

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

January 22, 2009

Chairman David Mueller called the meeting to order at 7:35 p.m. Mueller informed members the agenda needs to be revised by adding 2-A, for election of officers for 2009.

Roll Call was answered by Mueller, Jeff Bina, Bob Maxwell, Mary Avery, Kent Becker, and Dan Mount. Zoning Administrator Bobbi Strait was present.

Mueller welcomed Mount to the board, and asked him to tell members some of his background to help introduce him. Mount replaced Ervin Ediger on the board. Mueller explained that Vida Bartel in District One, and Glen Unrau in District Three, have not yet been replaced on the board so there are currently two vacancies. Marquette Eilerts arrived at this point, which was 7:37 p.m.

2-A Election of Officers for 2009. Maxwell nominated Mueller for chairman. Avery moved that nominations cease and members cast a unanimous ballot, and Becker seconded it. In favor: 6; Opposed: 0; Abstained: 1; Motion carried. Mueller abstained from voting. Bina nominated Becker for vice chairman. Avery moved that nominations cease and members cast a unanimous ballot, and Eilerts seconded it. In favor: 6; Opposed: 0; Abstained: 1; Motion carried. Becker abstained from voting. Becker nominated Margo Yates for secretary. Avery moved that nominations cease and members cast a unanimous ballot, and Bina seconded it. In favor: 7; Opposed: 0; Motion carried.

Mueller asked about a calendar of meeting dates for 2009, reminding members meetings will continue on the fourth Thursday of each month except the November meeting, which will be the first Thursday in December.

Item 3: Mueller explained that approval of the Record of Proceedings of the December 4, 2008, meeting will be tabled until the next meeting, since members did not receive a copy of the minutes to review prior to this meeting.

Item 4: A variance request for Nathan Hoffman. Mueller reminded members they are acting as the Board of Zoning Appeals for this application. Mueller reminded members the seven most senior members serve on the Board of Zoning Appeals, so all seven members participate. Mueller noted this application was published in the December 31, 2008 issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Mueller asked if any member had a conflict of interest with this application, or if any member had any outside communication concerning this application. No one did. Hoffman was

present to speak about his application. Hoffman explained to members that he and his wife plan to build a house at 1757 Pawnee, Marion, and this property has been in his family as long as he can remember. Hoffman said they plan to put their new house where the original house stood. He explained he has an uncle who is partial owner of the property, and his uncle has a shop on the property. The house will be within the fifty foot range, but it needs to be away from the shop, Hoffman explained. Hoffman said he has worked out the details with his uncle. He said he has had a dream since he was a child that he would live on this property some day, and he plans to live there the rest of his life and raise his family there. Mueller asked Hoffman if the garage and house will be on his property, and he said yes. Mueller asked Hoffman if the shop is on his uncle's property, and he said yes. The barn is on my property, Hoffman added. It is set up as far as the landscape and we will save the ash trees that my grandfather planted, Hoffman told members. Maxwell asked about the driveway, and Hoffman said it is on his property, but his uncle has unlimited access to it. Eilerts asked if the old home's foundation is still on the property, and Hoffman said no. The house we plan to build is larger than the original one, Hoffman told members. Mount asked about the easements and Hoffman said they are okay. Mueller asked if Hoffman plans to keep the existing trees, and Hoffman said yes. Becker asked if the building he was viewing in a photo was the barn, and Hoffman said no, that is the shop and the barn is to the south of the driveway. We eventually plan on retaining all the property for us, Hoffman said. Avery asked, and Hoffman explained where his uncle's property is. Avery asked, and Hoffman explained where all of his property is. Mount asked if there is an existing well, and Hoffman said yes. Becker asked if there is rural water, and Hoffman said no, it is a mile to the east. Mount asked about the logistics of the well and the septic system, and Hoffman said they are both located on his property and both are located okay. Strait agreed it should not be a problem. Maxwell asked, and Strait read a consent document from the original owners, Michael B. Hett and Christa A. Lalouette, saying they do not object to Hoffman's plans. Avery asked about the sewer system, and Strait said she will have to do a soil test on the property. Mueller asked, and Strait said there is a septic system for the property. Maxwell asked if an open area could accommodate the set backs, and Hoffman said no. With the square footage of the house, we need to allow for the trees to grow, Hoffman explained. The planned house will be 40x40, with an eight foot front porch, Hoffman told members. Mueller asked if anyone from the public wished to speak about this application, but no one did. Mueller asked Strait to give her staff report. Strait told members there have been no comments from the public concerning this application. Hoffman explained his mother, Anita Brookens, owns 80 acres on the section up from this property, and another section on the north. Maxwell asked, and Hoffman said Matt Purcell is the closest residence, located a half mile to the south. Mueller reminded members that the Board of Zoning Appeals makes a decision that is a final action. Maxwell asked what if Hoffman wants to sell, or what if Hett wants to sell. Mueller closed the public hearing for this application. Mueller asked if the easements are in place that will stay with the property, and Strait said yes. Strait reminded members they

