MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

December 4, 2008

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

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

Mueller asked for additions or corrections to the Record of Proceedings for the October 30, 2008, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Maxwell had one correction on page one where Mueller was spelled Muller. There were no other additions or corrections. Bartel made a motion to approve the Record of Proceedings with one correction and Ediger seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 4: Zoning Text Amendment Changes. Mueller asked Strait to review the changes.

The first change was on page 16, #152: **MANUFACTURED HOME**: A dwelling unit substantially assembled in an off-site manufacturing facility for installation ~~or assembly~~ at the dwelling site, bearing a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards (24 CFR 3280 et seq.) promulgated by the U.S. Department of Housing and Urban Development. A manufactured home is constructed so that the chassis is a permanent part of the structure as a load bearing support and will remain permanently attached to the structure after installation.

The purpose of this is so we have a more clear definition of the different types of homes, Strait said.

The next change is on page 17, #161: **MANUFACTURED HOME RESIDENTIAL-DESIGN**: A single-family dwelling manufactured off-site which is designed with the same appearance of an on-site, conventionally built, single-family dwelling and which satisfies the criteria illustrated in this Section and required in Section 15-102, and in state statutes. A residential design manufactured home is constructed such that the chassis is a permanent part of the structure as a load bearing support and will remain permanently attached to the structure after installation.

The third change involving definitions of different types of homes is on page 18, #163: **MODULAR HOME:** A residential structure manufactured off-site and built to a nationally-recognized and accepted construction standard published by the Building Officials & Code Administrators International, Inc. (BOCA) or the International Conference of Building Officials (ICBO) that is inspected and certified at the factory so that it meets said standard. A modular home shall have exterior structure materials and appearance similar to the customary single-family structures, as required of a manufactured home-residential design, and shall be

permanently situated on a concrete foundation. A modular home is constructed such that the chassis is not a part of the load bearing support of the structure and, once the home is installed, the chassis is permanently removed from the structure.

The next change is on page 51, #12-102: ***Official Map***: The Governing Body of Marion County hereby designates the Flood Hazard Boundary Map, dated August 22, 1978, or the latest available mapping data, as the official map to be used in determining those areas of special flood hazard.

Strait said the purpose of this change is that we are in the process of getting new maps.

The next change is on page 52, under 12-103, #2-E: Be signed by the ~~permittee~~ applicant or his authorized agent who may be required to submit evidence to indicate such authority.

Strait said this change is for clarification.

Next, on page 53, under 12-104, #2-F: Require that new structures be constructed with electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Strait explained this change is for uniformity.

Next, on page 54, under 12-104, #2-G:

1. Over-the-top ties shall be provided at each of the four corners of the manufactured home with two additional ties per side at the intermediate locations, with manufactured homes less than 50 feet long requiring one additional tie per side.

2. Frame ties shall be provided at each corner of the home with five additional ties per side at the intermediate points with manufactured homes less than 50 feet long requiring four additional ties per side.

3. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds.

4. Any additions to manufactured homes shall be similarly anchored.

Strait said she added "shall" above because it made more sense.

Moving ahead to page 103, under #29: A manufactured home on an individual lot may be authorized by the Zoning Administrator, on an emergency basis for a period not to exceed six months, on any lot where the permanent dwelling unit has been destroyed by fire, storm or other such calamity and the dwelling unit has been rendered uninhabitable. A manufactured home may be authorized for a period not to exceed six months for temporary housing during construction of a site built home if the Zoning Administrator, after consulting with the Planning Commission, determines there is a substantial need for the owner/occupant to live in close proximity of the construction project. If the authorization for the emergency placement of such manufactured home unit lasts longer than six months, a Conditional Use may be granted for an additional period of time,

provided, the procedures for approval of Conditional Uses outlined in Section 21-101 herein are followed.

Mueller reminded members that at the last meeting they discussed adding "after consulting with the planning commission," so that is all there.

