

# MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

## RECORD OF PROCEEDINGS

July 25, 2013

Chairman Nick Kraus called the meeting to order at 7:32 p.m. This meeting was held at the Lake Hall at Marion County Park and Lake due to large public attendance.

Roll Call was answered by Kraus, David Mueller, Jeff Bina, Jim Schmidt, Brad Vannocker, Dan Mount, and Mary Avery. Marty Dalke was absent. One seat remains open. Zoning Administrator Tonya Richards and Consultant David Yearout were both present.

Kraus asked for corrections or additions to the Record of Proceedings for the May 23, 2013, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Mueller moved to approve the Record of Proceedings as written and Bina seconded. In favor: 7; Opposed: 0; Motion carried.

Item 4: An application for Steven Meyer requesting a Conditional Use Permit (CUP) for an outdoor storage operation in the "A" Agriculture district located at the intersection of 120<sup>th</sup> and Diamond, on the north side of Diamond. Kraus noted this is application #PC-13-04. Kraus asked Richards to give her staff report. Richards told members Meyer allowed her to look inside the semi trailers which are parked on his property and used for storage. Richards showed photos of the materials in the trailers. These materials are from Meyer's recycling business in Harvey County. Richards read aloud five letters her office received concerning this application. The first letter was from Julia and Donald Rexer, who own land near this property. They object to having a commercial storage operation at this property. The second letter was from Mike Buller of Newton. This letter was in regard to the sale of this property from Buller to Meyer on November 13, 1998. Buller had a clause in the sales contract requiring Meyer to obtain a change in zoning on the property after January 1, 1999. The contract was subject to the zoning change because at the time the county required a minimum of 40 acres to build on. Richards noted she has given members a copy of the meeting minutes from August 27, 1998, in regard to Buller's request at that time for a rezone from Agriculture to Rural Residential. The third letter Richards read was from Alan "Pete" and Marilyn Flaming. Flaming's are neighboring landowners and said they do not wish to hinder his ability to maintain a livelihood for his family but his property is an eyesore for the area. The fourth letter Richards read was from Matthew Voth. Voth, who farms in this area, also said he does not have a problem with Meyer working from this location except for the appearance of his property. The fifth and final letter Richards read was from Paula Flaming. Flaming's own property in the area and are concerned about the contents of the trailers and Meyer's future plans. Next, Richards read her staff recommendation. Kraus asked, and Yearout said you cannot run a junk or salvage operation as a home business. Yearout said if he runs this as a Marion County site for recyclables, the state requires permits.

