

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

July 23, 2009

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

Roll Call was answered by David Mueller, Bob Maxwell, Jeff Bina, Mary Avery, Kent Becker, Dan Mount and Jim Schmidt. Zoning Administrator Bobbi Strait was present. Marquette Eilerts was absent due to medical reasons. Margo Yates was absent due to conflict of schedule. Tonya Richards was present to take minutes.

Kent Becker did not receive his packet in the mail.

Mueller asked if there were any additions or corrections to the Record of Proceedings for the May 28, 2009 meeting of the Marion County Planning Commission/Board of Zoning Appeals. Spelling correction was made to from "Duerksen" to "Dirksen" on page 3, etc. Bina made a motion to approve the Record of Proceedings with the name correction, and Mount seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 4: An application requesting a variance for 50 Lakeshore. Mueller reminded members they are acting as the planning commission to make a recommendation to the county commission for this application. Seven members are present; everyone will be acting as the Board of Zoning Appeals, taking a final action this evening. Mueller stated this application has been published in the July 1, 2009, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Avery stated she has property at the lake but does not feel it is a conflict of interest. Mr. Lewis, the applicant, was absent but the applicant's wife, Patty Lewis was present. Strait stated that setback requirements in a village district are 8 feet from the sides and 20 feet from the front. Patty stated the 8 foot side setback requirement cannot be met. She is currently about 1.5 feet from her neighbor's property line. The deck will be up against the house but not be attached to the house. The deck will not exceed the dimensions of the house. It will be clear of the grinder pump, and will actually be further away with the new porch, than the previous porch. Strait did not have any further information other than her verbal staff report. Mueller opened the discussion up for public comments. Mueller asked if anyone from the public wished to address this variance. Francis Smalley from the Marion County Improvement District #2 stated she was in attendance to make sure that the new deck will not interfere or cover up the grinder pump and the lines going to the grinder pump will not be interfered with. Mueller said since there were no additional comments from the public, the public hearing was then closed for this application. Bobbi reported that the lake has lots of small lots, so variances are often requested. She spoke with

the Marion County Fire Chief and the new deck will increase the flame spread and combustible materials on that lot. Though variances are usually granted it is important to consider the distance from the grinder pump and 12 foot distance required by fire code. Mrs. Lewis stated the decking materials will be most likely made out of composite materials. Bina didn't think the board should require the decking material to be composite. Maxwell agreed.

A motion was made by Avery to recommend approving this application for Gary Lewis variance. Bina seconded the motion. In favor: 7; Opposed: 0; Motion carried. Strait informed Mrs. Lewis to allow 30 days in case an action is filed in district court. After 30 days a permit will be granted and mailed.

Item #5: An application requesting a rezone at 1469 260th from "Agriculture" to "Commercial". The application is for approximately ½ acre to be used as an automotive repair shop. Mueller reminded members they are acting as the planning commission to make a recommendation to the county commission for this application. Seven members are present; everyone will be acting as the BZA, taking a final action this evening. Mueller said this application has been published in the July 1, 2009, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Applicant Belinda Engler was absent. Bina wanted to know the size of the building. Strait looked in the file but no size was determined. Mount asked if with commercial property, are there any health codes regarding plumbing that would be required. Strait explained that people will not congregate there, just drop off and pick up. Mount asked if there is any minimum acreage for commercial property. Strait said there a minimum square foot requirement and this will far exceed it. Maxwell asked about the issue of collecting and parking several cars and it looking more like a salvage yard than an automobile business. Strait stated that by approving this rezone, it would be legal to have cars parked there but the hedgerow should shield it from the public roadway. Strait explained you would have to drive up to the shop to see the cars. Strait stated it is very clean and Belinda will continue to operate her horse riding academy. Becker asked if the type of automotive repair matters. Is it cars, pickups, combines, tractors, and semi trucks? Strait said to be a tractor repairer he would have had to have gone to a different school than automotive repair. Gas engines will be what he wants to work on. Maxwell had several questions; it appears to him that the automotive shop is already operating as a business. Strait said there were no cars out there when she was out there and no vehicles in the shop. Maxwell drove out to the property on Wed, and a gentleman was working on a suburban and 3-4 old vehicles were already parked outside building. To him it looked like an accumulated collection of junk already. Strait stated maybe after she was out there they thought it was ok to go ahead and start operating. On the square footage, Maxwell pointed out on Englers application; she did not write the rezone was for an automotive repair shop. David Yearout said he doesn't know what our policy is for applicants who are not in attendance, but he stated the application is automatically tabled for one month in Dickinson County. Yearout explained it is important to keep in mind it is not a

