

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

December 3, 2009

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

Roll Call was answered by Mueller, Kent Becker, Bob Maxwell, Jeff Bina, and Dan Mount. Marquette Eilerts was absent. Mary Avery and Jim Schmidt arrived after the meeting began. Acting Zoning Administrator Tonya Richards was present, along with consultant David Yearout.

Mueller asked for additions or corrections to the Record of Proceedings for the October 29, 2009, meeting of the Marion County Planning commission/Board of Zoning Appeals. Maxwell made a motion to accept the Record of Proceedings as written and Becker seconded the motion. In favor: 5; Opposed: 0; Motion carried.

Item 4: An application for Keystone Pipeline requesting a Conditional Use Permit (CUP) for a temporary pipe storage yard at the southeast corner of Quail Creek and 290<sup>th</sup> in Clark Township. Mueller reminded members they are acting as the planning commission for this application. Mueller noted this application was published in the October 28, 2009, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Mueller asked members if anyone had a conflict of interest for this application or if anyone had any outside communication concerning this application. No one did. Tommy Darnell, Jim Prescott and John Rolf were present to speak about the application. Avery arrived at this point. It was explained that Keystone was given preliminary approval to prep the site for the temporary pipe storage yard. Florence is the rail site for bringing in the pipe. There is a small bridge on 290<sup>th</sup> that will need some adjustment in order to haul the pipe across it. They might place a portable storage trailer on the property. It was explained that as workers cut sections of pipe, they will haul the leftover pipe to the storage yard, temporarily. Richards said this is application #PC09-09. She said the temporary storage yard would be located on approximately 40 acres, which is zoned agriculture. Richards said upon completion, the area will be cleaned up and returned to ag use. There will be a temporary entrance and exit, and all such details are included in the development plan. Maxwell asked if there will be any type of construction going on at the site. Sometimes we have to put a concrete coating on the pipe, Darnell said. No construction on site, Prescott said. In mid-May we will begin work, Rolf said. The end of December to the beginning of January we will start bringing the pipe in, Darnell said. We use a big magnet to move the pipe, Rolf explained. The pipe storage yards are set up 30 to 50 miles apart, Prescott said. Avery asked how long the site will need to be in place, and Prescott said probably 18 months. Mueller asked how much pipe will be stored at this site, and Prescott said 30

miles. Maxwell said he has been reading in the newspaper about a lawsuit against the county and several plaintiffs, but no one seems to know about it. Schmidt arrived at this point. So, it was an imminent domain issue with a landowner, Mueller said concerning the lawsuit. They will pick up all the rock they have laid down at the site, and in some cases they will give it to the county, or the landowner, Rolf said. And, they will straighten out the berms and put everything back the way they found it, he added. The bridge that is too small is by Lincolnville, just west of the COOP, Darnell said. Darnell and Prescott are going to the county commission meeting on Monday to speak to them about the bridge issue. If we can do something to enhance the bridge, that might be an option, Rolf said. As long as it satisfies the landowner, Maxwell said. Any issues being close to the flood zone?, Mueller asked. Every one of our pipe yards is in a flood zone, Darnell said. We won't have anything in there it can hurt, Rolf said. It's mainly the road that goes under water there, Mueller said. Mount asked, and was told they use projectiles that go through the pipeline and they run a tool through to make sure there are no dents or indentations in the pipe. If they find a dent or indentation, they dig the pipe up and fix it. They check it to 1.25 percent of the maximum allowable pressure on it, Rolf explained. There are two valves and no pump stations, Rolf said. Maxwell asked about the depth of the pipeline. Rolf said they cover it with four feet of soil. He said the minimum requirement is three feet of soil cover, but they add another foot of cover. They will bore all roads. They go five foot under the flow line in the ditches on both side, Rolf said. Bed pipe, too?, Mount asked. No, just back fill, Rolf said. If they get in rock, they will either haul it off and dispose of it or pulverize it and use it as fill, Rolf said. No fuel storage?, Mount asked, and Darnell said no. Mueller asked Richards to give her staff recommendation. Mueller asked if there were other questions, or comments. Yearout asked why this location? It was explained they will truck the pipe in from the rail site in Florence, and there are limited places for rail to come in. Part of the reason is there must be a willing landowner to work with. Darnell said they work north to south, 30 to 40 miles at a time. This (property) is right on the pipeline, Rolf said. Historically, we use older trucks on the pipeline, but we will use better trucks on US 77 to Lincolnville, Rolf said. The bridge is the only problem, he added. We are willing to enhance the bridge, he said. We are going to build bridge arcs at every creek we come to, Rolf said. Is 290<sup>th</sup> paved?, Yearout asked. Yes, it is a nice road, Rolf said. If we have any problems with any east/west roads, we will just go down the right of way, if we have to, Rolf said. Rolf said the average length of pipe is 73 feet. Mueller asked if there were any other questions, or comments. Mueller asked if there were any comments from the public, and there were none. Mueller closed the public hearing for this application.

