

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

WORK SESSION

April 20, 2011

Present: Dan Mount, Brad Vannocker, Marquette Eilerts, Bob Maxwell, David Mueller, Jim Schmidt, and Lloyd Funk. Mary Avery and Nick Kraus arrived a few minutes after the session began. Avery arrived at 7:05 p.m., and Kraus arrived at 7:25 p.m. Zoning Administrator Tonya Richards and Consultant David Yearout were also present. The work session began at 6:50 p.m. Mueller explained to members he decided to ask Yearout to be present at this work session in order to save time in the long run. Yearout has 39 years of experience working with zoning. Members reviewed the minutes from the March 10, 2011 and the April 7, 2011, work sessions. They began by reviewing discussion from March 10, 2011. Changes and issues that were previously noted in red that have been approved have now been changed to black. Pending changes and issues remain in red.

ARTICLE 1

TITLE, PURPOSE, DEFINITIONS,
DISTRICT AND GENERAL REGULATIONS

Sections:

- 1-101 Title and Authority
- 1-102 Purpose
- 1-103 Jurisdiction
- 1-104 Definitions
- 1-105 Districts
- 1-106 General Regulations Governing All Zoning Districts
- 1-107 Vesting of Development Rights

1-101 Title and Authority: These regulations, including the Zoning District map(s) and overlay(s) made a part thereof, shall be known and may be cited as the "Zoning Regulations of Marion County, Kansas", and shall hereinafter be referred to as "these Regulations." Except where otherwise indicated, these Regulations were prepared and are adopted under the authority granted to Marion County by K.S.A. 12-741 et seq., and amendments thereto.

1-102 Purpose: These Regulations are intended to serve the following purposes:

1. To promote the health, safety, morals, comfort and general welfare of the citizens of Marion County, Kansas.
2. To create a variety of zoning districts sensitive to the peculiarities of the various permitted uses and designed to protect and enhance the values inherent in each zone; while encouraging the redevelopment and revitalization of the cities within the County.

3. To conserve good agricultural land and protect it from the intrusion of incompatible uses, but not to regulate or restrict the principal use of land for agricultural uses. After discussion, members decided to keep this wording.
4. To regulate and restrict the height, number of stories, and size of buildings; the percentage of lots that may be occupied by buildings and other structures; size of yards, courts, and other open spaces in the interests of all citizens of Marion County, Kansas.
5. To provide for adequate light and air, and acceptable noise levels.
6. To avoid the undue concentration of populations and to prevent overcrowding in the use of land and community facilities.
7. To provide adequate notice on subsequent changes to these regulations and an opportunity for interested parties to be heard.
8. To provide information regarding possible flood hazards.
9. To facilitate the adequate provisions of transportation, water, sewage, schools, parks, and other public improvements and services, and to carry out the goals and objectives as set forth in applicable laws of the State of Kansas and the Comprehensive Plan for Marion County, Kansas.
10. To promote the achievement of the Future Land Use Plan for Marion County, Kansas.
11. To inform the public regarding future development in Marion County, Kansas, thereby providing a basis for wise decisions with respect to such development.
12. To manage growth and promote economic development to benefit the citizens of Marion County, Kansas.
(Yearout explained that part of the purpose behind zoning regulations is to promote economic development and this addition is consistent with the comprehensive plan.)

1-103 Jurisdiction: These Regulations shall apply to all lands within Marion County, Kansas, lying outside the corporate limits of any city.

(Yearout explained the county has no jurisdiction inside any city, and an improvement district is an incorporated entity and this language resolves that issue.)

1-104 Definitions: For the purpose of these Regulations, certain terms and words are hereby defined. Words used in the present tense shall include the future and words used in the future tense shall include both the past and the future, and words used in the future tense shall include the present; words in the singular number shall include the plural and words in the plural number shall include the singular; the word "building" shall include the word "structure"; the word "dwelling" shall include the word "residence"; the word "lot" shall include the word "plot"; the word "person" shall include individuals, firms, corporations, associations, governmental bodies and agencies, and all other legal entities; the word "shall" is mandatory and not directory while the word "may" is permissive; and the phrase "used for" shall include the phrases "arranged for", "designed for", "intended for", "maintained for", and "occupied for". Words or terms not herein defined shall have their ordinary and customary meaning in relation to the context.

