

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

February 22, 2007

Vice Chairman David Mueller called the meeting to order at 7:30 p.m. Mueller welcomed new members Jeff Bina and Kent Becker, saying there is a full commission for the first time in two years, as all nine seats are now filled.

Roll Call was answered by Mueller, Bob Maxwell, Marquette Eilerts, Ervin Ediger, Willis Ensz, Mary Avery, Glen Unrau, Jeff Bina and Kent Becker. Zoning Administrator Bobbi Strait was also present.

Mueller asked if anyone had any additions to the agenda, but there were none.

Item 3: Election of officers. Mueller said he reviewed the by laws and members have a chairman, vice chairman and secretary to elect. Mueller said Margo Yates has been appointed as the secretary in the past, and this position does not have to be held by a commission member. Maxwell asked for volunteers. Avery nominated Mueller as chairman and Maxwell seconded the motion. Mueller asked if there were other nominations. Ediger made a motion that nominations cease and Ensz seconded the motion. Members first voted on the motion that nominations cease. In favor: 8; Opposed: 0; Motion carried that nominations cease. Mueller abstained from voting. Members then voted on the motion to elect Mueller chairman. In favor: 8; Opposed: 0; Motion carried to elect Mueller chairman. Mueller abstained from voting. Next members addressed electing a vice chairman. Maxwell nominated Avery as vice chairman and Ediger seconded the motion. Mueller asked if there were other nominations. Unrau made a motion that nominations cease and Ensz seconded the motion. Members first voted on the motion that nominations cease. In favor: 8; Opposed: 0; Motion carried that nominations cease. Avery abstained from voting. Members then voted on the motion to elect Avery as vice chairman. In favor: 8; Opposed: 0; Motion carried to elect Avery vice chairman. Mueller abstained from voting. Members then addressed electing a secretary. Ensz made a motion to elect Yates as secretary and that nominations cease. Avery seconded the motion. Members first voted on the motion that nominations cease. In favor: 8; Opposed: 0; Motion carried that nominations cease. Mueller abstained from voting. Members then voted on electing Yates as secretary. In favor: 9; Opposed: 0; Motion carried to elect Yates as secretary.

Item 5: Record of Proceedings of the December 14, 2006 meeting of the Marion County Planning Commission/Board of Zoning Appeals. Mueller asked if there were any additions or corrections. Ensz made a motion to approve the Record of Proceedings as written and Eilerts seconded the motion. In favor: 9; Opposed: 0; Motion carried.

Item 6: Application for Daniel King requesting a Conditional Use Permit (CUP) to own a junkyard to obtain a State Salvage License. Mueller said he will ask for a staff recommendation. Mueller explained he will let the applicant speak, and then he will let the public speak about this application. Mueller reminded everyone to turn their cell phones off. Mueller opened the public hearing for application number ZPO6-084. Mueller reminded members they are acting as the planning commission for this application to make a recommendation to the county commission for final action. Mueller asked if any commission members have a conflict of interest with this application, and no one did. Mueller asked Strait for her staff recommendation. Strait referred to the pages of information she sent out with packets to members for review, concerning this application. Strait explained the purpose of the CUP would be to operate a junkyard. In order to obtain a CUP they have to meet all guidelines by state statute, be in complete compliance and to be grandfathered in they must be in operation as a junkyard or salvage yard at the time zoning regulations were put in place, Strait said. To be legally operating under the state they have to be in compliance with all state regulations and have a state license, Strait said. If there was no license at the time of zoning, they are not allowed to continue as a legal non-conforming use, Strait said. If they came into operation after zoning they need a CUP and to be in compliance with all state regulations and all regulations with the county, Strait said. If at any time for a period of six months, starting the day they are notified they are out of compliance with state regulations, if their state license is revoked or they are not in compliance, they lose their right to operate and they would have to come in and request a CUP from the county and they would have to have that before reestablishing their state license, Strait said. Strait read the definition of a salvage yard. Muller reminded members they have a list of conditions for a CUP in the packet of information that was sent to them for this application. Daniel King was present to speak about his application. He said he has been there since March of 1983 and he has not had any problems with the state or the county and it was his understanding that he was grandfathered in. He said he had a license for two months last year from the state and they discussed what he needs to do. He plans an 800 foot fence and 400 cedar trees on the west side and north end of his property. There is a large drainage ditch and they are trying to decide what to do with it, he said. The weather has been bad and everything is happening at one time, King said. He said his health went downhill and he has had many surgeries, including an amputation, and he has been through a divorce. Mueller asked and King said he has a \$100,000 to \$125,000 commercial building he wants to put up and he wants to get back into heavy equipment, recycling copper, etc. King was asked about a flood zone on his property and he said it has been an issue for years. Mueller asked and King said he owns five acres. The state is issuing you a permit?, Bina asked King. They already have, King said. Maxwell asked about a CUP, and Strait explained that is what this application is for. According to the state I had a license for two months last year and I am applying again with this application, King said. Strait explained the state issued a temporary license, pending on the outcome of this hearing. Avery asked

