

2 Corrections

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

February 28, 2008

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

Roll Call was answered by Mueller, Marquetta Eilerts, Bob Maxwell, Ervin Ediger, Mary Avery, Kent Becker and Glen Unrau. Jeff Bina was absent. Avery was reappointed, and there is one vacancy still open. Zoning Administrator Bobbi Strait was present, and County Commissioner Randy Dallke was also present.

Mueller asked for corrections or additions to the Record of Proceedings for the January 24, 2008 meeting of the Marion County Planning Commission/Board of Zoning Appeals. Ediger made a motion to approve the Record of Proceedings as written and Maxwell seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Mueller reminded everyone from the public to please sign in.

Item 4: An application for Joyce Barkman requesting to rezone from Rural Residential to CP3, for a Bed & Breakfast with a Conference Room. Mueller reminded members they are acting as the planning commission for this application, to make a recommendation to the county commission. Mueller noted this application was published in the February 6, 2008 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. Mueller asked for a representative to come forward to talk about the application, and Mueller explained the procedure for the meeting. Joyce Barkman was present to speak about the application. Mueller asked Barkman to explain her application. There is nothing happening now, due to her husband's illness, Barkman said. Apparently people got the information out of the newspaper when my sister's class reunion was there, Barkman said. She explained folks asked her what she would call her Bed & Breakfast when she opened it, and she said "Milk & Honey," because it is in a milking parlor and we are in the honey business. Barkman read a statement, explaining her position. Barkman said she is 65 years old and has lived in Marion County and around Hillsboro her entire life. She said she has not had any paying guests at this point, only friends and family. Some for short stays, and others for extended visits, she said. We got the idea to build a B&B in the barn, she said. We remodeled the old dairy barn with four rooms in an existing building, and a large lodge-style family room, she said. We added a garage and bedrooms to the barn, and our daughter moved home to help care for her dad, Barkman said. I was told the tax would not increase, Barkman said. But, taxes were raised and assessments were made, without verifying information with the owner, she said. I wonder about a bed tax that was recently implemented, she

said. We have owned and operated one of the largest businesses in the county for over 50 years, and we employ 89 local people, Barkman said. We also own a sister company in Ohio, and we could move the business there if the taxes make it more feasible, she said. I am concerned about the taxes in Marion, County, she said. Barkman gave out copies of the statement she read aloud. Mueller explained this organization does not deal with a lot of her concerns. Mueller asked for the history of this property. We bought the property for the big barn, and there were many of the same characteristics of the house I grew up in, Barkman said. We added a garage with a bedroom upstairs, she said. Barkman explained her husband became ill and there were a lot of steps in the house, so one day the kids looked at the barn and decided they could make a nice handicap accessible bedroom and bathroom in the barn for their dad. Barkman said at this point she went to get a building permit. No kitchen is one restriction on Servant's Quarters, Mueller said. Barkman said she had no idea about that. In December of 2004, former zoning administrator David Brazil signed off on a building permit for Barkman. Was it intended as a second residence?, Mueller asked. Yes, so I could care for him, Barkman said. Mueller asked, and was told by Barkman there is 100 feet between the two houses, and there is another building between the two houses. Barkman explained that plans were changed, and they decided to make another bedroom in a room that was going to be a storage room. We did not know we had to go back in every time our plans changed, Barkman said. When her husband passes away, she plans to put up a B&B sign, Barkman said. Mueller asked Strait to explain. With two residences on two acres zoned Rural Residential, they are non-compliant on an illegal non-compliant lot, Strait said. Strait said she called Dave Yearout while Barkman was in her office, and he suggested commercial zoning, or a lot split. If it is rezoned to Agricultural it would still need a Conditional Use Permit (CUP), and if it is rezoned to Commercial it would just be one step with no lot split involved, Strait said. Strait showed an aerial photo of the property. Strait said there are 9.7 total acres. Strait explained the set back issues. Strait said the daughter said an old shed could be torn down, if they do a lot split. They have got to be able to provide access to the back lot, Strait said. Barkman asked about a driveway easement. We could probably do that, but if there is a business on the property, I'm not sure what future problems there could be, Strait said. The easiest way to bring it into compliance would be to rezone it Commercial, that is what Yearout suggested, Strait said. Mueller asked if a commercially-zoned lot can have more than one residence. It would all be one commercial enterprise, as they would just have one phone line, one office, and it would all be under one name, Strait said. So, it would just be a commercial property with two residences on it, Strait said. Similar to a business where someone lives upstairs, Strait added. I understand I will only be taxed commercial on the areas I use for the business, Barkman said. Her taxes are not figured from what goes on in this room, Strait said. Our decisions do not play into figuring her taxes, Strait added. Maxwell asked what about the future. We need to do something to make them a conforming lot, Strait said. If they decide to stop running a B&B, it could still remain zoned commercial, Strait said. If they want to sell one of the houses in the future, other things could change, like set backs, Strait said. Maxwell asked about the note that ~~Gayle~~ Township has no other commercially-zoned property, but what about the Canada Bait Shop. Mr. Kreutziger came in for a CUP and he is zoned Ag, Strait said. His CUP says you can do this one