staff's job to advocate for a rezone, nor the boards job to advocate for a rezone, it is the applicants. If they don't show up, by tabling it for a month that gets the message to the applicant their job is to show up. Yearout explained it would be beneficial for the applicant to designate which zoning district they are applying for. Anything allowed in that zone is allowed as a land use. Zoning goes with the land not the applicants. Say next week someone else buys the property, that needs to be taken into account. What this PC board is struggling with is what he has seen every board struggle with. Keep in mind when rezoning to a category, if a rezone is granted, everything listed in that zone can happen. Strait asked David Yearout if the application is tabled, it will only be tabled one time. David said it will only be tabled automatically one time but if they don't show again it is automatically recommended to deny the request. Strait stated that if they don't show up the board doesn't want to table again and again. Maxwell then clarified that the motion was to table the application for one month. Maxwell motioned to table application for one month. Becker seconded the motion. Table application until next meeting or until applicant is present. In favor: 7; Opposed: 0; Motion carried.

Strait confirmed that the applicant will be notified with a possible surprise visit to the property to see if they are currently operating without approval. Mount then asked if during that visit it is revealed that they are currently operating as a business, what happens. Strait said they have to shut down, they cannot continue. If they do not shut down the next step would be to file action in district court.

Off Agenda: Donald Alcorn was not present. Dave Yearout and Bobbi Strait spoke with Abigail Lewis at ATF (Alcohol, Tobacco, & Firearms). Abigail Lewis advised Strait that Donald is required to have the federal license whether he crosses state lines or not. He has to have a place of business where he conducts retail and wholesale transactions in order to obtain an ATF license. If we say in our zoning action that there can be no retail sales at that property location, she will automatically decline his ATF permit. He verbally expressed to Strait that he will use his commercial location in Herington, KS for his permanent address. No official application withdrawal has been received. David Yearout asked Lewis if there are categories of ATF licenses. Lewis said no. With the ATF license you can sell any legal weapon that is allowable in the USA. He asked if it also includes handling of ammunition. Lewis stated ATF does not regulate any ammunition. That part of it is not subject to any licensing. Alcorn's initial purpose for obtaining the ATF license was so he could cross into neighboring states to sell firearms. He has been in violation of federal gun laws since he has been selling firearms because he is required to have the ATF permit whether he goes across state lines or not. Yearout suggested recommending the county commissioners deny the request, which opens up the 14 day protest period. If Alcorn wants to withdraw his application he needs to put it in writing and at that point the application would be void. Maxwell asked if the federal government people have cleared Alcorn with background checks. Strait has not verified that

with ATF. Mount asked what if he uses the Herington address but still stored the guns at the lake. Yearout explained a complaint then could be made to ATF. Maxwell stated based on the information given and lack of attendance from the applicant; he recommends the county commissioners deny the request. Alcorn can then write a letter of formal withdrawal if so chosen. Strait stated in 14 days it will go to county commission. Richards asked if he publicly withdraws, would that be published in the newspaper. Strait responded with a no. Strait said Alcorn said "screw Marion County, I will use my commercial location in Herington as my business." Strait said that in May he stated that he had sold the Herington property. So there is much confusion. Maxwell asked what if Strait sends him a registered letter stating the PC board is denying the application. Yearout stated the letter should say that the PC reviewed Alcorn's conditional use on July 23, 2009. Strait contacted ATF. Alcorn's failure to show at the meeting has also been taken into consideration and with no indication of withdrawal it has been scheduled with the county commission. Strait said that sounds appropriate. Maxwell motioned to table application PC0903 to the next meeting. In light of the contradictions with statements he made with the facts that have been determined since then, the PC asks for a motion to deny the application PC0903 for Donald Alcorn. A recommendation to deny the application to the County Commissioners was made. Mount motioned to deny application. Maxwell seconded the motion. In favor: 7; Opposed: 0.

Application will go on to the county commission for final approval on August 10th, 2009. Mueller explained that conditional uses go on as recommendations from the planning commission to the county commission, but Board of Zoning Appeals actions are final actions.