have granted similar requests in the past in order to leave as much farm ground as possible. They can see what they are getting because it is already established, Strait said. This preserves the farm land as much as possible, which is according to our comprehensive plan, Avery said. There is no disturbance of the ag land, Maxwell said. And it follows the natural boundaries, Mueller said. Becker moved members approve a variance for Nathan Hoffman, at 1757 Pawnee, Marion, with a 15 foot west variance for new home construction and a 41 foot north variance for an existing structure, and Bina seconded it. In favor: 7; Opposed: 0; Motion carried.

Mueller asked Strait to explain the next step to Hoffman. Strait explained this is a final action by the Board of Zoning Appeals, so Hoffman may come to her office and get his permit.

Item 5: A variance request for Guy Wright, for property located at 2150 Kruse, in the Eastshore Subdivision at Marion Reservoir. Mueller reminded members they are again acting as the Board of Zoning Appeals and all seven members participate. Mueller noted this application was published in the December 31, 2008 issues of the *Marion County Record, Hillsboro Star Journal and Peabody Gazette Bulletin*. Mueller asked if any member had a conflict of interest with this application, or if any member had any outside communication concerning this application. Becker said he has an outside interest with this property owner. Maxwell said he lives nearby this property, but he would like to contribute to this application unless someone has a problem with it. Members agreed both Becker and Maxwell may participate. Wright was present to speak about his application. He told members he and his wife bought this property a little over three years ago with the intentions of putting something different on it and retiring. In the meantime, his wife's mother, Dorothy Cain, moved into a retirement home so she is giving them her 77'5" trailer. Wright said they would also like to construct a two car garage with a cement slab for parking and to be used as a patio. Avery asked the age of the trailer, and Wright said it is a 1984. Members viewed a photo of the trailer. Wright said the trailer has new siding and a roof, with extra insulation, new windows, new tile, carpet and counter top. We want to remove the existing trailer because it is in poor shape, Wright told members. Eilerts asked where the 1984 trailer is now, and Wright said it is in Wichita. In three or four years we will retire and live there full-time, Wright told members. Eilerts asked, and Wright said the trailer is skirted now, and they plan to put it on a cement slab. Mount asked about the shed, and Wright explained about the location of the existing shed. Mueller asked about the garage they propose to build, and Wright said they are planning on a garage the size of 26x38, and it would be inside the boundary line. Mueller asked Strait to explain the set back situation on Eastshore. Strait said set backs in the country are 30 on the front, 20 on the rear, and 10 on the sides. Strait explained that in September of 2000, the Improvement District at Eastshore applied for the following variances for their Subdivision set backs: 20 on the front, 10 on the rear, and six on the sides. Since 1969 Eastshore has been in restrictive covenants, and residents want to keep uniformity in their Subdivision, so it was agreed to grant these variance set backs over the entire Subdivision,