1. **ABANDONED VEHICLE:** Any inoperable motor vehicle to which the last registered owner of record thereof has relinquished all further dominion and control.

2. **ABATEMENT:** As related to waste tires, means the processing or removing to an approved storage site of waste tires which are creating a danger or nuisance.
3. **ABUTTING:** Adjoining or bordering.
4. **ACCESS:** The right to cross between public and private property allowing pedestrians and vehicles to enter and leave property.
5. **ACCESSORY BUILDING:** A subordinate building or portion of the main building, located on the same lot, the use of which is clearly incidental to that of the main building or to the use of the land on which it is located. Customary accessory buildings include, but are not limited to, garages, carports, garden houses, small storage sheds and children's playhouses. On properties zoned other than Agricultural, and especially on properties zoned Rural Residential and Suburban Residential, agricultural buildings shall be considered an accessory building.
6. **ACCESSORY USE:** A subordinate use which serves an incidental function to that of the principal use of the premises. Customary accessory uses include, but are not limited to, tennis courts, swimming pools, air conditioners, barbecue grills, fireplaces, and satellite dish antennas. On properties zoned other than Agricultural, and especially on properties zoned Rural Residential and Suburban Residential, agricultural uses shall be considered an accessory use.
7. **ADMINISTRATIVE OFFICER:** See Zoning Administrator.
8. **ADULT ENTERTAINMENT ESTABLISHMENT:** Any business, premises or establishment including, without limitation, adult bookstores, adult video stores, adult motion picture theaters, adult mini-motion picture theaters, adult cabarets, adult live performance theaters which complies with the Conditional Use Permit requirements of these regulations.
9. **ADVERTISING SIGN:** Any structure, object or device erected, maintained or used for advertising purposes related to the permitted principle use of the premises upon which it is located. This definition includes the terms signs, road-side boards, signboard advertising display, but does not include the word billboard.
(Yearout explained he proposed removing this definition because it should be in the regs under sign regs. He said it should be one place, or the other, but not in both locations, is his recommendation.)
10. **AGRICULTURAL PURPOSES, LAND USED FOR:** The use of a tract of land for the production of plants, animals or horticultural products, including but not limited to: Forages; grains and feed crops; dairy animals and dairy products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; or nursery, floral, ornamental or greenhouse products. Land used for agricultural purposes shall not include the following:
 - a. Lands which are used for recreational purposes; suburban residential acreages; rural residential home sites and yard plots whose primary function is for residential purposes even though such properties may produce or maintain some of the plants or animals listed herein.
 - b. The operation or maintenance of greenhouses, nurseries or hydroponic farms operated at retail.
 - c. Wholesale or retail sales as an accessory use unless the same are permitted by these Regulations.

- d. The operation or maintenance of a commercial stockyard or feedlot or other confined animal feeding operation.
- e. The operation of an auction sales yard.
- f. The operation of a junk yard.
- g. The keeping of exotic birds and/or animals.
- h. The operation of an airport or landing strip.
- i. Quarrying or mining activities, even though the reclamation of same may be for water impoundments that support agricultural activities.
- j. The operation of a boarding or breeder kennel, as defined herein.
- k. The operation of a riding stable, as defined in these Regulations.
- l. The placement and/or use of a manufactured home, mobile home, travel trailer, semi-trailer, shipping container, or any other structure originally built for other purposes, for any use including storage or housing of agricultural products or animals.
(Vannocker asked about semi-trailers that are converted for pigs, but Yearout said that is different. Yearout said if it is truly an ag problem you are not going to be able to do a whole lot with that.)

11. **AIRCRAFT:** A weight-carrying structure for navigation of the air that is supported either by its own buoyancy or by the dynamic action of the air against its surfaces. Aircraft includes, but is not limited to, airplanes, helicopters, gliders, ultra-light airplanes, hot-air balloons, and the like.