Next, on page 115, under 21-110: ***Prohibited Uses***: After the effective date of these Regulations, no mobile home nor any manufactured home that was constructed prior to April 1, 2001, as defined in these Regulations, shall be located, moved, relocated, or otherwise ~~brought into~~ installed in Marion County. All non-compliant or non-conforming mobile and/or manufactured homes that exist prior to the date of adoption of these regulations, as amended, shall be allowed to continue in their current location for as long as they remain habitable and occupied. In order to continue to qualify as a legal non-conforming use, structures and lots shall meet the requirements set forth in Article 24 of these regulations.

Strait explained the date was changed and she added "located" above because if it was already in the county, it could be moved around within the county. She also added "installed in." This will prevent it being hauled in and set up and abandoned, she explained. Maxwell asked if such a structure would still be taxed. Strait said a house has to meet certain criteria before it can be taken off the tax roll. She said as long as it still stands, it is supposed to still be taxed. Maxwell said he was once taxed for just a foundation, and for just a deck and steps. Strait explained some structures were recently put back on the tax roll, in part to help clean up the county. That is what we are trying to do, she said. It may take us six years, but we will get it, she said. Ediger asked about old, empty silos. I am not sure how they tax those, Strait said. They consider it a storage facility, she said. There is a substantial difference in the taxes on a shed, compared to a house, Strait said. Actually, this is a very good incentive, Unrau said. We are primarily doing it on houses, Strait said.

Moving on to page 116, under 22-101: ***Purpose***: The standards, regulations and restrictions set forth in this Article are the standards, regulations and restrictions for Manufactured Home Parks as authorized in Article 21 of these Regulations. These standards, regulations and restrictions are intended to accommodate the grouping of manufactured home sites for use under a rental or lease arrangement. The planning requirements in this Article are intended to provide a safe and healthful living environment and to assure the mutual compatibility of manufactured home parks with adjoining land uses. No manufactured home shall be permitted to be located within any Manufactured Home Park in Marion County which does not bear a label certifying that it meets the requirements of the latest version of the National Manufactured Home Construction and Safety Standards (24 CFR 3280 et seq.) or that was constructed prior to April 1, 2001. This restriction shall not apply to existing manufactured homes that meet the requirements of Article 24 of these regulations.

Avery asked how this impacts all those homes at the county lake. Strait explained that as of January 31, 2008, they had to be insurable and had to have a policy on file. If they were not insurable, they had to be removed, she said. It limits the economic impact by not allowing them to live here fulltime, Avery said.

County Commissioner Dan Holub arrived at this point. The next change is on page 121, under 22-106: ***Structural Quality of Manufactured Homes***: All manufactured homes proposed to be placed in Marion County, Kansas, shall have been manufactured after ~~September 1, 1973~~ April 1, 2001, and the owner must show verification of such to the Zoning Administrator to assure said Administrator of compliance with K.S.A. ~~75-1214~~ 58-4212 et seq. as amended, and these Regulations. Installation of all manufactured homes shall comply with K.S.A. 75-1226 et seq. and these regulations

Next on page 124, under 23-105, #1-A: **Density:** If public water and sewer service is provided, a Manufactured Home Subdivision shall not be developed at a gross density greater than 1 manufactured home lot per 7,000 square feet, excluding road rights-of-way and common open spaces.

If public sewer service but not public water service is provided, a Manufactured Home Subdivision shall not be developed at a gross density greater than one manufactured home lot per 43,560 square feet (one acre), excluding road rights-of-way and common open spaces.

If public water ~~and~~ but not public sewer service is ~~not~~ provided, a Manufactured Home Subdivision shall not be developed at a gross density greater than one (1) manufactured home lot per ~~43,560~~ 87,120 square feet (two acres), excluding road rights-of-way and common open spaces.

If neither public sewer nor public water service is provided, a Manufactured Home Subdivision shall not be developed at a gross density greater than on manufactured home lot per 130,680 square feet (three acres), excluding road rights-of-way and common open spaces.

This is how we are changing it in the Subdivision Regs, Strait explained.