Avery said the CUP specifically for pipe storage will remain with the land. Yearout recommended including a condition that the CUP is only for while they are using it. Mount asked, and was told it should take 18 months, or so. Yearout suggested members tie the length of the permit to the project, and also include restoration of the property to the satisfaction of the landowner. The pipeline will

not trigger anything in the zoning laws, Yearout said. The State of Kansas is informed, and even when you cross the flood zone you must file it, Yearout said. It is a storage yard issue, only, Yearout added. Mount asked where the valves are to be located. Both will be about 100 feet off rural roads at 350<sup>th</sup> and Remington and at 150<sup>th</sup> and Remington. Most are electrically operated, Rolf said. They will be remote operated valves and nothing can come back, he said. All will be within 100 feet of the road, he said. We will put a small gravel road to the site, Rolf said. He added the site will be about 40 feet by 50 feet. That does not trigger any zoning action, Yearout said. Rolf said a small satellite dish about 1.8 or 1.2 meters, or about three feet in diameter, will be used at the valve sites. Mueller reminded members there are 11 factors to consider with a CUP. Bina made a motion to recommend to the county commission approving a CUP for application #PC09-09 for Keystone Pipeline for a temporary pipe storage yard on 40 acres at the southeast corner of Quail Creek and 290<sup>th</sup> for storage of steel pipe, equipment loading, and on and off loading of pipe contingent upon the proposed Development Plan being maintained at all time, and with the following conditions: the CUP will expire with the completion of the project; upon completion of the pipeline construction, this temporary pipe yard will be cleaned up and the property returned to previous use as agricultural land; a temporary entrance/exit will be installed to county required specifications; and contractor will lay down geo-tech fabric and place six to eight inches of gravel on top of fabric for temporary gravel roads to be used for truck traffic to the temporary pipe storage yard. Mount seconded the motion. In favor: 7; Opposed: 0; Motion carried. Mueller asked Richards to explain the timeline.

Item 5: An application for Roger and Keri Richmond, requesting a CUP for a manufactured home on an existing farmstead in Wilson Township. Mueller reminded members they are again acting as the planning commission for this application. Mueller noted this application was published in the November 4, 2009, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Mueller asked members if anyone had a conflict of interest for this application or if anyone had any outside communication concerning this application. No one did. Keri and Betty Richmond were present to speak about the application. Keri explained the property is owned by her parents and there is an existing farmstead there, but it is not livable because it has foundation issues. Keri explained they would like to remove the old home and move on a 1998 manufactured home that is currently over between Goessel and Hillsboro. Mueller noted that currently a 2001, or newer, home is required in the regulations. Structure requirements say 1994, Yearout said. I recommend you recognize back to 1994, as you have here a structure built after the 1994 change that is of higher quality than most, Yearout said. Those built before 1994 are depreciating quicker, he said. I found out it should have been 1994, which resolves the issue, Yearout told members. I recommend addressing it in the amendments to allow the date to go back to 1994 because that is when the structures changed, Yearout said. We voted on 2001, Maxwell said. Our regs are in place, Mueller said. The folks could ask that the application be continued, and