12. **AIRPORT OR AIRCRAFT LANDING FIELD:** Any landing area, runway or other facility designed, used, or intended to be used either publicly or by any person or persons for the landing and taking off of aircraft, including all necessary taxiways, aircraft storage, and tie-down areas, hangars, and other necessary buildings and open spaces whether owned publicly or privately. Private airstrips or landing fields means those which are available for use by the owner only or by the owner and other persons authorized by the owner.

13. **ALLEY:** A public or private thoroughfare which provides only a secondary means of access to abutting property.

14. **ALTERATION:** A change or rearrangement in the structural parts of an existing building or structure. Enlargement, or other adjustment to a building, whether by extending a side, increasing the height, or the moving from one location or position to another, shall be considered as an alteration.

15. **AMENDMENT:** The process of change or alteration to the Zoning Regulations in one of the following forms:

- a. A comprehensive revision or modification of the zoning text and/or map.
- b. A text change in the zone requirements.
- c. The approval of a Conditional Use Permit as provided within these Regulations.

- d. A change in the map, i.e., the zoning designation of a particular parcel or parcels. This form is also known as "rezoning."
16. **AMUSEMENT ARCADE:** A commercially operated business that provides various devices for entertainment and may also provide food and non-alcoholic beverages for consumption on the premises.
17. **ANIMAL HOSPITAL OR CLINIC:** An establishment where animals are admitted principally for examination, treatment, board or care by a Doctor of Veterinary Medicine. This does not include open kennels or runs.
18. **APARTMENT:** A room or a suite of rooms within an apartment house or complex arranged, intended or designed for a place of residence of a family.
19. **APARTMENT HOUSE:** A building or buildings containing apartments used as a place of residence for more than two (2) families.
20. **APPLICANT:** The owner of a tract of land, or his duly designated representative, for which an amendment has been requested. Consent shall be required from the record owner of the premises if the applicant is other than the owner.
21. **ASSISTED LIVING:** Multifamily dwelling units used or designed to be used by older persons, persons with disabilities or other persons needing or desiring assistance with day-to-day living matters, but not including group homes, group housing, hospitals or convalescent care facilities. Typical uses include retirement communities in which housekeeping services, common dining facilities and recreational and social activities are offered to residents.
22. **ATTENDANT CARE FACILITY:** A facility licensed by the State of Kansas as non-secure care not to exceed 24 hours excluding weekends and holidays for children 10 years of age and older, or as defined by the state child care regulatory agency.
23. **AUCTION SALES YARD:** A tract of land and accompanying buildings and/or other structures, if any, arranged or designed to be used for the sale by auction of merchandise and/or livestock offered on consignment.
24. **AUTOMOTIVE AND MACHINERY REPAIR SHOPS:** A building used for the repair of motor vehicles or machinery. This shall include, but not be limited to, body and paint shops, glass service shops and auto service centers.
25. **AUTOMOTIVE SALES AREA:** An open area, other than a street, used for display or sale of new or used motor vehicles, and where no repair work is done except minor incidental repair of motor vehicles to be displayed and sold on the premises.
26. **AUTOMOTIVE SERVICE STATION:** Any building, structure or land used for the dispensing, sale or offering for sale at retail any motor vehicle fuels, oils, or accessories, including lubrication of motor vehicles and replacement or installation of minor parts and accessories, but not including tire recapping, major repair work such as motor replacement, body and fender repair or spray painting, provision of rental equipment, or open motor vehicle sales lots.
27. **BABY-SITTER:** Any person who provides care for six (6) or less children unrelated to the operator(s), whether with or without compensation, and whether or not registered with the State of Kansas.

28. **BASEMENT:** The lowermost portion of a structure partly or wholly below ground level. The term shall not include berm homes or other similar structures.

29. **BED AND BREAKFAST:** A family home, occupied as a permanent dwelling by the proprietor, in which lodging and meals are provided for time-limited durations to not more than four groups of patrons in a 24-hour period.

(It was agreed to remove “Beneficial Use” as it is under “Waste Tires.”)

30. **BILLBOARD:** (See Article 18)

31. **BOARD OF ZONING APPEALS:** That board created herein which has the statutory authority to hear and determine appeals, exceptions and variances to these Regulations.

