards is okay with it, too. She was very helpful, Mindy said. It is 550 feet from the neighbor's door to the proposed location for the wind turbine. Tim showed Avery on a map where he wishes to place the wind turbine. Tim introduced Arlen Penner. Penner checked the map and the property line. Tim said the property line in question is on the other side of the road. It is 689 feet to

Richards' residence from the proposed site for the wind turbine. It will be 100 feet in from any of my property lines, Tim said. Mueller asked if there were any other questions. Maxwell asked if the turbine will be professionally installed. No, I'm going to do it myself with my father-in-law's help with the foundation and the welding, Tim said. Maxwell asked about installation plans, and Tim said he did not have them with him. Tim said his father-in-law has run CAD (computer aided design) programs. Mueller asked about the tower manufacturer. Southwest Energy out of Arizona, Tim said. It is a Sky Stream 3.7, Tim added. It called for five inch schedule 40 pipe, but we did six inch schedule 40 pipe, because my father-in-law ran a stress test and he was not happy with it, Tim explained. It is 10 feet to the base of the tower, Tim said. It talks about grounding it, but there are no details about the foundation, Tim said. It said they will not honor the warranty if it is not within the specs, but there was nothing about the foundation, Tim said. A gentleman in Canton put one up about a year ago, and Pat and Herb Bartel put one up this week, Tim said. Norm King was doing the foundation for Bartel's. Bartel did not have any need to ask for a variance, as he has enough land not to need one, Tim said. There is no safety factor built in, but the manufacturer recommends a safety factor of 1.5, Maxwell said. Is he capable of certifying it as such?, Maxwell asked about Tim's father in law. I'm not sure, Tim said. It's on their property, Bina said. It will have three guy wires about 30 feet up, which is said to be a non-safety feature, but I told him I wanted them, Tim said. Is there a company that could certify it after it is built?, Avery asked. You could hire a structural engineer, Maxwell said. We haven't done that with anyone else, Bina said. The variance is on the nearest residence, not on the property itself, Mueller said. Otherwise we would have to do the same to all, Mueller said. I didn't realize others are going up, Maxwell said. What we are really concerned about tonight is the separation distance from the nearest residence, Mueller said. Mueller asked if there were other questions. Mueller asked if anyone from the public wished to speak about this application. Penner spoke in support of the application. We are very comfortable with them putting up the wind turbine, Penner said. Paul Raugust lives within a mile of the Richmond's, and he is in support of the turbine as well. Mueller asked Strait for her staff report. Strait said there were no written or verbal communications concerning this application, as of April 21, 2009, except for Tonya and her husband, and they are very much in support of it. This is not the only "green" endeavor they have undertaken, Strait said of Richmond's. Mueller asked if anyone had any questions for Strait. It sounds about as loud as a washing machine, Tim said. It produces 400 to 700 kilowatt hours per month, and we use 330 to 900, so most of the time we will produce more than we use, Tim said. The meter runs backwards, Tim explained. It costs us sixteen cents a kilowatt hour to buy electricity from the electric company, and it costs us about five cents a kilowatt hour to produce electricity, Tim said. Mueller closed the public hearing for this application and began deliberation.

Mueller reminded members of the five factors to consider for approving a variance. Bina made a motion to approve application #PC0902 for Tim and Mindy Richmond for residential set back within 1,000 feet of a neighboring residence at 1489 Kanza for a single private wind turbine, with the condition of getting signed written approval

from the other nearby residence (the Richards) for the file. Avery seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Mueller asked Strait to explain the timeline. Strait explained there is a 15 day appeal period where if someone feels the Board of Zoning Appeals misunderstood the regulations, they have the opportunity to file an appeal in court. Otherwise, we can give you a legal document of approval, Strait said. You could get Neighborhood Revitalization going in the meantime, Strait suggested to the Richmond's.

Strait asked to bring up one off agenda item while the public is still present, as they may be interested in the information. Strait presented Energy Conservation Code information. She said we must come into ninety percent compliance with energy codes within eight years. She said it is going to become mandatory nationwide. If we do not come into compliance, our entire state will not be eligible for any grants, Strait said. A portion of the funds are dedicated to bringing existing buildings up to code for those who can't afford it, and a portion to local governments to certify and train employees to do inspections, Strait explained.