*Gate*

thing, and nothing else, Strait said. If you want to do something else, you have to come back in, Strait added. The board room might be able to be used as a conference hall, Strait said. CP3 is for planned commercial on a highway, Strait said. It just broadens the scope for what is possible out there, Strait said. It just gives her more options, Strait added. Carmon Jones, Barkman's daughter, said the property is surrounded by farmland, and if they could convince a farmer to sell them more acres to help their situation, that might be an option. Strait explained the minimum acreage requirements. You could have five acres with the main house, and three acres with the second house, Strait said. But, the maximum density is one house per 40 acres, Strait added. You have enough acres now to make it compliant, Strait said. I would prefer clean property lines, Strait said. To purchase more land may be an option in the future, Strait said. CP3 would also allow her to use some of the rooms in the main house, Jones said. So, this does seem to be the best solution, Mueller said. Mueller asked if there were any other questions. We are also going to apply for a permit for a commercial business on the property so our daughter can have a flower business, Barkman said. It is beginning to sound more and more like this is the best solution, Mueller said. Mueller asked if anyone from the public wished to speak about this application. Mueller asked Strait for her staff recommendation. We've pretty much gone over most of this, Strait said. There is no cost to the county to improve roads, as it is on a major highway, Strait said. There should not be an increase in traffic, she added. They have planned for future growth, she said. It is currently zoned Ag all around the property, and the property is zoned Rural Residential, so farming can carry on without any problem, she said. There are lots of uses in a CP3, Strait said. I did not find anything that would not be compatible with the surrounding area, she said. I recommend rezoning to CP3 because currently it is non-compliant, Strait said. It is a really nice, well-kept property, she said. I think it would be a huge benefit to Marion County, Strait said. Mueller asked Barkman if she had any other comments, or questions. Barkman asked if there were any complaints. Maxwell questioned on the photo where the area is located. Strait showed members the parking area, and where the lagoon is located on the photo. Maxwell asked, and Barkman said there is a single meter for water and separate meters for electricity, and they also have underground propane. Mueller thanked Barkman for explaining, and he double checked that a CP3 is the best way to go in her opinion. Mueller closed the public hearing for this application and asked members to begin deliberating.

It looks to me like it would be a benefit to them, and to the county, Maxwell said. It's just a matter of getting it into compliance, Mueller said. It will become a legal conforming lot, Strait said. Becker made a motion recommend granting a CP3 to Joyce Barkman for application number PC08-003 for a Bed & Breakfast with a Conference Room. Eilerts seconded the motion. In favor: 7; Opposed: 0; Motion carried. Mueller asked Strait to explain the timeline to Barkman.

Item 5: An application for Horvath Towers, LLC, requesting a Conditional Use Permit (CUP) for a cell tower on land owned by Bruce and Shari Padgham. Bob Herlihy, of Selective Site Consultants, Inc., of Overland Park, was present to explain the application. Herlihy began by saying there are 245 million cell phone used in the United States. He explained that companies buy out other companies and merge all the

companies together. He said they are working on two phases with 105 sites, and this project comes through this area, and then over to Missouri. He explained the intent is to make a corridor of connections, so they have a seamless band of cell carriers, as well as improve 911 calls from cell phones so emergency personnel can find people on cell phones. He said there was one tower that failed structurally, and it cannot handle any more weight, so they are proposing a new tower to hold up to four or five carriers. Mueller said he noticed it would be located within one mile of the other tower, and that was a question, why so close together. In the past it has been all secretive, and they built towers too flimsy to handle other services, Herlihy said. Avery and Eilerts asked about the tower that is supposed to be going up near Peabody. Herlihy said there should be service in Peabody in six to eight months, as they are waiting for the tower to be constructed. Unrau asked about the tower that is supposed to be going up by Goessel, and was told it has been too wet to get in there. Unrau asked how many antennas will be on the tower. Four or five, Herlihy said. Mueller asked if there were other questions. Ediger asked where the other tower is located, and was told it is on Remington Road, just south of 210<sup>th</sup>. Mueller reminded members they are acting as the planning commission for this application. Mueller noted this application was published in the February 6, 2008 issues of the *Marion County Record*; *Hillsboro Star Journal*; and *Peabody Gazette Bulletin*. Mueller asked if any member had a conflict of interest for this application, but no one did. Mueller asked Strait for her staff report. Strait said there is nothing unusual for a cell tower application. It is suitable for this because it sits up high enough and there is no change to the property, Strait said. I recommend approving a CUP for the tower, with the stipulation that a chain link fence be allowed, as we have in the past, Strait said. We will landscape it, Herlihy said. It appears like the base part of the structure will not be visible from the road, Maxwell said. There is a road up there, right?, Maxwell asked, and was shown the road on a photo. Maxwell asked about the distance between the towers. Maxwell said the plans refer to page 13, but he could not find page 13 in the specs. Herlihy referred Maxwell to pages seven and eight. Avery asked about lights on the tower. Maxwell said yes, it says there will be lights, right in the front of the specs. Herlihy explained the Migratory Bird Act has lead to the determination that red beacon lights actually attract birds, so they must now use white strobe lights on the towers at night. So, you are following the rules, Mueller said. It is the Department of Interior Guidelines, Herlihy said. What is already there they are letting stay there, but anything new has to comply, Herlihy said. Becker asked about a television tower that is no longer in use, but is too expensive to take down. Mueller asked if there were any other questions or comments from the public. Mueller asked Herlihy if he had any closing comments, and he said no. When will it go up?, Maxwell asked. As soon as the county commission okay's this we will apply the next day so we can get our building permit right away, and it will be up by June, Herlihy said. Mueller closed the public hearing for this application.

