

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

SPECIAL MEETING

July 21, 2011

Chairman David Mueller called the meeting to order at 7:38 p.m., with a quorum present.

Roll Call was answered by Mueller, Mary Avery, Bob Maxwell, Lloyd Funk, and Nick Kraus. Brad Vannocker, Marquette Eilerts, Jim Schmidt and Dan Mount were absent. Zoning Administrator Tonya Richards and Consultant David Yearout were both present.

Mueller asked for changes, or additions, to the Record of Proceedings for the May 26, 2011, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Kraus moved to approve the Record of Proceedings as written, and Funk seconded. In favor: 5; Opposed: 0; Motion carried.

Mueller explained there are no applications on the agenda, and members will work on the regulations. Mueller suggested members begin by discussing Article 31 first, since Rex and Carolyn Savage were present because of this agenda item.

Item 4: Mueller asked Yearout to give members some information about the Governor's action concerning possible locations for Wind Energy Conversion Systems (WECS). He is not saying no way, Yearout said. It is not a prohibition, Yearout added. He has taken it all the way down to the Oklahoma border, Yearout said. He has extended it west of US 77, and south of US 50, in Marion County, Yearout said. Kansas is one of the only states in the country that does not put these on the tax rolls, Yearout said. Address and deal with what you feel is appropriate here, Yearout told members. Do what you feel is best for the county, he added. Stay out of drawing lines on maps, Yearout told members. It should be a decision made at the local level, not at the state level, he said. Savage agreed, saying he thinks Yearout is on target when he said to leave the overlay district as is. Savage said there are several holes in what the state has proposed. Savage said it has had a chilling effect on the Doyle South Project. Savage said the Doyle North Project is moving along. As far as taxes, that is a state decision, Savage said. We've proved Marion County has a set of regulations that do work, Savage said. I don't think you want to pull much meat out of your regs, from your point of view as well as my point of view as a landowner, Savage told members. Savage told members he does think it would be okay to take the redundancies out of the regulations. He also commented that environmental concerns are not land use issues. He said he thinks putting all such information together to address these concerns would be the way to go. He said he does not think there is a need to change the intent of the regulations; he just thinks members could try to consolidate things. Mueller suggested members work their

way through Article 31, and give Savage the opportunity to respond. Yearout said he realizes members spend a lot of time discussing a lot of issues, but he is not sure all the information is familiar to those in the audience at meetings. If someone raises a concern, you need to document and show you have addressed all the issues, Yearout said. My concern as more regulations deal with land use issues, is for example, there is nothing to use to address issues with road concerns, he said. You could go with having a copy of the documentation on file, but to roll it into the approval process is sending the wrong message to the public, Yearout said. If the public has a concern, and there is nothing in place to help rectify it, but the public was given a false sense of security, you have to be very careful, he said. Mueller said he liked the idea of putting a copy on file so the public knows the issues were addressed. Savage said he could submit an Avian Study as a document. If we had uncovered something radically wrong it would have altered our plans, Savage told members. I was simply looking at ways to streamline the regulations, Savage said. I'm not trying to tell you what you need to do, he added. Mueller asked members for their opinion on how to proceed. I don't see any problem with what is in there, now, Maxwell said. Maxwell said an example is it was suggested to strike #5, but Maxwell disagrees, as he thinks #5 can involve land use concerns. Kraus asked Yearout for examples. Yearout explained Jefferson County has brief regulations. Mueller asked Avery for her opinion. Avery said she thinks the regulations we had worked very well for the first presentation. Everything was addressed for the public, she said. But now that we have been through it once, I think Rex is right that some things could be changed, Avery said. It met the needs to ensure there was a fair hearing for everyone, and I think that speaks well for the county that all aspects and points of view were presented and respected, she said. If we do not have the authority, I like the idea of having the information filed, Avery said. I think that was a nice suggestion, Avery said. If there are issues we have no authority on, we probably shouldn't be talking about them, she said. I was pleased at the end that it worked, but we want to be sure to have some consistency, so let's tweak it a little bit, she said. Mueller asked Funk what he thought, and Funk said he agreed it worked well. Do we really have the authority to look at as much stuff as is in here, and will it hold up in court?, Kraus asked. The risk is using it as a basis for denial because they will question what it was based on, Yearout said. Kraus asked if having an overlay district in place gives the okay to proceed. It is not saying it is okay, it is just saying you can approach it in that area, Maxwell said. Since there is an overlay district, if something is not approved, does that open it up to a lawsuit?, Kraus asked. They still have the burden of proof to show it is a viable thing, Yearout said. Avery said at the time the overlay district was established it was because of transmission lines and geography. An overlay district is not static, Yearout said. It can always be moved, he added. As it functions, if you are outside the overlay district, you will not be considered, Yearout said. Avery asked, and Yearout said he is not a big fan of overlay districts unless they can be easily identified. Yearout said he understands the rationale to identify it in Marion County, but most counties do not use the overlay to describe an area like that, he said. If there is no overlay district, is there a way to control the location?, Kraus asked. Yes, Yearout said. Zoning regs give the county a seat at the table as things change, Yearout said. Zoning regs give a voice to protect the public, but as far as the substance of the regs, you guys need to decide what you want to do, Yearout told members. Environmental concerns

