

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

December 1, 2011

Chairman David Mueller called the meeting to order at 6:35 p.m. Members met an hour prior to the public hearing, concerning the proposed updates to the zoning regulations.

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

Mueller asked for corrections, or additions, to the Record of Proceedings for the October 27, 2011, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Maxwell moved to approve the Record of Proceedings as written, and Vannocker seconded. In favor: 8; Opposed: 0; Motion carried.

Mueller explained the public hearing begins at 7:30 p.m. Mueller asked Yearout for any discussion topics concerning the proposed regulation changes. Yearout asked members to review Article 20. Yearout gave members copies of this article and asked them to take note of Article 20-108. If you have an existing non-conforming structure that does not meet setbacks, and you want to put an addition on and build it straight out from the existing structure, that is okay if it lines up with the existing building because you are not increasing the non-conformity, Yearout said. Mueller asked if this only applies to the side that does not conform, and Yearout said yes. Mueller asked Richards if this is the way this type of situation has been handled, and Richards said no. Richards said she could think of one example where if they met the setbacks with their addition it made the building look funny. You just don't increase what you've got that is out of synch, Yearout said. Otherwise you have to go to the BZA, but you are not really creating a new variance need, Yearout said. Richards asked about access structures, like carports. What if it is unattached?, Kraus asked. It applies to the lot, Yearout said. Kraus asked if this allows a loophole. Avery said an example is a garage that did not meet the setbacks so they built the garage inside a barn and then tore down the barn. They are not creating anything out of whack more than before, Yearout said. Mainly because there already was a structure there and it improved the property, Mueller said. Yes, already a structure there and the improvement increased the tax base, Yearout said. It allows more stuff to be documented and does not fuel coffee shop complaints, Yearout said. Richards said there is an old building going down at the county lake and she would like to see a new structure go up. Administratively I will still enforce eight feet, Richards said. A grandfathered right is if they tear down it can go in the same place depending on the initiative as to why they are making the change, Yearout said. You get into zoning issues because grandfathered rights are lost when you make changes, he said. A lot of communities have recognized that is fine in theory but does not allow for improvements, Yearout said. If they are allowed to build up, that is an enlargement,

Yearout said. Avery asked if it would be setting a precedent if they allowed newer mobile homes. It could for someone who already has a singlewide, but not to allow someone to bring one in, Richards said. Yes, it sets a precedent, but it does allow a process to do that, Yearout said. I think it will allow more positive change, Kraus said. I hope it keeps people here instead of moving, Richards said. There is still a public safety issue on top of it, Mueller said. Some insurance companies will not insure a property if there is an old mobile home on the property, Avery said. If we allow this, where do we stop?, Vannocker asked. I've seen a lot of small acreages with dilapidated houses on the property, he said. Are we going to allow mobile homes in there?, Vannocker asked. They do not conform to the manufactured homes here, Yearout said. We have a lot of dilapidated farmsteads, and we do have people wanting to bring in manufactured homes, Richards said. Done property, it can work, Yearout said. I read where the citizens of Marion County are supposed to notify the administrator of any violations they see, Maxwell said. Funk said he likes the reminder in the tax notifications, for permits and zoning. Contractors have no excuse for not knowing about zoning, Mueller said. Avery agreed. If it is not something that is part of your life people don't pay attention, Avery said. Richards said it is the same with the flood zone issue. People don't know they are in a flood zone, she said. So, coming in for a permit saves them, Mueller said. It does, Richards agreed. A lot of people would say it is none of their damn business anyway, Yearout said. It's in the water, Yearout said. No, it's not in the water, Mount said. Rex Savage arrived at this point. Yearout gave an overview of the other changes. He reviewed lot splits and boundary shifts in the subdivision regulations under Article 3. Mueller said he will wait until 7:30 p.m. to open the public hearing. Mueller said he would like to start with the Wind Energy Conversion Systems (WECS) sections if no one else is present from the public, but it is up to the members as to how they wish to proceed. Mueller asked Richards if she has any comments. Richards said she likes the definitions in the subdivision regulations. She also likes if a property is split off they can build on the remaining acres. Mount asked what about animals in the subdivision regulations. In the county people think they can buy three or four acres and bring in three horses, too, Mount said. Too many animals on too small of a lot are a health issue, but that is a KDHE (Kansas Department of Health and Environment) issue, Yearout said. Village One regulations have some restrictions. And also in the CUP (Conditional Use Permit) section, too, Yearout said. Mueller noted it is 7:30 p.m. so he will recess the planning commission meeting and open the public hearing.