32. **BOARDING OR ROOMING HOUSE:** A dwelling in which roomers, lodgers and/or boarders are housed but individual cooking facilities is not provided.

33. **BUFFER AREA:** Open and unobstructed ground area of a plot in addition to any required yards or road widening around the perimeter of any plot.

34. **BUILDABLE WIDTH:** The width of that part of a lot not included within any required open space.

35. **BUILDING:** Any structure built for the support, shelter, or enclosure of persons, animals, chattels or movable property of any kind, and which is permanently affixed to the land, exclusive of fences.

36. **BUILDING, COMMUNITY:** A building used for noncommercial social, educational, or recreational activities of a neighborhood or community.

37. **BUILDING, COMPLETELY ENCLOSED:** Any building having no outside openings other than ordinary doors, windows and ventilators.

38. **BUILDING HEIGHT:** The vertical distance from the established grade to the highest point on the roof or parapet wall.

39. **BUILDING LINE:** A line, usually fixed parallel to the lot line, beyond which a building cannot extend under the terms of these Regulations. The building line is equivalent to the setback or yard line.

40. **BUILDING, PRINCIPAL:** A building in which is conducted the main or principal use of the plot on which said building is situated. In any residential district, any dwelling shall be deemed to be a main or principal building on the plot on which it is located.

41. **BUILDING, PUBLIC:** A publicly-owned building used or occupied for a public purpose. Public buildings include, but are not limited to: fire stations, police stations, auditoriums, gymnasiums, natatoriums, community halls, maintenance buildings, park shelters, jails or penal institutions, and schools. This shall include privately owned buildings used for the same public-type purposes.

42. **BULKY WASTE:** Discarded or stored inoperative household appliances, disused furniture, disused equipment, junk lumber and other building debris, parts of machinery and equipment, and similar waste not ordinarily collected with compactor equipment; provided that bulky waste shall not mean abandoned or inoperable vehicles in whole or in part.

43. **CAMP:** Any plot, including its area of land and/or water, on which are located cabins, shelters, houseboats or other accommodations of the design or character suitable for seasonal or other more or less temporary living purposes; but not including a day camp, trailer camp, rooming house, tourist home, hotel, summer colony, hospital, place of detention, school of general instruction, or nursery school.
44. **CAMPER TRAILER (Pop Up):** A structure designed to provide temporary living quarters for recreational, camping or travel use, constructed with integral wheels to make it mobile and/or towable by a motor vehicle, not to exceed 24 feet in length and 5 feet 6 inches in height in a collapsed condition.
45. **CAMPING BUS:** A self-propelled vehicle originally designed and built as a bus, which has been redesigned with or converted into a portable dwelling used for recreation.
46. **CANOPY:** Any structure, movable or stationary, attached to and deriving its support from framework, posts or other means independent of a connected structure for the purpose of shielding a platform, stoop or sidewalk from the elements; or a roof like structure of a permanent nature which projects from the wall of a structure and overhangs the public way.
47. **CAR WASH:** An establishment having facilities designed or used exclusively for washing or cleaning motor vehicles.
48. **CEMETERY:** Land used for burial and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery.
49. **CERTIFICATE OF OCCUPANCY:** A document signed by the Zoning Administrator which acknowledges that a use, structure, building, or lot is completed and ready for occupancy based on the information submitted with the application for a Zoning Certificate.
50. **CHILD CARE CENTER:** A facility licensed by the State of Kansas to provide for the care of thirteen (13) or more children from two (2) weeks to sixteen (16) years of age, and which is maintained for less than twenty-four (24) hours per day.
51. **CHILD PLACEMENT AGENCY:** A social service agency licensed by the State of Kansas which receives children for services including placement in residential programs or in foster family homes, or for adoption; or as defined by the state child care licensing agency.
52. **CHURCH:** An establishment, the principal purpose of which is religious worship, but which may include such accessory uses in the main structure or in separate buildings, as Sunday School rooms, assembly rooms, kitchen, recreational facilities and/or library.
53. **CIRCUS AND/OR CARNIVAL:** A temporary outdoor amusement center, bazaar or fair, either involving use of special purpose equipment or conducted by professional operators, or both, and where activities include such things as rides, exhibitions, food services, sales, or small scale games.
54. **CLEAR VIEW:** A range of sight beyond any point on a street or entering a street right-of-way where clear, unobstructed sight is required (see also Sight Triangle). The following requirements shall be referenced when designing and review roadway plans:
- a. On streets with reverse curves, a reasonable tangent shall be provided between curves to permit a smooth flow of traffic.