it could just sit there, Yearout said. If you push it through, and it goes to the county commission and gets denied, then they have the one year waiting period, Yearout said. I'm comfortable going with 1994, and I have the document from HUD (Housing and Urban Development) showing that, Yearout said. We don't want to try and get the money if we are going to be denied, Betty said. They are actually waiting to see what happens here tonight, Richards said. Avery is concerned about the technicality causing hardship and wondered how long it would take to get it changed. You can have a public hearing in January to consider changes going to the county commission in February, Yearout said. The Kansas Manufactured Housing Association is under the opinion you cannot shorten the time period from 1976, Yearout said. My argument has always been '76 is way too far back, he added. Mount asked about the fact that the home is in Marion County now and they are just talking about changing the location. It is applied to a piece of property, not the county, Yearout said. When it was moved into the county our regs were 1976 and it was bought new, Richards said. You could hold a hearing on the application the same night you hold a hearing on the regs, Yearout said. I don't think it is improper or violates anyone's rights to do that, Yearout said. Mueller asked if anyone had any issues changing the year from 2001 to 1994. Maxwell questioned the previous denials. I think we need to expedite it as soon as possible, Becker said. Bina asked about the timeline. Yearout said members could recommend approval with the note that plans are to amend the regs, and ask that relief be granted. I have new information regarding the fact it should have been 1994, Yearout said. And given the fact you have a photo showing the good condition of the manufactured home, Yearout said. Consistency is very important but considering the uniqueness of this, and time is a factor, and they don't want to lose the home, Avery said. Maxwell asked if the applicant could wait until January so it would make it clean without a hint of manipulation, and set it back to 1994 at that time. It might be a problem with the manufactured home owner, Richards said. Another person from Butler County is interested in buying the home, Richards said. They are going to improve the farmstead, Mueller said. It is already in the county, Mount said. It is a unique situation but should at least be considered because she is going to lose the opportunity to purchase the home, Becker said. The county commission could send it back to us instead of deny it, Avery said. If you vote to move forward, I would urge you to follow up with a date for the regs amendments to remove the age problem, Yearout told members. You have a responsibility to the public to be responsive to a need, Yearout said. The January meeting is at the end of the month, so it is almost two months away, Yearout said. Mueller said Richards is adhering to the regs. We have more information now, and this is causing a hardship, Mueller said. If there is a way to grant some kind of relief without setting a precedent, it is something we should do, Mueller said. Maxwell asked if Richards informed the applicants about the year of the home when they applied. Richards said yes she did, and the Richmond's both agreed. Bina asked and was told yes, if the manufactured home's age was April 1, 2001, or newer, no CUP would be needed. If you recommend approval to allow the 1998 unit as an exception you can set a hearing date in January immediately after, Yearout said.

Mueller noted there are no public comments as there is no one from the public present at this time. Mueller closed the public hearing for this application.

Maxwell said he is okay with recommending a 1998 unit, but members could still wait until after January. There is another buyer for the home, Mueller explained. It would set a precedent, Maxwell said. If something needs to be changed, it needs to be changed, Bina said. If you are more comfortable you could take a motion to hold the hearing first then recommend the CUP so you are not putting the cart before the horse, Yearout said. Just because you agree to do it here does not mean you have to agree to do it with every one that comes through here, Yearout said. You could say it was the wrong information when the decision was made, Yearout said. How often is this going to happen?, Mueller asked. To me this does not open the book to say anything is up for grabs, Mueller said. We probably could go with the proper procedures but this is unique and is going to put a hardship on the family, Avery said. We need to have compassion as they would lose the home, Avery said. The property would continue to be not improved, and they are going to improve it, and there will be tax dollars coming to the county, she said. I am not talking about denying it, I am talking about prolonging it, Maxwell said. But they may not be able to find a quality home for another year, Avery said. They are victims because we had the wrong information, Avery said. Morally, I don't think that is right, she said. Procedurally, I agree with you, and any other time we would have to follow the regs, but I am with Jeff, Avery said. Discussions like this are healthy, Yearout said. You are asked to vote your conscience and that is fine, he added. The commissioners will ask, and they do every time if someone is opposed, they ask why they were opposed, Richards said. In most cases there are not many gray areas, but this is a ways in there, Becker said. There is a long laundry list of other items to address after those currently coming up for consideration, Yearout said. This brings it up sooner, he said. We don't jump in and amend the regs every month, he added. Avery made a motion to recommend to the county commission approving application #PC09-10 for Roger and Keri Richmond for a CUP for a manufactured home on an existing farmstead in Wilson Township based on improvement of the property and hardship to the applicant, as there is new information and the date was an error. Becker seconded the motion. In favor: 6; Opposed: 1; Motion carried.

