

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS
RECORD OF PROCEEDINGS

August 28, 2008

Chairman David Mueller called the meeting to order at 7:30 p.m., with a quorum present.

Roll Call was answered by Mueller, Jeff Bina, Vida Bartel, Mary Avery, Ervin Ediger, and Marquette Eilerts. Bob Maxwell, Kent Becker, and Glen Unrau were absent. Zoning Administrator Bobbi Strait was present. County Commissioner Dan Holub was also present.

Mueller asked if there were any additions or corrections to the Record of Proceedings for the April 24, 2008, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Avery made a motion to approve the Record of Proceedings as written and Bina seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Strait introduced her new secretary, Tonya Richards. Strait said Richards is doing an excellent job and has been going out on inspections with her.

Mueller wanted to note for the record that there was a meeting in May, 2008, and members met upstairs in the courthouse for a work session. Members present for the work session included: Bina, Bartel, Avery, Eilerts and Maxwell. No minutes were taken for this work session. Mueller wanted to also note for the record there was no meeting, as usual, in June, 2008, and there was no meeting in July, 2008, due to a lack of a quorum because the county fair was going on that evening.

Item 4: An application requesting a rezone for Leland Seifert. Mueller reminded members they are acting as the planning commission to make a recommendation to the county commission for this application. Mueller said this application has been published in the August 6, 2008, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Mueller asked if any members have a conflict of interest for this application, or if anyone had any outside communication concerning this application. No one did. Mueller noted the applicant was not present, so Mueller asked Strait to review the application. Strait said Martha Krispense previously owned this property and in 1998 she applied for a rezone so she could parcel off 10 acres as rural residential so she could sell it as a legitimate, conforming lot. Strait said Krispense did not want to sell 40 acres. Strait said Mr. Krispense is interested in buying back part of the land, and they could do a boundary shift but they need to get it back to ag zoning to do a boundary shift without a lot split. Strait said they

plan to go with a row of trees for the border and they will have a surveyor move the boundary over to the row of trees for an area of about five acres. It is already fenced off there, so it seems to be a natural boundary, Strait told members. If they go with just three acres, they would have to take the fence out, she explained. Krispense wants to buy the north part back, Strait said. Strait showed members on an aerial photo where the property is located. Seifert has allowed Krispense to drive on his property all this time, Strait said. There are several out buildings there, if someone wanted to buy it for their hired help, Strait said. Bartel asked Strait what road runs by the property, and Strait said the road is Pawnee. It makes sense to rezone it back to ag since it has all those ag buildings out there, Strait said. Strait said no comments have been received about this application as of August 20, 2008, and to this day there still have not been any comments received. Strait reviewed her staff report for this application. We are not intending to rezone anything additional to rural residential, Strait explained. We can revert it back to the original zoning and keep things uniform, she said. Nothing has changed except the zoning regs, Strait said. And, it is actually still being farmed by the original landowner, she added. The Seifert Trust does not want to keep the property, and it is actually more sellable this way, Strait said. Pawnee Road is a major roadway, and the property has an on-site sewer system, and the water is in good shape, she said. When referring to number nine of the factors to be considered in a change of zoning classification, Strait said she does not consider ag use as vacant land. I strongly recommend approving this application, Strait told members. Strait also referred to number eleven in the list of factors to consider, reminding members the comprehensive plan was written in a way to encourage preserving ag use in Marion County. This will not change the use of the land, and it will not change the taxes, it will only change the ownership, Strait told members. Avery asked about the location of the lagoon and Strait showed her on a photo. When they sell the property, it will go through a water and sewer inspection, Strait said. Mueller said since there were no public comments received and no one from the public is present at this meeting, he will close the public hearing for this application.

Bartel made a motion to recommend approving this application for the Leland W. Seifert Trust to rezone 10 acres from Rural Residential Zone District to "A" Agricultural Zone District to allow the boundary shift and have a legal conforming lot when the shift is completed. Ediger seconded the motion.