- b. Where there is a deflection angle of more than ten degrees (10°) in the alignment of a street, a curve with a radius adequate to ensure safe sight distance shall be made.
 - c. Every change in grade shall be connected by a vertical curve constructed to afford the minimum required site stopping distance in conformance with accepted engineering standards. Said site stopping distance shall be measured from a driver's eye level that is assumed to be three and one half (3½) feet above the pavement surface, to an object six (6) inches high on the pavement.
55. **CLINIC:** A building designed and used for the medical, dental or surgical diagnosis or treatment of patients under the care of doctors and/or nurses, and/or other licensed medical professionals, with no overnight boarding.
56. **CLUB:** Buildings and facilities owned or operated by a corporation, association, person or persons for social, educational, or recreational purposes, but not primarily for profit which inures to any individual and not primarily to render a service which is customarily carried on as a business.
57. **CLUB, MEMBERSHIP:** Membership clubs, including private clubs, as defined by K.S.A. 41-2601 et seq and succeeding amendments, including but not limited to such clubs as the American Legion, VFW, and the Elks.
58. **CLUSTER HOUSING:** The site planning technique of grouping dwelling units around courts, parking areas, common open spaces and private drives as opposed to fronting all on a public street.
59. **COMMON OPEN SPACE:** An area of land, water, or combination thereof, planned for active or passive recreation, but not including areas utilized for streets, alleys, driveways or private roads, off-street parking or loading areas, or required yards. The area of recreational activities such as swimming pools, tennis courts, shuffleboard courts, etc., may be included as common open space.
60. **COMMUNICATION TOWER:** Commercial AM/FM radio, television, microwave and cellular telephone transmission towers, electronic emission of any wave length and accessory equipment and buildings.
61. **COMPREHENSIVE PLAN:** The current Comprehensive Plan for the unincorporated portion of Marion County, Kansas, and amendments thereto. adopted by the Planning Commission and co-adopted by the County Commission which, through a combination of text, charts and maps, sets forth data and establishes policies for general locations of various land uses, including streets, parks, schools, public buildings, utilities; and related uses, such as the utilization and preservation of natural resources.
62. **CONDITIONAL USE:** A use of any building, structure or parcel of land that, by its nature, is perceived to require special care and attention in siting so as to assure compatibility with surrounding properties and uses. Conditional uses are allowed only after public notice, hearing, and approval as prescribed in these Regulations and may have special conditions and safeguards attached to assure that the public interest is served.
63. **CONDITIONAL USE PERMIT:** A written document of certification issued by the Zoning Administrator permitting the construction, alteration or establishment of a Conditional Use.
64. **CONDOMINIUM:** A building containing two (2) or more dwelling units which are designed and intended to be separately owned in fee under the Townhouse Ownership Act (K.S.A. 58-3710 et seq) of the State of Kansas.