Item 6: Zoning Text Amendments. Strait updated members on feed lot regulations. Maxwell asked, and Strait explained about a new statute. It made 47-1501 irrelevant pretty much, as they decided chickens did not equal horses, Strait said. Mueller asked Yearout to explain. Court cases were overturned which opened the door to various animal operations, Yearout said. There are new laws on the number of animals and separation issues, with lots of new language for how handling waste must be permitted, Yearout said. Below 300 animal units are not even required to register, unless there is a waste problem, with even as little as two animals present, Yearout said. Kansas, as an ag state, has historically backed off of small operations, Yearout said. Who determines if there is a problem?, Mueller asked. KDHE (Kansas Department of Health & Environment), Yearout said. Yearout referred to a copy of a court case that Strait handed out to members. Look at it from a zoning perspective, Yearout told members. Zoning is dealing with the use of the land, he said. How the land is used, he added. Don't ask can we put this in our regs, ask if you can defend it, Yearout told members. Off site impacts should be considered, Yearout said. Such as high impacts on public roads, where they bring in several trucks a day at a large operation, Yearout said. Are you advising that on any....., Avery began. No, Yearout said. Yearout mentioned water quality concerns and fighting ag exemption rules. What is ag?, Yearout asked. If you run cattle on a pasture, and you ship them in and out, and they are confined temporarily, do you need special zoning approval?, Yearout asked. Such situations are open for debate, and should be debated, because there is nothing wrong with that, Yearout said. The state has already set benchmarks, he said. You need to make sure your regs are specific as to what is ag and what is not, Yearout told members. I use confined animal feeding operation, instead of commercial feed lot, Yearout said. You want to make sure that everyone knows what we are talking about, Yearout said. Avery asked Yearout if he thinks we should lower our regs to 300 animal units. I'm not opposed to lowering it, but it just means you are going to pick up more applications, Yearout told members. Mueller asked which items we can actually consider. Noise, smell, air quality, dead animals,

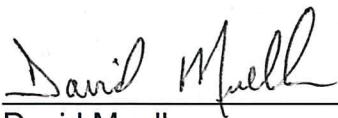
Yearout said. Even if just there is just one dog on a property, if there is an environmental issue, it goes to KDHE, Mueller said. Avery asked, if they have 245 and there is a problem, can a complaint be filed? Yes, they are not exempt, Yearout said. If there is a placement that would have a direct economic impact on the county, could it be considered if we are not talking about an environmental issue?, Avery asked. In every zoning issue there is an economic impact, Yearout said. By not having a CUP (Conditional Use Permit) for under 300, I wonder how it could be handled, Avery said. Small independent operations are operating at the 999 level because the cost is so much greater to go beyond that number because they have to build the big lagoons, etc., Yearout said. And if they make an effort to improve, they lose their grandfather status, Mueller said. You wonder how far someone can modify their operation before they jeopardize their grandfather status, Yearout said. He gave an example of a five acre operation that expanded into a large quarry. They went to court, Yearout said. It went from a guy using a dozer, to blasting and a full operation, but not changing the use, and they were on the same ground, Yearout said. When do improvements benefit surrounding conditions and neighbors?, Mueller asked. Avery asked if some location decisions are not poorly made. Most people who are farming today are not going to get into small feeding operations, because it is not profitable, Yearout said. Avery asked for recommendations on our regs. You need to look at every place where it is going to be added in your regs, Yearout said. You need to make sure you have good, solid language, he added. We are trying to be consistent, Mueller said. You also need to make sure the definition of ag is the way you want it, Yearout said. You could drop to 300 animal units, but that is a policy decision, Yearout told members. I'm not ready to vote, Avery said. No, tonight is not a public hearing, Yearout said. We are just working on a proposal, he added. We need to decide tonight which direction we want to proceed, Mueller said. We need to clean up the commercial feed lot operation definition and language throughout the regs, Mueller said. Avery asked, and Yearout said, 1,000 to me is a slam dunk. McPherson County does not deal with confined feeding at all, Mueller said. Butler County and Harvey County are 1,000 animal units, Yearout said. Dickinson County is going to 1,000 animal units, Yearout added. We want to be consistent with KDHE and with our surrounding counties, Mueller said. I don't think we want to get into separating family operations and commercial operations, Mueller said. If there were two separate definitions, would it simplify it?, Strait asked, and Yearout said no. The going amount is 1,000 animal units, Yearout said. Is it wise to put in how the public can address it?, Avery asked. Not within the language itself, Yearout said. You could put out a brochure with the requirements, he added. Bina questioned going to 2,000 animal units. I had a county go to 2,000, but it never kicked in, Yearout said. I think it is important for the public to have a way to address concerns, Avery said. There is a process, and a lot of people do not know how to go about it, and there has been a lot of turmoil in Peabody, Avery said. Either I can call KDHE, or the public can, Strait said. So that gives you the comfort that you can call the state and they are educated and can handle it, Mueller said. County Commissioner Dan Holub arrived at this point. We use the same benchmarks, Yearout said. For some operations the number of animals depends on market conditions, Yearout said. Yearout said he will work on the regulations for next month's meeting. Mueller asked about environmental impact