Next on page 125, under 23-105, #3-A: **Lot Area:** Each lot served by public water and sewer service shall consist of at least 7,000 square feet. Each lot ~~not~~ served by public sewer ~~and~~ but not public water service shall consist of at least 43,560 square feet (one acre). Each lot served by public water service but not public sewer service shall consist of at least 87,120 square feet (2 acres). Each lot not served by public sewer or public water shall consist of at least 130,680 square feet (three acres).

On page 126, under 23-107: ***Structural Quality of Manufactured Homes***: All manufactured homes proposed to be placed in Marion County, Kansas, shall have been manufactured after ~~September 1, 1973~~ April 1, 2001, and the owner must show verification of such to the Zoning Administrator to assure said Administrator of compliance with K.S.A. ~~75-1214~~ 58-4212 et seq., as amended, and these Regulations. Installation of all manufactured homes shall comply with K.S.A. 75-1226 et seq. and these regulations.

Strait said that change was made to match the other changes.

On page 128, under 24-102: ***Nonconforming Use of Land***: Where open land is being used as a nonconforming use at the time of the enactment of these Regulations, and such use is the principal use and not accessory to the main use conducted in a structure, such use may be continued; provided, such nonconforming use shall not be extended or enlarged, either on the same or adjoining property. The protection afforded to nonconforming use of land by this section applies only to such land held under ownership or lease agreement for said activity on or before the effective date of these Regulations, but shall not apply to new lands purchased or leased after said

date. In addition, said protection shall not apply to any activities not ~~legal under the terms of the regulations which these Regulations replace~~ legally existing at the time of adoption of these regulations.

This change was made for clarity, Strait told members.

Next on page 151, under 31-106: ***31-106 Power Purchase Agreement (PPA):*** ~~The Conditional Use Permit does not authorize construction of the project until the Applicant has obtained a Power Purchase Agreement (PPA) for the electricity to be generated by the WECS. The Applicant shall advise the Zoning Administrator when it obtains a power purchase agreement and shall provide such documentation confirming said agreement.~~

~~The PPA must be obtained within two years of the date of publication of the Resolution approving the CUP. The two-year period may receive up to a 6-month extension upon written request by the Applicant, and approval of the Planning Commission and the Board of County Commissioners. In the event the Applicant does not obtain a PPA within the 24 to 30 month time span, the CUP shall be null and void. Building permits shall be issued only after the Zoning Administrator receives documentation confirming said PPA, and all conditions pertaining to WECS have been satisfied.~~

Evidence of negotiations for a Power Purchase Agreement (PPA) shall be submitted to the Zoning Administrator prior to **completion of** turbine construction. Developmental rights, and any other rights granted by the issuance of the Conditional Use Permit will continue under any extensions, reissuances, renewals or assignments of the original lease as long as the Zoning Administrator is provided with documentation that a lease for the project was continuously maintained in effect.

After a discussion about the purchase agreements and the transmission, members decided to delete the words "completion of" in the paragraph above.

The next changes are on page 152, under 31-108. The first change is under #3: Communication lines and power collection lines are to be installed underground in the area covered by the CUP with use of directional boring, horizontal drilling, micro-tunneling, vibrating plowing, narrow trench ditching and other techniques in the construction of facilities underground which results in the least amount of disruption and damage as possible to the surface soil and natural features. Said lines are to be located under or at the edge of turbine access roads. Aboveground transmission lines may be used only in public rights-of-way or easements.

The second change is under #5: A ~~Power Purchase Agreement (PPA), and a~~ surety bond for de-construction purposes must be approved and accepted before any building permits are issued for construction to begin.

The third change is under #10: There shall be no lights on the towers other than those required by the Federal Aviation Administration (FAA) ~~which shall be white during the day and red at night~~. This restriction shall not apply to infrared heating devices used to protect the wind monitoring equipment.

The fourth change is under #11: At the end of the projects useful life, equipment shall be removed from the site and the ~~foundations shall be removed to a depth of four (4) feet below the ground surface~~ base shall be covered over with a minimum of 18 inches of topsoil and re-seeded with native grass or **as determined** by the landowner at the time of decommissioning. Access roads shall be removed to the landowner's satisfaction, and the ground shall be restored to a use compatible with surrounding use. The requirement to remove access roads shall not apply to roads in existence before the WECS application was filed. The landowner may choose to have access roads left intact.