65. **CONFINED ANIMAL FEEDING OPERATION:** Any lot, pen, pool and/or pond which is used for the confined feeding of animals or fowl for food, fur or pleasure which is not normally used for raising crops and in which no vegetation intended for animal food is growing. For purposes of these Regulations, a Confined Animal Feeding Operation shall be any operation defined herein that has the capacity of 1000 animal units or more, with an animal unit being as defined by the State of Kansas at K.S.A. 65-171d, and amendments thereto.
66. **CONSTRUCTION/DEMOLITION LANDFILL:** A permitted solid waste disposal area used exclusively for the disposal on land of construction and/or demolition waste.
67. **CONSTRUCTION/DEMOLITION WASTE:** Waste building materials and rubble resulting from construction, remodeling, repair or demolition operations on houses, commercial buildings, other structures, pavements, curbing, bridges, and trees and brush; but not asbestos or other hazardous materials.
68. **COUNTY:** The Board of County Commissioners of Marion County, Kansas, or its delegated staff, boards or agencies.
69. **COUNTY ATTORNEY:** The County Attorney, or such licensed attorney designated by the County Attorney, responsible for the prosecution of all violations of these Regulations in accordance with the provisions contained herein, and as established by law.
70. **COUNTY COUNSELOR:** The County Counselor, or such licensed attorney designated by the County Counselor or Governing Body, to furnish legal assistance for the administration of these Regulations.
71. **COUNTY ENGINEER:** The County Engineer, or such licensed engineer designated by the County Engineer or Governing Body, to provide engineering assistance in administering these and other Regulations governing areas of normal responsibilities assigned to the County Engineer.
72. **COUNTY HEALTH OFFICER:** The Administrator of the County Health Department, or such person designated by the Board of County Commissioners to administer the Health Regulations of the County or the State of Kansas.
73. **COURT:** An unobstructed open area bounded on three or more sides by the walls of a building or buildings; an **OUTER COURT** extends to a street or yard, and an **INNER COURT** does not.
74. **DAY CARE HOME:** A facility licensed by the State of Kansas to provide for the care of not more than ten (10) children under fourteen (14) years of ages, not more than six (6) of whom are under kindergarten age, between the hours of 6:00 a.m. and 9:00 p.m. This term is further construed to include similar units operated under other names.
75. **DAY CARE HOME, LICENSED:** A facility licensed by the State of Kansas to provide for the care of not more than ten (10) children under fourteen (14) years of age, not more than six (6) of whom are under kindergarten age, between the hours of 6:00 a.m. and 9:00 p.m. This term is further construed to include similar units operated under the other names, or as defined by the state child care regulatory agency.
76. **DENSITY:** The average number of dwelling units per acre of land, expressed in terms of "per acre." (Example: 300 dwelling units occupying 40 acres of land is 7.5 units per acre.)
77. **DETENTION CENTER:** A secure residential facility licensed by the State of Kansas, designed specifically for children who require secure custody and which provides temporary living accommodations

for alleged delinquent, miscreant, wayward, truant or deprived children pending court disposition or placement in an appropriate program.

- 78. **DISTANCE:** Horizontal distances, unless otherwise designated.
- 79. **DISTRICT:** A section or sections of the zoning jurisdiction for which the regulations governing permitted use of buildings and land, the height of buildings, the size of yards, and the intensity of use are uniform.
- 80. **DOG:** Any canine specie over one (1) year of age.
- 81. **DRINKING ESTABLISHMENT:** A premises, which may be open to the general public, where alcoholic liquor by the individual drink is served.
- 82. **DRIVE-IN ESTABLISHMENT:** An enterprise which accommodates the patrons motor vehicle and from which the occupants thereof may make purchases, transact business, or view motion pictures or other entertainment.
- 83. **DRIVE-THROUGH ESTABLISHMENT:** Any restaurant, financial institution, or product vending enterprise where the patron does not necessarily enter and remain within a building during the transaction of his business. Food vending establishments where the food is not normally consumed within a building or where facilities are provided for eating outside a building are included in this definition.
- 84. **DRIVEWAY:** A minor private roadway providing access for vehicles to a single lot, parking space, garage, barn, dwelling, or other structure.
- 85. **DWELLING:** Any building, or portion thereof, designed or used primarily for residential purposes, including residential-designed manufactured homes, and modular homes.
- 86. **DWELLING, MULTIFAMILY:** A building or portion thereof, arranged, intended or designed for occupancy by three or more families.
- 87. **DWELLING, SEASONAL:** A residence intended for occasional, but not permanent, occupancy.
- 88. **DWELLING, SINGLE-FAMILY:** A building having accommodations for and occupied exclusively by one family. A residential-design manufactured home shall be considered a single-family dwelling.
- 89. **DWELLING, TWO-FAMILY:** A building or portion thereof, arranged, intended or designed for occupancy by two families.
- 90. **DWELLING UNIT:** A building or part thereof, containing complete housekeeping facilities for one family.
- 91. **EASEMENT:** A grant by a property owner to specific persons, or to the public, to use land for a specific purpose or purposes. Also, a right acquired by prescription.
- 92. **EFFICIENCY UNIT:** A dwelling unit, constructed as a part of a residential complex, having a living area of at least 220 square feet; an additional 100 square feet of living area for each occupant of such unit in excess of two (2); a separate closet; a separate bathroom containing a water closet, lavatory, and bathtub or shower; and, a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches in front.