There are a whole bunch of other things involved, Yearout said. His North Newton business does not have enough space, so he is storing things here, Yearout said. If this is a commercial business site then he should be paying commercial taxes, not agriculture taxes, Yearout said. What is really going on here?, Yearout asked. He is not just storing trucks here, Yearout said. We need all the information out in the open, Yearout said. Kraus asked Meyer to comment. Meyer said he and his wife are not happy with the way things look, either. He said he is not upset with any of his neighbors or anyone from the community. Meyer said he was notified he needed to apply for a CUP, or something. He said he was not sure what he should apply for so he applied for a CUP. Meyer said he started in the recycling business in 1991 and bought the 30 acres in question in 1998. He said in 2002 and 2003 he began building a home on the property. Meyer explained he turned back some of the space he was using in Newton because he couldn't afford to pay more rent. He said there were two trailers on the property prior to 2010 that were used to store household goods and animal feed. He now has a trailer half full of five gallon buckets he was storing for a Mennonite project, but he doubts they want the buckets back now, as he sees they now have lots of other buckets. He said there is also barrels and stucco material on the property. He said he needs to sort, process, and find a home for the materials to be recycled. Mueller asked Meyer if this is a commercial business or mainly storage, and Meyer said mainly storage. Meyer said his business was doing well between 1999 and 2004, but then the business suffered when he lost a contract for marketing his recyclables, and he said that put him in a bind. He said the last two years before he lost the contract he was earning \$100,000 a year, so he started to build their home. But after he lost the contract he was never able to gain momentum, again, Meyer said. He said there was a Wichita business that was going to purchase some of his materials but the business was unable to grind up the materials as planned, so that did not work out. Mueller asked Meyer again if he is operating a commercial business or storage. Meyer said he is currently bringing brush to the property to turn to mulch. He said it amounts to about one or two ton a month of vegetative matter. Bina asked Meyer if he is currently selling recyclables, and Meyer said yes. Sometimes there is cardboard sitting on the property, Meyer said. I rarely unload material on the property, he said. It is usually just trailers sitting there, he added. Avery asked about the vegetative matter and if Meyer sells it. No, mostly it is wet to begin with and when it dries out there is not as much left, Meyer said. I believe those kind of disposal sites require an okay from KDHE (Kansas Department of Health and Environment), Yearout said. Anything less than a half acre has no requirements from KDHE, Meyer said. Vannocker asked Meyer what is going to change. Three trailers and contents could be moved immediately, Meyer said. He said it has gone on longer than he wants. He said plastics are harder to market. Avery asked if the home is complete. We live in the basement, Meyer said. The upstairs is not complete and the stucco is not complete, he said. Mueller asked, and Meyer said they have lived there since 2003 or 2004. The state has gotten very aggressive, Yearout said. They want detailed plans of such sites, including recyclables, Yearout said. I appreciate the background of all he has gone through, but that is really not part of what needs to be addressed, Yearout said. Richards asked, and Meyer said yes, he owns the trailers. Richards asked, and Meyer said yes, even if he got rid of the contents inside he would still have the trailers on the property. If the intention is to get to the point of approval, then we need to

understand what is involved, Yearout said. I am not bringing more stuff in, Meyer said. I might rent the trailers, off the property, he said. Bina asked, and it was explained that Meyer is self-employed and rents space in Newton where he operates his business. He is not collecting revenue off anything on his property, Richards added. Mueller asked if Meyer cleans up his property there would not be a need for a CUP, or anything, and Yearout said that is correct. You could give him a deadline when it has got to be out of there, Yearout said. Kraus asked what if the trailers were empty, and Yearout said then there would still be the issue of dead semi trailers on the property. Richards pointed out that prior to 2011 he was using two of the trailers for personal items. Kraus said the trailers can be moved. Avery asked what happens if there is no action taken at tonight's meeting and Meyer remains in violation? You could delay for a month and ask for more information, Yearout told members. Nothing is going to happen if you delay this, Yearout said. Nothing is going to happen until the county commission takes action on this, Yearout added. Avery asked what happens if members deny this application, and Yearout said the county would say he needs to get it cleaned up and the violation would remain. Kraus asked when Meyer was originally notified, and it was on May 15, 2013. Richards said 30 days does not seem quite right (as enough time to clean the property up.) Meyer said one year would work to clean up. He said he does pay some commercial taxes on the dirt work on his property. Richards checked on this and said some is Agriculture, and some is Commercial tax. Vannocker asked Meyer what his intent is with the property, if he was planning to bring in more recyclables, or what, and Meyer said no. Not just anyone can sort recyclables, Meyer said. Sometimes it has to be redone, he added. Bina asked Meyer if he has no desire to operate on this property, and Meyer said he assumes that would be different than what he has applied for. We do permit auto body shops, vets, boarding facilities, etc., in the county, Richards said. Kraus asked if anyone from the public wished to speak. Paula Flaming asked about the amount of recycling materials in trailers at this point, and how long some of the material has been on the property. Since 2010, and some since 2004, Meyer said. You have made no attempt to remove anything, Flaming told Meyer. I believe you are using it as a recycling business, Flaming said. I have seen all the material on your property and I did not know until today that you are using it for recycling, Flaming said. I thought it was just trailer storage, she added. It is supposed to be Agriculture use, Flaming said. We are getting a recycling center in Marion and I don't want it to become a recycling drop-off site, Flaming said. I think he needs a deadline, she added. Richards asked Meyer if he wants to keep everything there. The trailers could be sold, Meyer said. Richards asked if anyone else from the public wished to speak about this application. Kraus asked Meyer if he applied because he was in violation, or because he wants to move forward. Meyer said he needs to decide to either get out of business, or what to do. If you want to clean it up, there are options, Kraus told Meyer. Aluminum cans are safer on my property because they have been stolen before, Meyer said. But, that makes it a business, Kraus told Meyer. We are unclear as to what you want there, Avery told Meyer. Before we can move forward we need a clear plan, Avery said. Either you ask for a CUP or submit a plan to comply with the violations, Avery said. I suggest we table this for a month and come back with a recommendation, Avery said. Kraus asked Avery if that was a motion, and she said yes. Avery moved to table this application to the August 22, 2013, meeting, and Mueller seconded. In favor: 7; Opposed: 0; Motion