Richards asked if there is a need for a timeline for demolishing the current home. Is the current home habitable?, Yearout asked. No, Richards said. The appraiser will still stick it on the tax role, Yearout said. Maxwell asked Richmond's if they still have a foundation, as he was taxed on a foundation at his home. Yes, they tax us, too, and they raised it last year, Betty said. Richards gave Richmond's a timeline for proceeding. Yearout pointed out the Richmond's are welcome to attend the county commission meeting when their application is presented, if they wish. Avery reminded Richards to please explain to the county commissioners, and ask they to send it back if they wish. Becker made a motion to set a public hearing in January to amend the zoning regs to change the date to July 13, 1994. Mount seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Yearout suggested Richmond's see if they can secure a contract on the home with a closing date after the final approval.

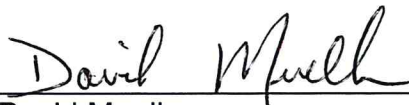
Yearout presented regulation changes to members. He said there are three language changes proposed. First is the language to create a new residential district at the county lake to accommodate lot sizes, etc. Richards pointed out there may be a need to include Eastshore at Marion Reservoir, too. Yearout said there is a need to create a new Article 6 for lot size and set back issues only, which are different at the lake than in other residential districts. You have got to have public water and sewer, he said. Eastshore properties all have right of ways, so they meet easements, road right of ways, etc., and then our set backs, Richards said. Maxwell asked that Eastshore be left alone since issues there have already been addressed. The county lake was never intended to be homes, Avery said. They were cabins, she added. Now folks want to build on every square foot, and if there is a fire it is going to threaten all the neighboring homes, Avery said. I am running into quite a few problems at Eastshore with the road right of way at 80 feet, Richards said. Now we measure from the middle of the road until the easement which is 35 feet, she said. On the west side of Kruse Street 50 feet is designated where an old, abandoned oil line went through there, and it is 30 feet on the east side, Maxwell said. You may need to create two districts, one for the county lake, and one for Eastshore, Yearout said. Yearout asked about the zoning designations, and Richards said Eastshore is Village, and so is the county lake. The covenants are null and void at Eastshore, Richards said. The county has grandfathered our set backs, Maxwell said. The planning commission has no authority to grandfather anything, Yearout said. Set backs are eight feet, Yearout said. If you want six foot set backs we would need a hearing, Yearout said. We could do a separate district with Bob's covenants, Mueller said. We need to fix it, Mueller added. Even though the Village District does not have a minimum lot size it would make sense to have a separate district in here, Yearout said. There is no risk at any point of someone declaring a property out there as non-conforming for a mortgage, or a purchase, or whatever, Yearout said. If there are different conditions at Eastshore compared to Marion Lake, a one size fits all will not work, Yearout said. Next members were asked to review Article 20, and Richards handed out a copy to members. Avery said going to five feet, instead of three feet, would help the fire code. We are not dealing with fire codes, but there is a better rating with five feet given you would have 10 feet of separation between buildings, Yearout said. Now under Village District, which is what you have at the lake, eight feet is the side yard set back, Yearout said. The language and numbers are about as generous as any lake lot in the state, he said. A 40x40 is not very big, but they were supposed to be cabins, he added. That would have taken care of the application in August where they wanted to change the concrete at the former restaurant property, Mueller said. The intent behind this is not to see constant requests for variances out there, Yearout said. If you see lots of requests for certain kinds of variances, the regs are not working, he said. So, you fix the regs so variances are not requested in the first place, he added. Most should be denied, he said. Again it is the regs,