93. **ESTABLISHED SETBACK:** The average setback on each street on which a lot fronts established by three (3) or more buildings; provided, only those properties that are within the same district and within 300 feet on each side of said lot along the same side of the street, but not beyond any intersecting street, are used in determining the established setback.
94. **EXOTIC BIRDS OR ANIMALS:** Birds or animals not commonly kept domestically or that are not native to Marion County and/or the United States. Exotic birds or animals includes, but are not limited to, bears, lions, tigers, cougars, wolves, half-breed wolves, and snakes.
95. **FAMILY:** One or more persons related by blood or marriage or adoption, living together as a single housekeeping unit plus usual domestic servants; or a group of not more than four (4) unrelated persons living together as a single housekeeping unit.
96. **FAMILY DAY CARE HOME:** A facility licensed by the State of Kansas to provide children under eighteen (18) years of age with food and lodging for less than twenty-four (24) hours per day. This term is further construed to include similar units with different names.
97. **FAMILY FOSTER HOME:** A facility licensed by the State of Kansas for twenty-four (24) hour care of four (4) or less children between the ages of infancy to 16 years of age and unrelated to the operator(s), or as defined by the state child care regulatory agency. Children in foster care have been found by the Court to be in need of care.
98. **FARMERS MARKET:** The seasonal selling or offering for sale at retail of home-grown vegetables or produce, occurring in a pre-designated area, where the vendors are generally individuals who have raised the vegetables or produce, or have taken the same on consignment for retail sale.
99. **FEED LOT, COMMERCIAL:** (See Confined Animal Feeding Operation.)
100. **FENCE:** An unroofed barrier or unroofed enclosed structure, including retaining walls.
101. **FENCE HEIGHT:** The vertical distance measured from the side of the fence that is exterior to the property or from the lowest adjacent ground level to the top of the fence material. In the case of wire fencing, height shall be measured by the width of the material used, providing that when installed, the material is directly adjacent to the ground level.
102. **FLOOD PLAIN:** (See Article 12)
103. **FLOOR AREA:** The square foot area of all space within the outside line of a wall, including the total area of all floor levels, but excluding porches, garages, or unfinished space in a basement, cellar or attic. (Yearout recommends including attic.)
104. **FOOTPRINT:** The horizontal area as seen in plan, measured from outside of all exterior walls and supporting columns. It includes residences, garages, covered carports, patios, decks, balconies, and accessory structures.
105. **FOSTER HOME:** A facility licensed by the State of Kansas for the care of four (4) or less persons unrelated to the operator(s).
106. **FOUNDATION, PERMANENT:** A site-built foundation, with or without basement, that meets or exceeds the foundation requirements of the 1988 Edition of the International Conference of Building Officials (ICBO) Uniform Building Code, that portion of which is incorporated by reference herein.

107. **FRONT:** The part or side of any building or structure facing the street or frontage road.

108. **FRONTAGE:**

a. **Street Frontage:** All of the property on one side of a street between two intersecting streets (crossing or terminating), measured along the line of the street; or if the street is dead ended, then all of the property abutting on one side between an intersecting street and the dead-end of the street.

b. **Lot Frontage:** The distance for which the front boundary line of the lot and the right-of-way are coincident.

109. **GARAGE, PRIVATE:** An accessory building designed or used for the storage of motor vehicles owned and used by the occupants of the building to which it is accessory.

110. **GARAGE, PUBLIC:** A building, or portion thereof, other than a private garage, designed or used for equipping, repairing, hiring, servicing, selling or storing motor vehicles.

111. **GARAGE, STORAGE:** A building, or portion thereof, designed or used exclusively for housing motor vehicles, other than trucks and commercial vehicles, pursuant to previous contract or arrangement.