After more discussion, members decided to replace the words "as determined" in the paragraph above, with "any greater request."

The next change is on page 153, under 31-108, where the entire #17 was deleted.

Maxwell asked why not just take out the first two sentences in #17. We can leave it in, Strait said. It is not going to hurt us, but it is not going to help us, either, she said. I don't know that it would stand up in court, Strait said. Mueller asked about removing the last sentence. We are not going to conduct inspections, Strait said. What if we do put in building codes in the next few years, then we would not have to go back and put it in, Avery said. It is all covered in building codes and that may be why I went ahead and took it out of here, Strait said. Maybe it would help cover the zoning administrator inspecting them, Mueller said. A zoning administrator is not going to be qualified to inspect them, Strait said. Our liability would be if it was not inspected in a timely manor and we do not catch it, Avery said. I don't think we would have some liability, I think they would be out of compliance and they would be liable, Strait said. It says it has to be a certified structural engineer, Strait said. Is that by law?, Avery asked, and Strait said yes. Mueller asked members what they wished to do, and Bartel said go with Strait. It's pretty clear to me what is required and they are the ones that are liable, Becker said. That doesn't mean you are not going to get named, because you're going to get named, regardless, Becker said. Members agreed to go with it as presented.

Also on page 153, under 31-108, #18: If the CUP is to be transferred from one party to a different party, ~~said transfer must first be approved by the Board of County Commissioners~~. First party shall inform the second party of the surety bond and all other requirements of the CUP. The second party, or new holder of CUP shall meet the surety bond requirements and all other requirements of the CUP and evidence of such compliance shall be provided to the Zoning Administrator prior to completion of the transfer. A transfer fee of $100 per turbine shall be paid to the County.

The next change is on page 159, under 31-109, #5: Lighting: Antennae and support structures shall not be lighted unless required by the FAA or other state or federal agency with authority to regulate, in which case a description of the required lighting scheme will be made a part of the application to install, build or modify the antennae or support structure. Equipment cabinets and shelters may have lighting only as approved by the Zoning Administrator on the approved Site **Development Plan**, and should generally be white in the day and red at night.

After discussion, members decided to end the last sentence after "Development Plan."

Also on page 159, under 31-109, #7-E: All towers shall be surrounded by a minimum 6 foot high ~~decorative wall constructed of brick, stone or comparable masonry materials and a landscape strip of not less than 10 feet in width and planted with materials, which will provide a visual barrier to a minimum height of 6 feet. The landscape strip shall be exterior to any security wall. In lieu of the required wall and landscape strip, an alternative means of screening may be approved by the Zoning Administrator in the case of Use permitted by Administrative Permit, or by the Planning Commission in the case of a Conditional Use Permit, upon demonstration by the applicant that an equivalent degree of visual screening will be achieved.~~ fence, as necessary to restrict access to the tower. Fences may be designed to provide privacy and restrict the view of activities or equipment inside the fence, such as concrete or masonry walls, or they may be designed to be less intrusive to the surrounding area, such as chain link fencing.

Fencing plans will always be submitted in the plan, Strait said.

On page 160, under 31-109, #7-F: All towers, disguised support structures, and related structures, fences and walls shall be separated from the property line of any adjacent property zoned for a residential use at least a distance equal to the height of the tower, and shall be separated from all other adjacent property lines at least a distance equal to one-half of the height of the tower or structure. All towers shall be located a minimum of total tower height from all impervious roadways.