and King said the building would be up on supports. I'm moving it behind the existing house which is 114 years old and we paid to get it moved up here, King said. Maxwell asked about the plan part of this. There is supposed to be a plan along with this, Maxwell said. That is if this was an industrial zone district, Strait said. I think the develop plan comes in where nothing exists, Strait said. Maxwell asked about the drainage on the five acres and drainage that may go onto someone else's land. Maxwell also asked about auto liquids and appliance liquids. I don't intend to bring anything in there like that, King said. There are a lot of other problems in the county you should be worried about, King said. When Bina questioned King further, King said it will have to be handled according to state regulations. Some counties require you to pull all fluids out before you bring it in your yard, King said. Strait said there is no such requirement in Marion County. She added there are EPA requirements for salvage yards. Mueller asked if all liquids are removed. Not on the running vehicles, King said. Have you had a license from the state since 1983?, Avery asked and King said no. You had one for two months last year?, Avery asked and King said yes. I applied in October and I reapplied in December for this year, King explained. Was last year's a temporary license?, Eilerts asked. Yes, it was a temporary permit, King said. Does the state require you to have a plan?, Maxwell asked. They mandate the right of way, King said. This is a storage permit, only, he said. They have several types of salvage licenses, King said. Do you move vehicles off the property?, Maxwell asked. Yes, but I do not sell to the public, that is a whole new thing, King said. Mueller asked and King said he intends to screen the entire five acres. You can see all four sides from the road, King said. There will be trees along the north and south, and a continuous fence, he said. Mueller asked what kind of fence. Corrugated steel and cedar trees on the west, King said. Mueller asked if there were other questions. Mueller said he will now ask for public comment and after the public comment he will give King a chance to respond. Mueller asked if anyone from the public wished to speak about this application. Strait said she will start by reading the two letters she received concerning this application. The first letter Strait read was dated February 12, 2007, and was from Larry and Beverly Coover of Haslet, Texas. The second letter Strait read was dated February 5, 2007, and was from Constance B. and Robert L. Manahan, of Irvine, California. Mueller asked that the letters be entered into the record. Ray Just asked to speak, saying he owns property across the road to the south of King. Is salvage, junk, disposal and waste all the same?, Just asked. The definition of a junkyard encompasses all salvage disposal and storage, Strait said. The state has different kinds of licenses, Strait explained. How far from a public road do you have to be?, Just asked. If it is within 1,000 feet of the right of way, the state requires you to get a state license, Strait said. It has to be out of the right of way and completely screened from the public, Strait said. How high does the fence have to be?, Just asked. So you can't see it from an average car driving on the road, so however high the junk is the fence needs to be, Strait said. Jim Ratzloff asked to speak, saying he owns property next to King. Will the east side also have a divider, or screening?, Ratzloff asked. Mueller asked if there were any other questions. Darrell York asked to speak, saying he owns property to the