In favor: 6; Opposed: 0; Motion carried.

Strait said this application will go on to the county commission for final approval on September 15, 2008. Mueller explained rezones go on as recommendations from the planning commission to the county commission, but Board of Zoning Appeals actions are final actions.

Off Agenda: Martin Marietta was discussed. Several years back Martin Marietta applied for a Conditional Use Permit (CUP), and it was approved with the condition they stay 300 feet from the stream bed. Now they want a variance from the set back required for the stream bed, which was an original condition on their

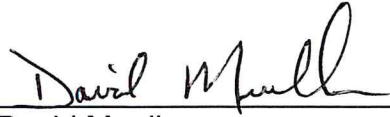
CUP. Strait asked Dave Yearout about this and he said they now must request an amended CUP. Strait said a representative from Martin Marietta was supposed to call her two weeks later after their initial conversation and she has not heard back from them yet. Strait said today is the deadline for the September meeting and as of today there are no applications for September. Rocky Hett got his portion of the quarry property annexed into the City of Marion and now he is grumbling because now he has to pay city taxes instead of county taxes, but he did get his C&D (construction and demolition) site okayed by the city, Strait said. Strait said Hett's request for a C&D site went from the city's planning commission to the city council for final approval. Strait said she does not know what to think at this point about the possible amended CUP request as it depends on what the terrain looks like and where the water level is, and until they tell her exactly what they are wanting to do and how deep they are wanting to go, she cannot make any recommendations. There is no use in pursuing it until they make a formal request, Mueller said. It was very contentious at the meeting when they applied for the CUP, Eilerts remembered. I will probably attach the previous meeting minutes to the staff report so everyone can see why they made the condition, Strait said. Mueller took a minute to welcome Commissioner Holub to the meeting. Strait told members she learned a lot about flood disasters during a recent trip to Cedar Rapids, Iowa. She said she took 287 photographs of flood damage, etc., and she sent in one inspection report. Strait said the property she inspected was in the flood zone and there was still water running into the home, but FEMA said there was not enough damage to get more funding to fix the property. Strait explained the owner had the home paid for, so the owner did not have flood insurance. But, after reviewing Strait's report, FEMA did give the owner more money as a result of the information Strait provided. Strait talked about sewer lagoons that were located upstream, and several towns were located upstream, so their sewers were flooded, too, and that was also coming downstream. Strait said when homes flood the refrigerators and freezers float and cause more damage by knocking holes in walls, etc., as the water moves through the home. It was a very good experience, Strait said. I was the only building inspector who went from Kansas, she said. Strait said she brought home some computer software from FEMA, and Richards has been putting the county's information into the program, so we will have a head start if we ever need it. We hope we never need it, but we have to be prepared, Mueller said. We can use the same software for a fire or a tornado, Strait said. They (Iowa officials) had to contract out for outside inspectors to come in and enter the information in their computers before they could even begin, Strait explained. Officials from FEMA said if we enter the information now to be ready, we will never regret it, Strait said. She also told about houseboat owners being required to secure their boats with steel bars, but it caused the boats to go straight up on their ends, causing damage. She explained the houseboat owners who ignored the requirement and just used rope to secure their boats were okay because their boats just floated up with the rising water and then back down. Mueller asked about taking formal action at next month's meeting. If you want to we will need a public hearing first, Strait said. The planning commission has a public hearing