And on page 161, under 31-109, #7-I-5: Notice of Tower Applications. Prior to any application for the construction of a new tower or Disguised Support Structure, a copy of the application or a summary containing the height, design, location and type and frequency of antennae shall be delivered by certified mail to all known potential tower users as identified by a schedule maintained by the ~~Health Department~~. Zoning Department. Proof of such delivery shall be submitted with the application to the county. The Zoning Administrator may establish a form required to be used for such notifications. Upon request, the Zoning Administrator shall place on a list the name and address of any user of towers or prospective user to receive notification of applications. ~~The Zoning Administrator shall, before deciding on the application or forwarding it to the Planning Commission for consideration, allow all persons receiving notice at least 10 business~~

~~days to respond to the county and the applicant that the party receiving notice be permitted to share the proposed tower or locate within one mile of such area.~~ Before deciding on the application or forwarding it to the Planning Commission for consideration, the Zoning Administrator shall allow at least 10 business days for all persons receiving notice to respond to the county and the applicant that they have an interest in co-location or locating within one mile of the proposed site. Where two or more parties seek to locate within one mile of each other, or such other distance as is demonstrated to the Zoning Administrator to be reasonable pursuant to the objectives of this Article, the Zoning Administrator shall designate such area as a Multi-Use Interest Area on the map. The failure of the receiving party to use this process or respond to any such notice shall be considered cause for denying requests by such party for new towers or structures.

Strait said the above changes are for better grammar and understanding.

And the last zoning text amendment change is on page 162, under 32-103, #2: The mounting of antennae on any existing building or structure, such as a water tower, provided that the presence of the antennas is concealed by architectural elements or fully camouflaged by painting a color identical to the surface to which they are attached.

Strait said the change above was also a grammar correction.

Mueller asked members if they had questions or other changes. I think we have done a thorough job going through it and everyone seems to be comfortable with this, Mueller said.

Becker made a motion to approve the Zoning Text Amendment Changes as presented, with three changes: on page 151, take out the words "completion of"; on page 152, replace "as determined" with "any greater request"; and on page 159, end the last sentence after the words "Site Development Plan." Bartel seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 5: Subdivision Text Amendment Changes. Strait explained that in Article 4, #1: B, C, D & E have been changed to comply with the zoning regulations, and F was a wording change because the county does not have an engineer.

B: If the proposed subdivision is served by public water and public sewer ~~serviced by a public water supply and a public sanitary sewer system~~, the minimum lot area requirements shall be subject to those set forth herein in the Zoning Regulations.

C: If the proposed subdivision is served by public water but not public sewer ~~serviced with a public water supply, but not with a public sewer system, or is serviced with a public sewer system, but not a public water supply~~, the minimum lot size shall be two acres (87,120 square feet) or ~~the preliminary plat shall be prepared on the basis of minimum lot sizes~~ as determined by the county; provided, however, that additional lot

area may be required if the area has or is suspected of having a high water table or if soil conditions prove to be unsuitable based on standards of the Marion County Sanitation Code.

D: If the proposed subdivision is served by public sewer but not public water, the minimum lot size shall be one acre (43,560 square feet) or as determined by the county ~~not served with either a public water supply or a public sewer system, the subdivider shall submit a Preliminary Plat on the basis of minimum five (5) acre lots~~; provided, however, that additional lot area may be required if the area has or is suspected of having a high water table or if soil conditions prove to be unsuitable based on standards of the Marion County Sanitation Code.

E: If the proposed subdivision is not served by public sewer or public water, the minimum lot size shall be five acres (217,800 square feet); provided, however, that additional lot area may be required if the area has or is suspected of having a high water table or if soil conditions prove to be unsuitable based on standards of the Marion County Sanitation Code.

F: All water and sewer systems shall be approved by the County upon recommendation by County ~~Engineer~~ Environmental Health Sanitarian as provided in Article 8.

Strait said the change on page 8, was a grammar clarification: **Streets and Alleys**: Relationship to Adjoining Street Systems: The arrangement of streets in new subdivisions shall make provisions for the continuation of the principal existing streets in adjoining additions (or their proper projection where adjoining property is not subdivided) insofar as they may be necessary for public requirements. The width of such street rights-of-way in new subdivisions shall be not less than the minimum street widths established herein. Alleys, when required, and street arrangement must cause no hardship to owners of adjoining property when they plat their land and seek to provide for convenient access to it. Whenever ~~there exists~~ a dedicated or platted half street or alley exists adjacent to the tract to be subdivided, the other one half of the street or alley shall be platted and dedicated as a public way.

Strait explained the next change on page 18 is due to the cost of fuel and rock being subject to change and this will allow the road and bridge department to determine the cost.