west of King. Is there a time that has to be applied so the cedar trees don't grow too big?, York asked. The state determines what size of trees, how close together, etc., Strait said. They make the screening recommendations, Strait said. Can the trees be located on county property?, Just asked. No, on his own property, Mueller said. If they raise up the drainage my ground will get even more, Ratzloff said. That's a concern I have, too, Ratzloff said. Marion County Commissioner Randy Dallke said he received one call not agreeing with the permit being issued. The state says evergreens are acceptable, but do we have in our regs that a complete fence has to be put up?, Dallke asked. No, Strait said. For something not already in existence, that could be included in the development plan, Strait said. Mueller asked if there were any other comments from the public. Mueller explained that once he closes the public hearing there will be no other opportunities for the public to speak. I'm also concerned about ground water contamination, York said. York asked if any testing has been done. Not to my knowledge, Strait said. Mueller asked if there were any other comments. Mueller closed the public comment for this application. Mueller gave the applicant a chance to respond at this point. Mueller asked King about screening issues on the east side. That side would be galvanized fence, King said. When asked how high, King said eight feet, plus. We are going to slope it to the west, King said. At the north it won't get raised as high and we'll put a retaining thing there, he said. I intend to put a fence up through the trees for security, King said. And, if there is a concern we can put a continuous fence up, he added. As for rodents, I have a lot of cats, which my neighbors can attest to, and I haven't had a mouse in my house for years, King said. Mueller asked about the trees and King said they have to be three feet tall, or bigger, according to state law. The state man said he would give you 90 days and if you are working on it you can get an extension, King said. The state said they will give an extension for a year, but you must show you are making progress, King said. How often does the state come out to inspect?, Mueller asked. They are supposed to come one time a year, King said. They could come twice a year, or they could not come for over a year, King said. Mueller asked about water. We are going to drill a new well and we are going to use the existing well for watering, King said. So, he is on rural water?, Maxwell asked and King said yes. Based on the regulations, people who wrote the letters obviously live within a mile of this site, Maxwell said. Driving by, it looks like there are articles that have been there a while, Ediger said. How long do you intend to keep things?, Ediger asked King. The market is up and weather permitting we will be moving things, King said. I have some things for five minutes and some for years, he said. Eilerts asked King if he has a plan for the mound of scrap concrete on his property. We are going to work on it, King said. Where are you going with it?, Avery asked. The new building, King said. Avery asked the size of the new building and King said 60x70. It will run north and south, the long way, and be built so we can add onto it, King said. We haven't applied for a building permit, King said. You have been in operation since 1983, and obviously there are concerns about upkeep and maintenance, how can you guarantee you can get all this done on time?, Mueller asked. By virtue of the law, King said. You all are

the governing body, King said. Everyone wants the county cleaned up, but everything has to go some where, King said. But, at the same time we have to ensure it will be handled correctly, Mueller said. Are there other questions?, Mueller asked. Avery referred to a copy of a letter from KDOT (Kansas Department of Transportation) dated September 25, 2006. He had 45 days, do I understand since he had a temporary permit, that took care of the 45 days?, Avery asked and Strait said yes. Mueller asked King if there was anything else. Mueller explained once he closes King cannot speak unless members ask him a question. Eilerts asked King about the water, saying he had said two different things. Any hazmat stuff would be in the county ditch, King said. Like it has for years and I've heard about it, Eilerts said. Mueller said last call for questions and comments. Mueller thanked King. Mueller closed the public hearing for this application and asked members to begin deliberations.