and then it goes to the county commission?, Mueller asked. Yes, there is only one public hearing required for zoning, Strait said. So, the building codes would be a separate issue?, Mueller asked, and Strait said yes. We could actually hold both public hearings at the same time, we would just need two notices, Strait said. Mueller asked Strait to review the proposed changes for zoning regulations. Strait talked about manufactured housing and changing the construction date deadline to April 1, 2001, as well as not allowing mobile homes. Strait also talked about wireless towers and changing requirements to a chain link fence surrounding the structure instead of a masonry fence. We also need to talk about changing fees because of the cost of fuel, and sometimes I have to go out to a property three times, Strait said. For the next meeting, Mueller asked Strait to summarize the changes to simplify things. For changes to the sanitary code, Strait explained she submitted a preliminary draft to KDHE (Kansas Department of Health and Environment), and she has not heard back from them yet. She said there is no need to spend time on this until we find out if KDHE will or will not allow the rough draft she submitted. Contractor licenses and building codes can be packaged together, Mueller said. There is no continuing education for sewer installation people, but there is education for them, Strait said. They don't have to turn in continuing education like the others do, but it is still good to know there is insurance for all, Strait said. We want new construction in our county, but we don't want the current tax payers paying for it, Strait said. She said she has to make 12 trips to a construction site on new home inspections. She said on zoning requests she has to make one trip to the property, as well as one trip to inspect water wells, but she has to go out three times on sewer inspections. She also pointed out that with the cost of publishing, the county is currently losing money because the fees are not high enough to cover the cost. Some counties charge \$200 for zoning permits, she said. Instead of raising the fee from \$20 to \$200, we could charge a mileage fee, Strait said. We could charge a base fee plus mileage, Mueller said. We could adjust the flat fee for anything we have to publish, because \$50 does not cover it, Strait said. Currently the cost is more than double what we currently charge, Strait told members. I will e-mail you soon with the changes from the work session, Strait told members. If after reviewing them you are ready to go, let me know next week, she said. If the planning commission recommends changes on their own, we have to publish them only 15 days in advance, she explained. Mueller suggested members have a work session at next month's meeting on September 25, 2008, and then have a public hearing, at least for the zoning changes for sure, on October 23, 2008. Members talked about building code changes. Strait said Maxwell had reviewed some of the codes. According to the building codes the ground snow load in Marion County is 20 inches maximum. The frost depth is 30 inches, and the wind load is 90 mph. Strait said we should have preliminary flood maps before the end of the year. She explained that 1978 is the most recent information available now, so she is waiting for the new data. The average temperature in Marion County is 55 degrees. Those are things we will need to put in the resolution, Strait explained. Strait talked about gas appliances in basements and the need for detection monitors or ventilation systems. They used to require installation in attics, so if

the appliance blows it would just blow the roof off, Strait said. Strait reminded members of the time she was called out to a home where a young girl died due to a propane leak. If we can get away from putting propane water heaters in basements, I would be a happy camper, Strait said. If three safety precautions are in place, and they all fail, it is a freak accident, because if one fails another should catch it, and that is about as safe as you can make it, Strait said. From April 1 to October 31 insect screens are required at restaurants, or should at least be available, and the same goes for rental properties. From November 1 to March 31 there must be a heat supply in homes, Strait said. This requirement should not mean the landlord must pay the bill, it only means they must have the capability of heating the home in place, Strait said. We will be required to have two hearings because this is a model code, Strait said. We don't want to adopt the private sewer code because it was not written for around here, Strait said. Strait ask if there were any comments. Bartel asked how many homes do not have a furnace or water heater in the basement. Mueller said that requirement would be for new construction. Or, if they replace a furnace or a water heater, they would need a permit, Strait said. We don't know that, Avery said about needing a permit to replace such an appliance. Right now we don't have anything in place that requires that, Strait said. Yesterday I got a call from someone in McPherson County who is putting a bid in on a pole barn in our county and McPherson County only has an 80 mph wind load because if you bump it up to 90 mph it costs more, Strait said. Avery asked if all counties surrounding us have building codes. Harvey, Butler and McPherson do, but I don't think Dickinson does and I'm not sure about Morris, Strait said. Chase County does not even have zoning, she added. Now, some of the towns might, but the county does not, she added. If we don't adopt building codes, eventually the government will adopt them for us, and we won't like it, Strait said. Members discussed incentives that are available to get communities to adopt building codes, such as the Community Building Code Grant Act. We might want to consider eventually adopting the Energy Efficiency Code, as it is already mandatory in several states, Strait told members. Strait said the existing building codes are used if someone is remodeling or repairing fifty percent of their property. She said if the SRS calls and says a house is uninhabitable, she does a property maintenance inspection. All the other codes only apply to new construction, unless they are replacing a water heater or furnace, she said. If we don't do it all at once no one will know things such as they are required to have a shut off outside by the air conditioner unit, she explained. Or an electric shut off outside that the fire department could get to, she added. It is to protect the homeowner, and if it is not permitted it is not inspected, Strait said. Mueller asked Holub if he had any comments. Holub said they had several strategic plan meetings and never had one zoning complaint in six meetings. Everyone is happy with zoning like it is, Holub said. He said cooperation is starting to build and contractors want licenses. I guess the next issue is how it combines with the cities, Mueller said. Marion condemned a house recently, Holub said. If the cities don't want to be on board, we can just go out in the county, Strait said. Mueller asked, and Strait explained that contractors now must get separate licenses for each community in the county. They want a