studies. I don't like putting that in there because it immediately gives an impression of what we are talking about, Yearout said. I don't like to bring in outside issues to pure zoning matters, Yearout explained. Some issues are building code issues, Yearout said. Insurance companies require more for covering fire places and are big on requirements for professional installation, he said. When mortgage companies are involved they also bring issues, he added. Can you include it? Yes, Yearout said. Can you defend it? Probably not, Yearout said. What actually is an environmental impact statement?, Mueller asked. Those documents depend on the individual project, Yearout said. It is worse to decide on a case by case basis what an environmental impact statement is for each application, Yearout said. This is almost a guaranteed lawsuit, he said. You need the right tools to address concerns, he said. We as a society are complaining more than several years ago, Yearout said. No regs I have been a party to have been overturned in court, he said. Just stay within what you are addressing, Yearout advised. The public has the right to address land use issues and we need to make sure both sides are represented, Avery said. Board of Zoning Appeals (BZA) actions are final actions, Yearout said. When dealing with land use decisions, it is preferable to have the decision made within the governing body so any legal challenges to it would be within the county and would keep you all out of it, Yearout said. Yearout asked about possible green policies for such things as private individual wind turbines. How hard, or simple, do you want to make it?, Yearout asked members. He suggested staying with 199 foot towers because if a tower is over 200 feet it has to be lighted for Federal Aviation Administration (FAA) requirements. If they could not meet the set backs, we would make it a CUP so it went to the governing body and is kept away from the BZA, Yearout told members. Every state in the country has the same five requirements for set backs, he said. The first requirement involves self imposed hardship and 999 should be denied out of 1,000 because they can't meet the hardship issue, but 999 are approved because no one cares, Yearout said. The county should be involved only on the big issues, he said. I am not saying do away with variances, but make the regs work to the extent the county is going to be involved in high impact issues, he explained. Mueller asked for a motion to have Strait and Yearout proceed in bringing the regs update to date to be consistent with KDHE and the surrounding counties. Avery asked about including investigating personal wind energy conversion systems. Bina asked about 1,000 animal units. They are simply bringing you the language and I'm asking for a thorough updating, Mueller said. Strait suggested using the term renewable energy instead. Maxwell suggested addressing one energy issue at a time. Geo thermal is the only other activity around here at this time, Yearout said. Becker made a motion to have Strait and Yearout update the regs to be consistent with KDHE and the surrounding counties, and include information on renewable energy systems, and Avery seconded the motion. In favor: 6; Opposed: 0; Motion carried. It was decided to discuss at the next meeting when to schedule a public hearing.

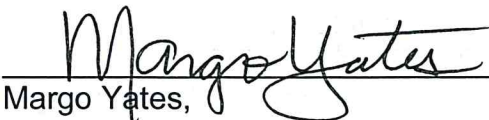
The next meeting is scheduled for May 28, 2009. Mueller handed out a schedule of meetings for the remainder of the year. Mueller handed out an updated membership directory list. Maxwell asked for a title sheet for Article 31. Maxwell questioned if the section area for the overlay district might be on the title sheet. Strait gave Maxwell a

copy of the title sheet. Maxwell questioned why the wording does not match in the sub division regs. He thought perhaps a sentence had been left out, or something. Maxwell said he will bring it to Strait to see if it can be straightened out. Strait said it was a big job changing the print from red to black where changes were made in the regs. I'm not sure I have all the paperwork and I need to find out, Maxwell said. Maxwell told members a task force report from the governor is a good read with lots of good information that members could consider when working on our regs. Yearout said that information was on a CD that was given out at a meeting this week. Strait said there are several parcels that are odd shaped and less than an acre, that were leftover from highway construction projects. Strait said they have been working on the deeds for these properties and locating them and mapping them out. She said we need to address the zoning for these properties so we know for the future what their status is. Tonya is in the process of mapping them out based on the deeds and descriptions that KDOT (Kansas Department of Transportation) gave us, Strait said. Strait mentioned a 42 percent budget decrease for the WRAPS (Watershed Restoration and Protection Strategy) program that she found out about today. She said funding for an environmental protection grant was decreased. We may need to look hard at permit fees to cover the cost of inspections, Strait said. I had Tonya go back through the records and there were five different meetings with eight different CUP's that were not required to have environmental impact studies, Strait said. We need to be consistent and follow our regs, she said. Maxwell asked if feed lots are going to be history because of carbon caps. In Europe they have begun to back off because the economy is going down, Yearout said. The feds work really slowly anyway, he added. Mueller asked if there were any other questions. Mueller asked Holub if he had any questions. Holub did not have any questions. Mueller thanked Holub for coming to the meeting. Mueller thanked new member Schmidt for coming on board. Bina made a motion to adjourn and Becker seconded the motion. In favor: 6; Opposed: 0; Motion carried and the meeting adjourned at 9:47 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yates,
Secretary