Mueller asked Strait for her staff report. Strait referred to the golden factors and she went through the things that have to be considered for this application. Referring to #5 on her staff report, Strait pointed out this business will be taxed as a commercial property as will other salvage operations in the county per the new county appraiser. Strait said she did not take into consideration the flooding issues and she has not gone on the property to view this area. Strait went on to explain about the golden factors and the list of several other things to consider with this application. On contamination and runoff, what about if the flood waters get in a contaminated area, it will go on downstream anyway, Maxwell said. It's always going to be an issue, Strait said. She said during her previous job there was 16 inches of rain in three hours and in cases like that everything is going to flood, no matter how many precautions are taken. Bina said it is cost prohibitive to even plan for something like that, anyway. It may already be contaminated, or there may be a problem later on, Strait said. Not only with runoff but also seepage down into the water table, she said. Avery said she drove out past this property today and she is not sure where the property line is and what is county property. Typically 60 feet, Strait said. Maxwell added, 30 feet from the center of the road. Strait said a photo was taken before road and bridge went out and had him take things out of the county right of way. Strait had a copy of the deed and read the legal description. Becker asked about the ramifications of issuing a CUP without an environmental impact study. What if we issue it and six months down the road neighbors find contamination?, Becker asked. If we issue a CUP as long as he is compliant with the state regulations the county is not liable, Bina said. I don't know what the liability would be, Strait said. We just make recommendations and pass it on to the county commission for final decisions, Mueller said. It is a concern, and obviously a concern of surrounding landowners, Mueller added. He is serving a need and someone has to do it, but downstream conditions are bothersome, Maxwell said. Mueller said members have golden factors to consider and Mueller reviewed these factors. We already have a hint of people wanting to build in the area, so the character of the neighborhood could change, Maxwell said. The big one is item #6, concerning public health, safety and welfare, Mueller said. Maxwell asked about relative gain. What is relative

gain?, Unrau asked. If you have destruction what would you gain by shutting it down?, Unrau asked. I would only have suspicions but I think some where along the line there needs to be some kind of environmental control, Maxwell said. I think I'd rather act on the positive side and prevent something from happening, Maxwell added. What are you thinking, ground water testing?, Mueller asked. Yes, Maxwell said. If I owned property south and southeast of this property I'd be really concerned, Maxwell said. I have a problem with the county trying to micromanage state control, Bina said. I think we're overstepping our bounds, Bina said. We do have an option to put in additional conditions but this is where it could be conceived as overstepping, Mueller said. Avery asked about liability. I have a CUP for a feedlot and you all aren't liable if I'm out of compliance, I am, Bina said. The state is no fun to deal with, Bina added. Does the state come out on schedule to inspect your lot?, Unrau asked Bina. They come every five years, Bina said. Would you consider it micromanaging if a CUP was issued but with an inspection from a local health department?, Unrau asked. The applicant said he has a year to come into compliance, Avery said. Would it be possible to issue a temporary permit until he comes into compliance?, Avery asked. But doesn't a CUP become invalid when he loses his state permit?, Bina asked. Yes, Mueller said. If he doesn't get the state permit he loses the CUP, Mueller said. If I was the applicant I wouldn't want to hear about a one year permit if I am going to spend money on trees and everything, Maxwell said. What if we put a provision on there of some soil testing, etc., to see what is there now and if no contaminates are found he can proceed?, Maxwell asked. You can do that and I think that would help a lot of the suspicions, Strait said. We owe those people that much and the people planning to build there, Maxwell said. If you put the provision in place where do you draw the line?, Mueller asked. The EPA has guidelines and they might come do some testing if we need them to and they have their own guidelines, Strait said. I don't know how extensive it is or what they'd charge, Strait said. The board needs to make the decision what if the results come back not acceptable, Bina said. I would close it down, Maxwell said. If you are going to require soil testing are you going to make a decision or just table it?, Strait asked. Put in a provision, Maxwell said. Can we legally encumber a tax payer in this county?, Becker asked. One letter said they bought property and planned to build a house, they could of had it tested before they bought the property, Bina said. Remember, we just make a recommendation, Mueller said. If you make that kind of requirement you also have to give a timeframe to become complaint, Unrau said. Bad results on a soil test would require mediation, Strait said. The state will want to know the basis for the concern, what to test for and where, Strait said. So, I'm getting a general consensus that members are against soil testing, Mueller said. I'd like to see soil tests but I also think you are setting a precedent, Becker said. Mueller asked members to get back to the question of the CUP. There are environmental concerns, runoff, rodents, screening, time for trees to grow, are there other concerns?, Mueller asked. It just looks bad, Ediger said. That's why I asked him how long he keeps things because there are pieces of old trailers and box cars, and I mean pieces, and I know the neighbors are concerned and he has outgrown his acreage, Ediger said. Mueller questioned if