reciprocal license, Strait said. That is the word I was looking for, Mueller said. We may still want to charge \$5 because we have to track insurance and continuing education, but once we get the system set up we should be able to do that for \$5 a year, Strait said. Mueller asked if the cities are comparable, and Strait said no. And, I'm not sure if all the cities have licensed inspectors, Strait said. The purpose of the contractor's license is to make sure they know what they are doing before they go out and mess up someone's house, Strait said. Holub said you never know. He said one guy had a new truck and looked good, but the phone number on the truck was not a good number. Strait talked about problems with remodeling a house near Greensburg, and said it would be good to hear from someone with such a horror story. This is a way to protect people from that scenario, she said. The initial point of contact (with county residents) now is for zoning permits, Strait said. And, neighborhood revitalization, she added. Right then (when they come in for a permit) I can give them a list of requirements and licensed contractors and they will have it right off the bat, Strait said. She told members about a wind farm in Butler County that had a \$300,000 construction permit fee. She gave another example of \$90,000 income from an ethanol plant in Seward County that was a \$9 million project. Strait said they sent the plans to a certified planner in this case, as this is an example of when it pays to get a qualified inspector for unique situations. They are working on a wind farm proposition east of Florence, Strait said. They never adopted a moratorium not allowing wind farms in the Flint Hills, she said. Strait explained the overlay district, saying it just means it is an area where it would be easy to do a wind farm. If it was outside the overlay district they would have to rezone it first, she added. Mueller explained the overlay district is where the best options are for a wind farm. Avery added that the planning commission was trying to be proactive after seeing the difficulty with wind farms in Butler County. And to correlate with state agencies, Eilerts added. Wind farms, like cell towers, need their own chapter, Strait said. Butler County's wind farm sells (electricity) to Missouri. One farmer in Butler County makes an income of \$150,000 to \$200,000 from the wind farm. Bartel said there are 30 to 50 wind turbines going up by Salina near Rolling Hills, but the construction has not yet been completed. Members discussed dam breach impact areas. Strait said we need to find an engineering study for the county. Members tried to remember when a study was done in recent years. Mueller suggested contacting the Corps of Engineers at Marion Reservoir, and other members remembered the county lake was part of the past study, too. Strait suggested we may need to revise the dam breach impact area. Strait said she will attend a state meeting next week for flood zone managers. Members discussed salvage yards. Strait said KDOT does not require fencing on salvage yards located in industrial zones, but you can do it on a local level. Strait told members the status of Mr. King's salvage yard. She said there is an issue with water accumulating near his property. Now he says he was grandfathered in, and he was not, Strait told members. Mueller reminded members the next meeting is scheduled for September 25, 2008. Bartel made a motion to adjourn and Bina seconded the motion. In favor: 6; Opposed: 0; Motion carried and the meeting adjourned at 9:42 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yates,
Secretary