Strait explained. Avery asked where Kruse is and was shown on a map. Mount questioned an old pipeline, and Maxwell said he is not sure if someone has control over it, or not. I've been there for about 30 years and it's always been just an abandoned line, Maxwell said. Strait said she talked to the Register of Deeds when she was researching this. Maxwell pulled out a large map of Eastshore. Strait read from the plat. Strait showed where the 20 foot easement is on the map. Telephone, sewer, and water lines run down the easement, Strait said. Maxwell said that is correct on everything but water. Maxwell said it is gas, electric and telephone in the easement. It is a 20 foot easement, split 10 feet on each side, Strait said. Bina asked, and Maxwell showed on the map where Wright wants to put in a trailer. Bina asked if all the homes face the same way, and Maxwell said some were put in against regulations. Mount asked about the room between the water lines and the trailer. There should be room to fix the water line, Maxwell said. The easement is the question, Avery said. A fellow built a new garage here, Maxwell said, and showed members on the map. We try to keep things lined up so it does not look all mismatched, Maxwell said. There have been some fences built and some trees planted, and I have told people you can do what you want with your fence or trees, but if they come along and bulldoze it out you have no recourse, Maxwell said. The big concern is knowing exactly where the water line is, Mount said. Wright asked if the line is where the meter is. It could be three blocks away, Mount told Wright. Eilerts asked about a breach of the covenant. We cannot enforce covenants, we can only enforce easements, Strait said. Mueller asked, and Maxwell said yes, 70 feet is the maximum length. Are there no trailers over 70 feet?, Mueller asked. I would say no, because when a lot of them were put in they probably didn't even make them 70 feet, Maxwell said. Eilerts asked about manufactured housing in the regs, and Strait said members need to go over the new regs later tonight. I have been on the water board out there for about 18 years, but it was built a long time ago, Maxwell said about the water lines. They did a pretty good job, but some places they cut corners, he said. I would think there would be room to service the water line, but there are no guarantees, Maxwell said. Janis Wright said they are concerned about the alley access, and that is why they asked for the trailer to be positioned the way they have. Maxwell asked Wright if he put in a carport. I moved it, and I could move it over another two feet, Wright said. Mount said he is concerned about them pouring a concrete slab and not knowing where the water line is. We are a water district, so any costs come back to us, Maxwell said. Mueller said the issue is with the utilities. Mueller asked the Wrights if Strait has talked to them about the proposed manufactured housing guidelines. Strait explained to the Wrights that the county's updated manufactured housing guidelines are going to be more in line with HUD (Housing and Urban Development) standards. You need to get the home in place prior to next week because this is going on the county commission's agenda Monday, and it will be published next Wednesday, and if it is not established on the lot before this is in place, it would have to be newer, Strait told Wright's. Avery explained that members have been working on this for a long time and this is not a new issue. We have recently had two public hearings on the text amendments, Strait said.

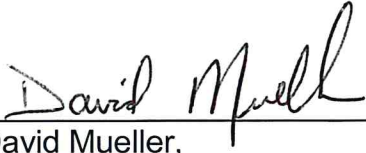
Eilerts asked Strait to give more background on the issue. FEMA (Federal Emergency Management Agency) does not want to give disaster funding to areas that are not in compliance, Strait explained. In April of 2000 they updated the HUD standards, she said, which had not been updated since 1977. The existing HUD Code caused too much property loss, and too much death and injury, Strait said. They review the HUD Code every two years, she said. We decided to accept anything built on or after they updated the code to give us a better chance of getting disaster funding, she said. From a health and safety standpoint, we felt it was better to upgrade our regulations with the federal regulations, she explained. Janice Wright asked why they were not told it needed to be newer when they applied, because now they have wasted about three months of time. Members explained it is not in the regulations at this time. Mueller apologized for the miscommunication. Janice Wright said they will withdraw their application. Guy Wright asked where he can go to file a complaint about trailers facing the wrong way at Eastshore. The Homeowner's Association, Maxwell told him. It works in conjunction with the water group, Maxwell said. It really has no power, he added. Jim Christensen is the Chairman of the Improvement District, Maxwell said. And, Larry Cameron is the President of the Water Board, Maxwell added. Maxwell said he contacted Strait about the covenants, and Strait had researched it. Avery said when she read the application she assumed they were buying a new home. Strait said the application was turned in on December 12, 2008. They said they have been at it for about three months, and in September it was legal, Strait said. Becker asked if there should be a disclaimer stating that regulations are subject to change. The state statute requires we publish in the *Marion Record*, and we publish in three newspapers, she said. Becker said at work they have a disclosure to say that this is the regulations today. Maxwell recommended applicants sit down and talk with Strait. If the secretary does not have the responsibility of giving out information, why do I have a secretary?, Strait asked. This is personal responsibility, Avery said. I own a home out of state and there has to be some personal responsibility to do the property research, Avery said. A space on the application that says the age of the home would take care of it, Avery suggested. I doubt once we update our manufactured housing that it happens again, Strait said. They could fill out a zoning permit application at the same time as a variance application, Strait said. Encroaching on the easements was a reason not to grant the variance, Mount said. We have talked about easements at the county lake, and we have denied some variances because of utilities, so this is consistent, Avery said. By knowingly approving a variance in an easement, we could cause a safety hazard, Avery said. Mount asked about the homes turned the wrong direction. That comes under the covenant, Maxwell said. The only way they can resolve something like that is to go to court, Maxwell said.