Yearout discussed a petition can be filed to protest the application to the county commission, in that case the county commissioners will need a 3-0 vote not a 2/3rds vote to overturn it. A protest has never been filed that Strait was aware of, so Yearout will email the protest form to the P&Z office. If the applicant is denied you cannot come back and reapply for 1 year.

Yearout asked if each property at the lake has it's own a grinder pump? Smalley stated each homeowner is responsible for the cost of installing their own grinder pump and the improvement district maintains it. Yearout asked if it is then the homeowners? Smalley replied no, because the improvement district maintains it. From the pump into the house is the homeowner's responsibility. From the main line into and including the pump, it is improvement district owned. Yearout expressed the reason he is asking, is because under the regulations you typically cannot build over a utility easement. Yearout thinks it would be extremely beneficial to create a new zoning district specifically for the lake. That way the board could avoid all of the village district repetitive applicants, which are usually variances from setbacks. The PC could set up the lakes own design standards that fit to what is going on at the lake so variance issues will be taken care of. It is not in the best interest of anyone to have to continually apply for a variance. Part

of the design of that would incorporate the easements for the utility and improvement district. This would then give latitude to the homeowners so that the homeowners do not feel like they constantly have to ask permission on their own property. Yearout expressed if the PC decides to pursue that, it would be beneficial to have a member from the lake help form the new regulations. Strait asked if Dan Crumrine completed GPS of all the grinder pumps and water meters before he passed away. Smalley stated she thought he did. Strait expressed having the GPS coordinates correlated with the county map department would be beneficial.

Off Agenda: Maxwell stated the International Energy Efficiency Conservation Code scares the daylights out of him. He doesn't believe Marion County can afford to adopt these codes. There are too many mandates. Yearout stated the energy conservation code is one of many codes. Many counties have adopted only building codes, electrical and plumbing. He doesn't know of any county who has an energy code. Maxwell encouraged everyone to look at and review the code book. Yearout stated the issue of building codes may be mute because the state may be making the codes mandatory. The only way around that is for the county to adopt codes of their own. Strait handed out the governor's assurance to everyone. In Feb 2009 Obama signed the ARRA (America Recovery Reinvestment Act). In it is the EERE (Energy Efficiency and Renewable Energy). This will require 90% of existing buildings and 100% of new construction to be compliant. Before they release any money they will require the governor's assurance to be signed. On June 24 KS received 15 million dollars. This means this governor's assurance has been signed. It requires 2009 or later residential building codes and a plan to achieve the 90% compliance within 8 years. The 8 years starts June 24th 2009. The state then has to report their compliance back every 3 months. Strait expressed she is pursuing grant money to train to be an energy auditor and additional money available to purchase the equipment and what the county match dollars would be for that. Tonya researched current energy auditors to see what they charge. Nothing could be found other than from one gentleman in Abilene, who no longer is certified charged 350.00 per audit. The remaining energy auditors were part of an electrical or utility company who charged based on what energy upgrades they purchased with the company. Strait explained this was discussed briefly at the budget meeting today and one of the commissioners was not happy about it, but it is coming and if we don't do something locally, it is going to be mandated. Yearout said the state adopted energy codes in the 1970's, that was the initial push. The question about item 2C and 90% compliance, Yearout does not see it saying all existing structures. If it does state that then he believes it will fall flat on it's face. There is no way they can do that across the country. Strait stated it does say 90% compliance of all existing buildings in the federal part. Yearout explained there have been thousands of things they initially want to require and then they don't enforce because it would not be possible. Yearout believes it will be the insurance companies that will enforce codes. If a natural disaster happens, FEMA will not sign over any funding unless codes have been adopted. They will not spend a