Avery made a motion to recommend approving application number PC08-004 for Horvath Towers, LLC, for a Conditional Use Permit (CUP), with the condition that a chain link fence be used to surround the tower. Unrau seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Maxwell said this was the best detailed tower specs that he has seen presented to this board. Maxwell asked about tax on cell towers. When a cell tower goes up, the portion of land that a cell tower sits on is taken out, and it is considered commercial property, explained Cindy Magill, Marion County Appraiser, who was in the audience. Landowners get \$500 a month rent, or more, for towers on their property.

Review of Bylaws. Mueller asked members if they had any changes or updates for the bylaws. Avery asked if all nine members could serve on the board of zoning appeals. No, state statute only allows three to seven members on the board of zoning appeals, Strait said. Are there any changes in here?, Maxwell asked about copies of the bylaws that were given to members. No, Strait said. If there are no changes in here, they are okay, Maxwell said. This is just a review, Mueller said. I don't believe there are any changes needed, Mueller added. Unrau questioned the word, "may." Strait explained it gives you the option, without requiring it. It is set up that the seven most senior members serve on the board of zoning appeals, but we can appoint alternates, if needed, Mueller said. Are there any other issues on the bylaws?, Mueller asked. No one had any other issues. Strait said the City of Ramona has been hounding her about new regulations for manufactured housing. Strait gave members a handout on this information. We can't be more lax than what they are, Strait said about the regulations. What are they wanting?, Mueller asked. They want to know what year can be moved in, and they don't want singlewide manufactured homes to come in all over town, Strait said. They have had three applications for them, she added. They don't list the year any more, they have to have the HUD plaque on the back, she said. The data plate is required, with the list of info on it, she said. A certain label has to be positioned on a specific place on the home, she added. Tie down straps now go up and over the homes, and there is better insulation, and a higher standard for electricity, Strait said. There are new requirements, so they are safer homes, she said. It refers to the National Electric Code, 2005 edition, but I don't have a copy of the 2005 electric code, so I'm still researching this, Strait said. It has to be compliant with the HUD code when it was built, she said. From December 27, 2002, forward, those are the ones that are HUD compliant, she said. I think if they were HUD compliant in 2003, it would still be compliant today, but I'm still researching it, Strait said. We need to decide what is HUD code compliant, and how long it stays that way, she said. Revisions could be changed every two years in the code, she said. Hurricane issues are what prompted this, Strait explained. Mueller asked, and Strait said January 1, 1977 is the old cut off date. You can find a 1980 manufactured home that someone has taken care of that is in better shape than a fairly new structure, Strait said. The City of Ramona is questioning if they can move them in, and how they can zone them out, Strait said. They are going to have to designate an area as a mobile home park, she said. By Kansas state statutes, manufactured home installers have to be licensed, Strait said. They have state certification requirements, but they are different than other license requirements, she said. The state is considering amending laws regarding license exams, she said. Strait showed members photos of Delbert Thiessen's property that the Kansas Department of Transportation (KDOT) is cleaning up. Strait showed a photo of water with an oil slick, in the ditch that the county previously cleaned up. Avery asked about the Daniel King property. Strait said she has a meeting tomorrow afternoon with King and his lawyer,

and the road and bridge department and the county attorney. She said they are meeting at the property so he can show where he says the county ditch is on his property. It could be a natural waterway that I am looking at, so I don't know for sure if that is where he is talking about, Strait said. Did I read where it has been surveyed?, Maxwell asked, and Strait said yes. Also, about the Thiessen property, KDOT should be done tomorrow, or the first of next week, Strait said. They will do the final part, soon, she added. We're going to do an environmental assessment, and decide what needs to be done before KDOT comes back in, she explained. Mueller asked if there was anything else. Mueller reminded members the next meeting is scheduled for March 27, 2008. Unrau made a motion to adjourn and Becker seconded the motion.

In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 9:45 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



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David Mueller,  
Chairman



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Margo Yates,  
Secretary