Mueller noted the public hearing notice was published in the November 9, 2011, issues of the *Marion County Record*, *Hillsboro Star Journal*, and *Peabody Gazette Bulletin*. Mueller said notices were also sent to all the incorporated cities in the county. Mueller said he appreciates the work Richards did to show the proposed changes in the regulations, as it made it easy for members to review. Mueller asked members to review Article 27 on Wind Energy Conversion Systems (WECS). Savage asked about the wording concerning using the smallest number of roads possible. Yearout said that is the old wording. Mueller questioned if it would be better to use the word "feasible." Or, "practical," Savage said. Under Article 27-107, #5, members agreed to change the wording to "practical." Mueller noted the intent is to minimize the disturbance on the property. Take the shortest path on the property, Kraus said. Mueller asked Savage if

there were any other issues he wished to discuss. No, that was the only thing that came to mind, Savage said. Richards asked about changing the notification area to 1,000 feet, and where that change would be located in the regulations. Yes, it is in the administration section of Article 4, Yearout said. Vannocker asked what the notification area was in the past, and Mueller said one mile. It was very expensive, Richards said. We notified within one mile, but they can protest only within 1,000 feet, and that could be contested, Yearout said. Nothing wrong about being stricter, but notification areas carry with them perceived rights, Yearout said. Mueller asked if there were other questions about Article 27. We've come a long ways, Avery said. Mueller polled the board tentatively for Article 17-107, #5, change the wording to "practical," and there were no objections from members. Kraus asked if the county commission was okay with people having to have their taxes paid in order to apply, and Richards said the commission was okay with it. There has to be a resolution, Yearout said. Tonya will work up a resolution for the county commission to approve, Yearout said. Maxwell had several questions.

Maxwell's questions in Article 1:

On page 1-3, #9-M, there was a typo and the word "for" needed to be added.

On page 1-11, #94, Maxwell asked if this is the new K.S.A. number because it is different. Yearout said it is okay as the definition is in both but said he'll double check.

On page 1-14, #131, Maxwell asked if there is a need to add pre-kindergarten. Yearout said that is covered under the licensed issues, so it is okay.

On page 1-15, #147, Maxwell questioned the use of "or through" in the title. Yearout explained it means through lot. Kraus showed Maxwell the diagram on the page showing a through lot.

On page 1-18, #169, Maxwell questioned the use of the word "contradistinction." Yearout said it is okay.

On page 1-19, #188, Maxwell said this is different and not the definition in the dictionary. Yes, Yearout said, but it is okay.

On page 1-28, #106-G, Maxwell asked about including Article 15 with Articles 13 & 14. Yearout said it should read, Articles 14 & 15, not Article 13.

Mueller asked if there were any other issues with Article 1, and members said no. Yearout said he modified page 1-28, paragraph 2 by adding "the operation of machinery of any kind 24 hours a day." Yearout said this is new, but meaningful. Maxwell said some words were deleted, like "ostriches." Yearout said Kansas has changed to allow ostriches in Kansas laws as livestock.

Maxwell's questions in Article 2:

On page 2-2, 2-103, 2-104 & 2-105, Maxwell asked if Articles 15, 16 & 17 be included. Yearout said it should read:

2-103 should be Article 13

2-104 should be Article 14

2-105 should be Article 15

2-106 should be Article 16

2-107 should be Article 17

2-108 should be Article 18

2-109 should be Article 19

Maxwell asked about Article 3, page 3-1, 3-105 where it reads Article 11. Yearout said it should be Article 15. Richards asked about page 3-2, #6, if Article 17 is okay, and Yearout said yes. Yearout said the blanks need to be filled in for Article 9. Maxwell asked about Marion and Hillsboro and the airport overlay districts. Yearout said it will be coordinated with the local airports. Yearout suggested if there are airport master plans we can fill in the blanks, but if not we can put the section in and say it is for future use, and take the language out.