have to be addressed for projects to proceed, but this is controlled by KCC (Kansas Corporation Commission), Yearout said. KCC does not have much to do with it, unless you are going to sell power within the state, Savage said. Mueller suggested keeping the overlay district as is, or slightly amended. Mueller said his reasoning has three points, first that applications have worked within this framework for nine years; second that the governor has proposed coming into the overlay district and if it is dropped now you could say it was not a defensible position; and finally, if someone has a proposal for the north end of the county, members can address it at that time. Maxwell said he buys into what Mueller said. Mueller asked members if there was any opposition to keeping the overlay district as is. There was no opposition, so Mueller said members agree to keep the overlay district as is. Avery asked Yearout to bring back for members how he thinks our regs need to be tweaked. Mueller said members need to give Yearout some guidance. Members went through Article 31. Yearout suggested leaving 31-101 alone, and members agreed. Mueller said it was already decided to leave 31-102 alone. Under 31-103, #2 needs to be changed to 199, and Richards and Yearout will make it consistent. Under 31-104, #4 Yearout questioned, and Mueller suggested dropping it. Members agreed 31-105 is okay. Yearout suggested 31-106 be moved to the end of the document, like for someone wanting to rezone an area to develop a commercial business park, but proof is needed that it can actually happen. You need to know they have their plan blessed and ready to go, and they can show it can work, Yearout said. You want to avoid having turbines in place but no one to power them, Yearout said. Big developers come in and do zoning late in the process, Savage said. The average cost is \$20 million by the time they are done with zoning, Savage said. The other way it is done is the way we are approaching this, where the turbines go up and the PPA (Power Purchase Agreement) is being negotiated while we are in the process, Savage said. I can submit the PPA when it comes in, Savage said. Yearout will restructure and move 31-106. Yearout said for 31-107, you run the risk every time one of the issues is discussed, that someone in the audience will object. The intent would be to say environmental issues are addressed in documents and put in the file, and members agreed. Under 31-108, #5 should be deleted, and #16 is a condition for approval. Richards said it is similar with flood zones, as the county may hire an engineer but the county is not responsible to pay for it. All projects are very highly insured, Savage said. If something goes wrong it falls back on the developer, not the county, Mueller said. That is also why you have set back requirements, Richards said. Yearout said 31-109 is advisable to have the applicant address how the project will integrate into an area. Yearout said that in 31-109, #2 flood zones have to be addressed, anyway, but the rest is silly. Richards agreed. Savage agreed it would simplify things if it could all be addressed in one area. Richards asked if 31-109 #4, A-1 should be changed from county engineer to road and bridge department, but Yearout said the county has the capability to hire an engineer so members should leave it as is. Yearout suggested leaving 31-110 as is and moving the reference to PPA to that section. Yearout suggested deleting 31-111 because it is redundant. Maxwell asked about notification. Yearout said the county has done a one mile notification, which increased the cost, but those people have no more rights. So, we need to change it to 1,000 feet, Mueller said. Yearout said members can leave it as is, but protests can only come from within 1,000 feet. Richards said she would rather change it to 1,000 feet as per state statute, to save

the county money. If you leave it as is, you need to add language to explain only within 1,000 feet can protest, Yearout told members. The right for notification goes to the landowner, not the tenant, Yearout said. Mueller asked Maxwell's opinion. He said he is thinking about the rural areas, but he can see Richards' point. The lake is very similar to a city where 1,000 feet is enough, Richards said. Mueller suggested 1,000 feet for lakes and one mile for rural, but Yearout said it has to be the same. If someone owns two sections and they only want a change on one section, you don't have to notify anyone, Yearout said. Yearout explained that state law does require you to cross county lines, but you do not have to cross state lines. Mueller asked members what they wish to go with. Yearout asked members to give him a chance to make a suggestion. Mueller said members may talk more about it at next month's meeting. Mueller thanked Savage for providing input. I do think you have a product that works, Savage said. I just think you could make it work better, he added. Everyone at least knows that is what you want to see, Savage said. Avery said it is easier after members have been through it several times. Savage said if he can provide anything else that is helpful, to let him know.

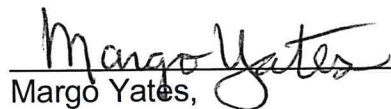
Item 3: Amendment to Regulations: Article 6, 7, 8, 9 & 10, Reserve for Future Use. All members agreed to this change.

Avery said she appreciates Savage coming in and she wished others would do the same. Mueller reminded members the next meeting is scheduled for August 25, 2011. Mueller asked Richards if there are applications for next month's meeting. Richards said there are a rezone and a plat, and a possible application for the county lake for a bed and breakfast. Mueller asked about a property where a garage is too close to the property line, and Richards said yes, it is at Eastshore. It is six inches from the property line, now, Richards said. Kraus moved to adjourn, and Avery seconded. In favor: 5; Opposed: 0; Motion carried and the meeting adjourned at 9:29 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yates,
Secretary