Lot Splits in "A" Agricultural District:

Lot splits approved by the Planning Commission for residential development under Section 2.102.5 of the County's Zoning Regulations shall be subject to final approval by the Board of County Commissioners and payment of the applicable road improvement assessment~~, as follows:~~ as determined by the Marion County Road and Bridge Superintendent or his/her designee. NO PERMIT SHALL BE ISSUED FOR ANY LOT SPLIT UNTIL A RECEIPT FOR ROAD IMPROVEMENT FEES IS PRESENTED TO THE ZONING ADMINISTRATOR SHOWING THE FEES HAVE BEEN PAID IN FULL.

~~(1) For lots on RS roads, no assessment.~~
~~(2) For lots on gravel, non-RS roads, $500.~~
~~(3) For lots on dirt, non-RS roads, $500 plus an additional $500 for each ¼ mile of road to be graveled, not to exceed a total assessment of $3,000.~~

Lot splits for residential development under Section 2.102.6 of the County's Zoning Regulations shall be approved by the Zoning Administrator subject to payment of the applicable road improvement assessment~~, as follows:~~ as determined by the Marion County Road and Bridge Superintendent or his/her designee. NO PERMIT SHALL BE ISSUED FOR ANY LOT SPLIT UNTIL A RECEIPT FOR ROAD IMPROVEMENT FEES IS PRESENTED TO THE ZONING ADMINISTRATOR SHOWING THE FEES HAVE BEEN PAID IN FULL.

~~(1) For lots on RS roads, no assessment.~~
~~(2) For lots on gravel, non-RS roads, $500.~~
~~(3) For lots on dirt, non-RS roads, $500 plus an additional $500 for each ¼ mile of road to be graveled, not to exceed a total assessment of $3,000.~~

The final changes are on page 35. Strait explained the governing body needs to make decisions based on the cost. We still have the right to recommend what we think is suitable?, Avery asked, and Strait said yes. Strait gave an example and said it needs to be looked at on a case by case basis, and it leaves it on the county commission to decide about the roads.

Variances: Whenever the planning commission deems full conformance to provisions of these regulations is impractical or impossible due to the size, shape, topographic location or condition, or such usage of land included in a subdivision plat being presented for approval, the planning commission may ~~authorize~~ recommend to the governing body, variances ~~of~~ to these regulations. In authorizing such variances or exceptions, the ~~planning commission~~ governing body shall find the following:

A. That there are special circumstances or conditions affecting the property.

B. That the variances or exceptions are necessary for the reasonable and acceptable development of the property in question.

C. That the granting of the variances or exceptions will not be detrimental to the public welfare or injurious to other property in the vicinity in which the property is situated.

Waivers: Any waiver of the required improvements shall be only by the ~~planning commission~~ governing body on a showing that such improvements are technically not feasible.

Avery made a motion to accept the Subdivision Text Amendment Changes for Articles 4, 6 & 10, as proposed. Ediger seconded the motion.
In favor: 7; Opposed: 0; Motion carried.

Off agenda: Mueller and Strait collected mileage sheets from members. Mueller reminded members the next meeting is scheduled for January 22, 2009. Mueller said Strait was looking at the calendar next year and if members want to, an adjustment could be made so meetings are scheduled on October 29, 2009 and on December 3, 2009. Avery said she likes the adjustment because the way it is now the January meeting seems like a long break between meetings, which could create a hardship. This way there is not such a long stretch, Strait said. If it is agreeable with you all, we will go ahead and put it on our schedule that way, Mueller told members. Mueller reminded members that terms are up for Ediger, Maxwell and Unrau. Unrau has decided to retire from the board, and so has Ediger. Bartel is also stepping down. Bartel and Avery encouraged Maxwell to stick with it. Mueller asked Unrau and Ediger to come back in January and go out to eat with everyone. Mueller asked Holub if he had anything to discuss. Holub told members thanks and Merry Christmas. Ediger made a motion to adjourn and Unrau seconded the motion. In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 9:19 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

David Mueller,
Chairman

Margo Yates,
Secretary