Maxwell's questions in Article 15:

On page 15-2, #15-104, #1 Maxwell asked about the change in clearance to 11 feet instead of 14 feet. Yearout said he is not sure why that change is there and it does not make any difference to him. Members agreed to change it to 14 feet.

No one had any issues with Articles 16 or 17.

Maxwell's questions in Article 18:

On page 18-1, #14-102, Kraus said it should be #18-102. Maxwell asked where Ag buildings and structures are listed here. Yearout said a true Ag building is exempt from regulations per state law. If they want to build a high structure there is nothing saying they cannot do it, Yearout said.

Maxwell's questions in Article 19:

On page 19-2, #19-103, lines 3 and 4, Maxwell asked about the wording "shall be permitted to continue, but with an unapproved Conditional Use Permit." Yearout said it is in the regulations. Maxwell asked how you handle it. Nothing really triggers it until the landowner asks to build a new building, etc., Yearout said. This comes out of Marion County over the landfill case, Yearout said. Richards said she is working on starting a GIS (Geographic Information System) system.

On page 19-9, #19-106, Maxwell asked about forfeiting the development plan, and why not also forfeit the CUP? The CUP is by resolution, so you have to go through the same resolution process to remove the CUP, Yearout said. Richards asked if you have to republish, and Yearout said yes, you have to go through everything again. Yearout explained a sunset provision can be included. You can do it on a CUP but not on a resolution, he said. Maxwell said there are lots of new items in Article 19. Yearout explained this makes the language more clear, where before it would be an interpretation issue.

Maxwell asked about Article 21, #21-102, where Richards marked the copy as "new." Yearout said that is okay.

Maxwell asked about Article 23, page 23-1, #23-103, where Richards marked the copy as "new." Mueller said he thinks those were proposals so they are okay.

Maxwell said he is finished with his questions. Mueller asked if anyone else had anything concerning the regulations.

Vannocker asked about Article 19, page 19-14, #5, saying he thought we put in shipping containers to allow one under Suburban Residential. Richards said she agreed it needs to be changed. Yearout said if you go to page 19-13, H, he addressed it there, and deleted it on page 19-14, under #5.

Vannocker asked about Article 24, page 24-6, paragraph 2. Vannocker asked who does the traffic study, and Yearout said it is okay. Yearout said it will be approved who provides them to us. Vannocker asked if we care who provides them to us. Yearout said it is addressed in the paragraph above.

Richards asked about 24-104, "Posting of Sign." Vannocker asked if Richards is required to put a sign up, and Yearout said no. Yearout said Richards just needs to put a legal notice in the newspaper, and mail notices within 1,000 feet. Mueller asked if any member feels Richards needs to post a sign, and members agreed to delete 24-104. So, there will need to be renumbering done for the remaining text. Mueller said this will save money.

Vannocker asked about Article 3, and the Subdivision lots of Geary County reference. Yearout said it has been updated. Mueller asked if there were other questions. Yearout said the format and Article numbers change in the Subdivision Regulations. Mueller asked if the Subdivision Regulations go with the rest of the changes to the county commission, and Richards said yes. Mueller asked if anyone else has questions on the Subdivision Regulations. Mueller asked if members could recommend them for approval but have Maxwell get with Richards in the morning with any questions, and if changes are needed they could be made. Kraus said if it is something major, Richards could e-mail members. Mueller asked if there was anything else.

Maxwell asked about manufactured homes and the RV code. That will replace Article 2 in your regulations, Yearout said. Mueller asked if members can add mobile homes and the RV code. It is a standalone code, Yearout said. You can review them but I am not pushing you to approve them tonight, Yearout said. By moving to a standalone code, they are not protected under the grandfather clause, which allows you to address health issues, Yearout said. We need to handle it separately, Mueller said.