Item 6: Zoning regulation changes. Members discussed County Commissioner Randy Dallke's objection concerning manufactured homes being occupied. Strait reviewed the change for 21-110. Legal non-conforming uses are allowed to continue as long as the use does not change, Strait said. If it is not re-occupied in

six months, it loses its non-conforming use status, she added. It expires the same as a CUP (Conditional Use Permit) expires, Strait said. Mueller asks about the last sentence concerning utility usage. If the utility usage is down, you know that it is not occupied, Strait explained. So, someone has to live there in order for it to be occupied, Mueller said. Or, using it on a regular basis, Strait said. Members discussed questions about occasional use at the county lake. They do not take their belongings with them because they know they will be back, Strait said. So, this is not unoccupied, she said. Unoccupied is when a renter packs up and leaves, she added. Avery asked about farm workers that may not be immediately replaced. They may hire someone who does not want to live in the house, but the house will be looked at every day, Strait said. The ag use is for families and employees of farmers, and the employees must work on the farm, Strait said. How are we going to know that?, Becker asked. That is a trust issue, and I tend to trust farmers, Strait said. Mail delivery could check on it, Maxwell suggested. Eilerts said the word occupied bothered the county commission. Eilerts questioned the wording "prior to becoming occupied." It is a non-conforming use, Strait said. It has lost the grandfather status, she added, because the use ceases to exist after six months. I think we have to be consistent, Mueller said. Becker asked about hunting lodges. If they leave the household contents in place, it would be a seasonal use, Strait said. Maybe we need to write a description of occupied, Strait said. The definition would go in the definition part of the regs, Avery said. So, we can approve this tonight and then you can come back with a definition, Avery said. We could submit this as is to the county commission on Monday, and they can approve it, Strait said. Then we can add the definition, she said. Maxwell reminded everyone the previous applicants at tonight's meeting were told it is going to the county commission on Monday. Wouldn't seasonal housing and guest quarters be the same thing?, Strait asked. Maxwell suggested running it by the county commission as is. Mount moved to present the amended regulations to the county commission as presented, and Eilerts seconded it. In favor: 7; Opposed: 0; Motion carried. Members agreed that plan B will be if it does not go through they will work on the definition of occupied.

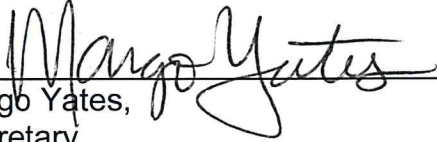
Off agenda items. Strait told members of two permit approvals from the Department of Agriculture Water Resources. Members briefly discussed Mike Beneke's feed yards. Strait said she is researching the history of this case but she cannot find a complete list from 1992. We can't grandfather it, if it did not exist at the time, she said. Strait also handed out copies of Article 19, showing the change. Mueller reminded members the next meeting is February 26, 2009. Eilerts asked for an updated member contact information sheet. Becker moved to adjourn and Bina seconded it. In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 9:42 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



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David Mueller,  
Chairman



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Margo Yates,  
Secretary