and not a hardship, he added. I am not sure they are going to change wanting to build on every foot, Avery said. There will still be requests, but we can say we have made changes, and get to the point where we just saying no and people will begin to get the message once they realize they cannot go get a variance, Yearout said. Maxwell asked about 6-102, #2, concerning temporary buildings. Yearout referred to 6-109 and Article 21, saying all access use can occur in those districts. You can change the language in 6-102 if you want, Yearout said. But, you will have to put the change in there a half a dozen times, he added. Maxwell asked about empty lots. Yes, it says you cannot put an access building on the lot until the principle building is there, Yearout said. Mount asked if Eastshore allows someone to build for boat storage without a home on the lot. It has been done, Maxwell said. You can allow exceptions, but you hold a public hearing so the neighbors know, Yearout said. Usually this is done in the country with the intent of building a home on the property some day, which is not a good idea because it is a perfect situation for theft to occur, Yearout said. I only intend to acknowledge in the regs what works at Eastshore, Yearout said. So, there should be no concerns about signing off on something, he added. Richards said there is an applicant with carport issues, where the family acquired the property at Eastshore. The water district informed new residents so they were aware of set backs and covenants, but I am not sure that is still being done, Maxwell said. The neighbors gave them a copy of the covenants but they already had the carport in place, Richards said. They already had water (since the property was already in the family) so they did not have to sign up, Maxwell said. They will need to apply for a variance, Yearout said. If you vote to amend the regs, the need for a variance becomes null and void, Yearout said. The other amendment is in Article 24 under non-conforming uses, Yearout said. Maxwell asked about 101-107, and Yearout said no change. Some wording was changed, Yearout said. It was not my intention to do that, Yearout said. Maxwell pointed out some wording changes, such as under 24-104 the wording was changed from six months to one year. There should be no changes in 24-102 through 24-107, Yearout said. We are just adding 24-108, Yearout said. I bet the current language you have had it that way in the original document, subject to appeal, Yearout said. I am talking about the 1992 regs, Yearout clarified. The board is to decide appeals, Yearout said. We had a case where a home was built on a non-conforming lot by Lincolnville, Maxwell said. The board is to interpret appeals, Yearout said. The Board of Zoning Appeals has to play a role, Yearout said. Otherwise you convert the appeals board to an administrative role, he added. Maxwell asked members how many know what has transpired with the last administrator, with what we should have and what is outdated. Maxwell said he would like to see revision dates on amendments, and Mount agreed. Your copy should have resolution numbers and the date published, Yearout said. The real challenge is not so much what you have got throughout the years, but you need to pull the resolutions, Yearout said. So, Richards will need to go back and review all the resolutions since 1992, he said. That is the only way you can be sure, Yearout said. The only other text amendment concerns cell towers, Yearout said. Currently you have a copy from some city's regs, not county's, he said. This

involves several pages of regs, Yearout said. Yearout said it involves pages 157 through 166. The concerns are to not build several next to each other, and separate the distance between them, he said. Most should be built for several carriers and we need to know there is no more room before we okay a new structure, he said. He said they are designed to collapse on themselves but there was a KDOT (Kansas Department of Transportation) tower in Topeka that fell on an apartment building three, or four years ago. Maxwell asked why it fell, and Yearout said it was a lack of maintenance. There are set backs involved, and strong language about lighting, Yearout said. Anything 200 feet above ground elevation has to have a white light in the daytime, he said. Red lights only have to be painted red, he said. White in the daytime and red at night, he said. Most folks complain about white strobe lights at night, Yearout said. The design load is not tied to the height, but to the cables, he said. Avery asked about signage. We could address it in the accessory building regs Tonya wants, he said. I'd like to think about the accessory building changes, Mueller said, and all members agreed. Would it resolve the need for variances, yes, but you will still have issues with existing carports, Yearout said.

Off agenda items. Mueller said Richards was offered the job of Zoning Administrator, and she is going to accept. Mueller asked members about the meeting schedule for 2010. Becker asked about the meeting time. It is okay in the summer, but not in the winter, Becker said. Mueller suggested addressing meeting times at the January meeting. Mueller said the next meeting is a re-organization meeting, and three member's terms are up. Bina will not renew his term. Eilerts and Becker have not said if they wish to renew their terms. Mueller said tradition has been for members to meet for dinner prior to the January meeting to recognize members who have served, and he asked if members wish to continue this tradition. Members agreed to meet at 6 p.m. for dinner at Country Lakes Café on January 28, 2010, prior to the meeting. Members discussed the county Christmas party. Richards gave members copies of follow up letters she send to the Wedel's, and also to the folks with the illegal mobile home on their property. There will be a public hearing on January 28, 2010, for proposed regulation changes. Richards reminded members mileage sheets are due. Becker made a motion to adjourn and Bina seconded the motion. In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 10:27 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,  
Chairman



Margo Yates,  
Secretary