Maxwell's questions about the Manufactured Home and Recreational Vehicle Code:

Maxwell said on page 1, section 104, under #2 & #4, we need to omit the word "his" and all agreed.

Maxwell asked under #1, #8, #11 & #24 if the wording can be made simpler, and Yearout said no, it is not the same thing. There is a place in the code which refers to camp because that is what the language says, Yearout said.

Maxwell asked about Section 104, #22, and the word "pier." Yearout explained, and Maxwell said okay.

Maxwell asked about Section 107, page 4, and on page 14, about the use of "storage lots" and Yearout explained the difference.

Maxwell asked about Section 112, questioning no building code, and Yearout said it is not required. So, if someone comes in and these things are not done correctly, are we liable?, Richards asked, and Yearout said no. Avery asked, and Yearout explained they still need a CUP. You can't just put in a mobile home park, he said. We are not changing how they apply, we are giving you a little latitude on how to handle things, Yearout said. What about the county lake?, Avery asked. The county commission has chosen to ignore their own rules on their own stuff, Yearout said. Any changes should apply to every park in the county, he added.

Maxwell asked about page 7, Section 117, if it should be left loose in case there is a change in fees. Yearout said you must have a reference to fees in here. You could say the fees are established by resolution of the governing body, Yearout said.

Maxwell asked about Section 118, existing parks, and if it would help to notify the park if a problem came up. Kraus said the one at the county lake is operated by the county, so there would be no one to notify. Yearout said the Army Corps of Engineers at Marion Reservoir want local regulations.

Maxwell asked about page 9 in Section 119, 13-5, saying the county does not have an engineer. Yearout said the county is ultimately responsible for that stuff, and they have to sign off on it. The engineer is whoever the county hires, Yearout said. Also on page 9, Section 119, under #5 in the paragraph, Maxwell said "he or she" should be deleted in line 5. Yearout said you have to put back in "inspection officer" because that is how you refer to them.

Maxwell said on page 13 the numbers are out of sequence, but Kraus said no, it is okay. Maxwell asked about #4 on page 13, and if recreation areas are required, and Yearout said yes. Maxwell asked if this is a state mandate, and Yearout said no.

Maxwell asked about page 15 and requiring new units as an upgrade. Yearout said some communities have said they will only address safety issues.

Mueller said members can talk about mobile homes and the RV code at the next meeting. Mueller asked for any other comments on the zoning regulations changes, or Subdivision Regulations. Yearout said there are two maps to create. Mueller closed the public hearing and reconvened the planning commission meeting.

Mueller said members have thoroughly discussed the changes. Mueller asked if there is no further discussion if someone has a motion. Mount moved to recommend the county commission adopt the new zoning regulations, including the paragraph added to Article 20, and the Subdivision Regulations, as edited tonight, and based on further editing that may come from staff on Subdivision Regulations. Kraus seconded.

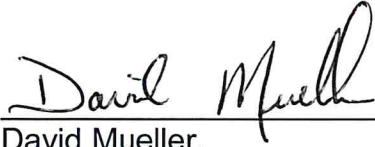
In favor: 8; Opposed: 0; Motion carried.

Members discussed mileage sheets for 2011 and the Christmas party. Mueller noted the next meeting is scheduled for January 26, 2012; at 6:30 p.m. Avery thanked Maxwell for serving and said it has been an honor to serve with him. You are always a gentleman and I very much appreciate you serving, and we will be lost without you, Avery told Maxwell. Maxwell said it has sometimes been challenging, but always interesting. Your gift has made a difference in our lives, Avery told Maxwell. Mueller


asked if members wish to start the next meeting at 6:30 p.m., with the meal at Country Lakes at 5 p.m. Members agreed. Mueller asked if there was anything else. Maxwell thanked everyone. Richards told Maxwell his attention to detail will be greatly missed. Schmidt moved to adjourn, and Maxwell seconded.

In favor: 8; Opposed: 0; Motion carried and the meeting adjourned at 9:25 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yates,
Secretary