dime to rebuild anything unless codes have been adopted. The day is coming eventually. Property insurance rates will eventually go up in counties where codes have not been adopted. The insurance industry, in order to survive, will mandate codes to insure the property. Hail and straight line winds are larger in dollars than tornados. Strait got an email from State Farm at a district or state level that asked her what building codes Marion County had in effect. Strait contacted the local state farm agent. Whether or not we have building codes in the county will affect over 200 properties in Marion County, just with State Farm. Strait said your house will be labeled or tagged just like your vehicle is tagged. If we can avoid this by adopting the residential building code and commercial code than that is what we want to do. Maxwell says he would rather watch grass grow than to read the residential code books because he gets so riled up. Maxwell stated there are too many open ends and it scares him to death. Yearout explained that is why virtually no one has adopted the 2009 building codes. The firefighters loaded people up on busses and took them to the annual convention in Minneapolis. The 2009 code has built in that all new buildings are required to have a sprinkler system installed. Strait said they want to sprinkler system every existing structure within a matter of time. Yearout said that is interesting because the firemen expressed what it will cost you to install, will save you in insurance premiums. The insurance industry said no because the premiums will be higher because water damage is 100% loss. The fire people hadn't thought about that, after it had already been approved. Maxwell stated what do we do? It is so flawed and full of corruption. Becker asked then what code do we want to use? Strait and Yearout agreed that 2006 was the best version of the international code and is what most jurisdictions are using. Mount ask what if we adopt codes and then the state mandates our codes still? Strait and Yearout do not know at this point. Maxwell stated we should just wait at this point, correct? Yes said Strait. Yearout said in his mind the fact that insurance companies are starting to redline our county is a bigger reason to adopt codes. It is a different response if Uncle Sam is requiring it vs. businesses closing in our county because of our lack of insurability.

Yearout passed out forms: one being a provision of livestock laws. It was defining what agriculture exemption excludes. Our biggest improvement concerning confined animal feeding other than environmental impact is the road impact. Yearout asked why would the county dip into their general fund to maintain and improve roads around a confined animal feedlot. Road and Bridge improvement and maintenance vs. county tax income has to be compared. The animal feedlot damage is almost always much more expensive for the county maintenance than the dollars the county is bringing in from the taxes.

Communication towers: a lengthy article regarding Johnson County towers was provided for members. In a lot of areas where towers are a conditional use Yearout is more comfortable in being generous with setback requirements. The way they are designed, they will collapse on themselves. The only time they fall

over is if it is sabotaged. You can specify higher wind ratings if you have building codes. He has gotten into encouraging tower use to be used by multiple carriers.

Sign regulations: idea of adding information for new technological signs such as LED signs.

New Lake Regulations: Yearout expressed the benefits of creating a special district around the lake with it's own special setbacks. The idea of that would be to get everything out from the possibility of being grandfathered in. Also to avoid all the variances unless someone is doing something out of the ordinary, such as exceeding the nonconformity. Maxwell asked what do we do because so many properties have only a 1.5 feet to the neighboring property. Yearout asked if the deck for 50 Lakeshore was going to be any closer to the property line than the house? Strait answered no. The deck lines up exactly with the dimensions of the house. If it is not written in the zoning regulations, it does not need to go through BZA because you are not increasing the nonconformity. The one side of the house already existed, and they are not encroaching any other setbacks or increasing the degree of nonconformity, therefore it is unnecessary to go through the BZA. Yearout said that should be built into our regulations. The more we remove the idea that government is in control, the better off we are.

1469 260th: Yearout has a new idea. When Yearout first helped the county put the regulations together years ago this had not yet been used. In Dickinson County they finalized their new regulations and they do not have a commercial zoned district in their regulations at all. Dickinson County has a zoning district for agricultural and residential. Anything that is not agricultural or residential is a conditional use. Conditional uses then could be used specifically and will create just that one use, instead of a list of uses that fall in the entire district. Factors to consider would be the creative actions based on utility demand. For example, someone builds a 5000 sq foot building for light retail vs. a tavern and restaurant. There is a huge difference in utility demand. The conditional use process will accommodate nonresidential and agricultural uses but each issue will be dealt with on a case by case basis. KS laws state you can create as many districts as you want but in that district anything that is allowed on that property has got to be allowed on the other one. A conditional use is saying that is not an appropriate use by right but we will consider those activities on a case by case basis. Yearout continues to explain, the argument is that someone wants to build an antique shop and no one has issues over an antique shop and it is in business for a couple years, then closes. If it is zoned commercially, many times what you needed to zone that commercial also allows you to open up a tavern or a firearms dealership. The neighbors who did not protest the antique shop and then someone opens a tavern in the same building, the neighbors become furious. Yearout attaches a site plan with the zoning. If it is vacant for a period of time, you can then initiate a change of zoning with a public hearing. Notice is then given to the landowner. Conditional uses can be taken away and if the

purpose changes you have to go through the zoning process for a conditional use again. The process is working and effective.

Mueller reminded members the next meeting is scheduled for August 27, 2009. Bartel made a motion to adjourn and Bina seconded the motion. In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 10:17 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yates,
Secretary