this is a salvage or disposal site. But, it would fall under one conditional use, because a lot of it is just disposal, Mueller said. Eilerts asked about a storage license. It also falls under junk license, Strait said. I think he probably has outgrown his property and is past his property line and if recommended it would be appropriate to ask that those items beyond the property line be moved back and trees be planted not to exceed the property line as they grow, Avery said. He can't plant trees on county property, Strait said. So, we could require growth not encroach on surrounding property, Avery said. You could also require he keeps the trees trimmed back to the property line, Strait said. Are there any other concerns or issues?, Mueller asked. Eilerts asked for an explanation about grandfathering. He thought he was grandfathered in but because he did not have a state license at the time he does not qualify as a non-conforming use, Strait said. Eilerts asked why he did not know he needed a license. They do not go check unless they get complaints, Strait said about the state. As a business man he has had a lot of contacts and he should have known he needed a state license, Eilerts said. Mueller asked if there were other concerns, or if anyone is ready with a motion. Bina made a motion to recommend a CUP for a junkyard for Daniel King as long as he meets all state requirements. Unrau seconded the motion. Avery asked if they are open to addressing the issue that the trees and fence not encroach on surrounding property. Bina asked what the state says about this. If there is a problem they go around and trim them, and on the north end of the property it could be an issue between him and the adjacent property owner, but it really comes down to between and the other property owners and what they agree to between them, Strait said. Maxwell asked if it is the same property owner on the side, and Strait said yes. If we issue this it is 12 months from the date on the permit when he has to be in compliance?, Becker asked. The general rule is you have 90 days to begin whatever it is and if you have made no attempt to start whatever the permit is for the permit is void, Strait said. If he is not compliant in a year the state is going to revoke his license, Strait added. They come back every 45 days, Strait said. They will give you one extension then they will send you a letter saying they will revoke you, but you can continue to work on it and they will continue to work with you, Strait said. But, if he loses his license that voids the CUP, Avery said. Yes, the day he is notified he is not in compliance that is the day his CUP is in question and if he is not back in compliance within six months the CUP is void. Strait said. And, it would transfer with the property if he sells it, Avery said, and Strait said yes. Mueller told members they have a motion and a second.

In favor: 5; Opposed; 4; Motion carried.

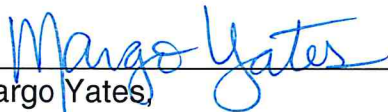
Mueller asked Strait to explain the timeline. Strait said there is a 14 day appeal period. Strait explained in two weeks on March 12, 2007, this recommendation and the Record of Proceedings from this meeting will be taken to the county commission at 9:40 a.m. They will either approve it as recommended, approve it with conditions, or deny it, Strait said. Mueller thanked King and the public for coming to the meeting.

Mueller asked for off agenda items. Strait said she has new copies of the regs for members so everyone has copies with the same page numbers to make it easier for reference purposes. Strait explained these copies are just of the zoning regs part of the plan. Mueller thanked Strait for the copies. Mueller asked if the member list has been updated and Strait said yes. Mueller said he would also like to have everyone's e mail address and Mueller asked Strait to add the e mail addresses to the member contact list. Strait said the only other thing was she wanted to thank everyone for coming to Eileen Sieger's reception. Strait also wanted to welcome Bina and Becker. Avery asked about reviewing the by laws and Mueller asked Strait to put it on the next agenda. Eilerts asked if Dave Yearout is coming and Strait said he will come to the next meeting, because he had some things come up tonight. Strait asked members to remember this discuss for the next meeting as there is an application for the next meeting which is also for a junkyard. Mueller asked and Strait said that is the only application for the next meeting. Maxwell asked about a list of permits from the last meeting and asked if members can talk about it in the future. Maxwell asked why there was only one copy and Strait said that is what she gives to the county commission and now that she has a secretary she can get copies ready for everyone. Eilerts asked who Strait's secretary is. Strait said her name is Amber Peterson and she is from the county clerk's office and she has five years experience in planning and zoning. Mueller asked if there were any other off agenda items. Unrau made a motion to adjourn and Becker seconded the motion. In favor: 9; Opposed: 0; Motion carried and the meeting adjourned at 9:53 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yates,
Secretary