112. **GARDEN APARTMENT BUILDING:** An apartment building located on a lot either singly or together with other similar apartment buildings, such buildings generally being one or two stories in height and having grounds completely landscaped.

113. **GOVERNING BODY:** The Board of County Commissioners of Marion County, Kansas.

114. **GREENHOUSE:** A translucent enclosure used for the cultivation or protection of tender plants.

115. **GROUP BOARDING HOME OR RESIDENTIAL CENTER OFR CHILDREN:** A facility licensed by State of Kansas to provide twenty-four (24) hour non-secure care for not less than five (5) nor more than 10) persons, between the ages or infancy to 16 years of age, or as defined by the state child care regulatory board.

116. **GROUP DAY CARE HOME:** A facility licensed by the State of Kansas for the care of a maximum of twelve (12) children under sixteen (16) years of age, and a limited number of children under Kindergarten age, or as defined by the state child care regulatory agency.

117. **GROUP HOME:** Any dwelling occupied by not more than ten (10) persons, including eight (8) or fewer persons with a disability who need not be related by blood or marriage and not to exceed two (2) staff residents who need not be related by blood or marriage to each other or to the residents of the home, which dwelling is licensed by regulatory agency of the State of Kansas. For purposes of this definition, disability shall mean:

DISABILITY: A condition, with respect to a person, which means:

1. A physical or mental impairment which substantially limits one or more of such person's major life activities;
2. A record of having such an impairment; or,
3. Being regarded as having such an impairment.

Such terms do not include current, illegal use or addiction to a controlled substance, as defined in Section 102 of the Controlled Substance Act (21 U.S.C. 802). Such terms also shall not include half-way homes, homes for parolees, persons released for sex crimes, or any other facility for the placement of persons convicted of felonies in a residential setting.

118. **GUEST HOUSE:** Living quarters within a detached accessory building located on the same premises as the principle or main residential building for use by temporary guests of the occupants of the premises and which shall not be used as a boarding house, bed and breakfast, or other similar use in which guests pay for their stay. Said living quarters shall not have separate utility services from the principle or main residential building.

(Yearout explained the wording “a total square footage of less than the total square footage of the primary structure” could be added to the Articles under “Temporary Structure,” not to the definition.)

119. **HAULING TRAILER:** A light-duty utility trailer intended for residential use, including open-bed small trailers designed to be towed behind a car or truck.

120. **HAZARDOUS WASTE:** Any waste meeting the definition of K.S.A. 3430 and amendments thereto.

121. **HAZARDOUS WASTE DISPOSAL FACILITY:** Any facility which meets the requirements as defined in K.S.A. 65-3430, as amended.

122. **HIGHWAY:** A road or street designated as a highway by an appropriate local, state or federal agency.

123. **HIGHWAY, LIMITED ACCESS:** A freeway or expressway providing for through traffic in respect to which owners or occupants of abutting property or lands and other persons have no legal right of access to or from the same, except at such points and in such manner as may be determined by the public authority having jurisdiction over such traffic-way.

124. **HOBBY ACTIVITY:** A non-commercial craft or assembly activity of lesser scale than a home occupation; and which is subordinate to the residential use of a dwelling or commercial use of a non-residential structure.

125. **HOME OCCUPATION:** Any occupation or activity which is clearly incidental and secondary to the use of the premises for dwelling.

126. **HOSPITAL:** A building or group of buildings having room facilities for one or more abiding patients, used for providing services for the in-patient medical and surgical care of sick or injured humans, and which may include related facilities such as laboratories, pharmacies, out-patient departments, training facilities, central service facilities, and staff offices; provided, however, that such related facilities must be incidental and subordinate to the main use and must be an integral part of the hospital operation.

127. **HOTEL:** A building or portion thereof, or a group of buildings, which provides sleeping accommodations for transients with or without meals, whether such establishments are designated as a hotel, inn, motel, motor inn, motor lodge, tourist cabin, tourist court, or otherwise.

128. **INDUSTRIAL LANDFILL:** A permitted solid waste disposal area used exclusively for the disposal on land of industrial solid waste.