carried. Flaming asked if neighbors will be notified, and Richards said no, but said she will call her.

Item 5: An application for Gary Dunnegan requesting a rezone and plat at 77 Lakeshore Drive, in the "LL" Lake Lot district, Saddle Creek Subdivision, at Marion County Park and Lake. This is application #PC-13-03. Kraus noted this application was published in the July 3, 2013 issues of the *Marion County Record*, *Hillsboro Star Journal*, and *Peabody Gazette Bulletin*. Kraus asked if any member has a conflict of interest with this application. Avery said her brother had looked at a house owned by Mr. Dunnegan, but said her brother is no longer interested in the property, and she does not have a conflict of interest. Dunnegan, and Steve Brosemer, owner of Geotech of Emporia, a land surveying services business, were both present to speak about this application. Dunnegan hung a map of the area on the wall for reference. Dunnegan built the home where the Kingfisher restaurant was. Dunnegan said Lori Heerey, Marion realtor, told him there is a need for \$100,000 homes for young families. Extra traffic for Eric Moore is the only concern I can see, Dunnegan said. He showed where a yellow line and a blue line are located on an aerial photo. He said the yellow line is the flood line and the blue line is the water line. He said he did check on the sewer and he does not know of any trouble with utilities or the sewer. He explained how he would set the lots at an elevation. I don't want big homes, I want affordable homes, he said. Avery asked what size, and Dunnegan said the lots would be 60x100 feet. He explained he wants a 40 foot easement so people can go down to the creek. I want to keep it a private development with a nice, hard-packed road, Dunnegan said. Richards said there would be no chance of having basements as FEMA (Federal Emergency Management Agency) would require a certain amount of elevation on those lots. Richards said the lots would need to be one foot above the base flood elevation per our zoning regulations. Yearout asked if there would be larger lots to the north, and Dunnegan said that is not part of this phase. Brosemer said you can see a possible phase two here on the map. It is best to do a preliminary plat on the entire project so there are no surprises and you can see how it all goes together, Yearout said. You had a sketch plat and discussion earlier this year and included the Improvement District and county officials, and we went through all this, Yearout said. Does it meet regulations, yes, Yearout said. There is nothing to take action on, Yearout said. This is the concept by which we will proceed if you approve rezoning tonight, Brosemer said. We want the public to be able to comment and ask questions, Richards said. Kraus asked if board members had any other questions before opening it up for public comments. Kraus opened the floor for public comments. All public comments came from county lake residents. Larry Lalouette said he is amazed by all the for sale signs that are up. So, how is building more going to be economical?, Lalouette asked. Dunnegan said as far as new construction, there are zero for sale right now. You don't have \$100,000 new homes, Dunnegan said. Nancy Lalouette commented on how beautiful the lake is and how it is a community the way it is set up. She said if you start developing the area it changes the complex of the whole lake. Dunnegan said change somewhat is good. The city and the county don't operate without money, Dunnegan said. You get money off taxes, he added. They get plenty of money, they just spend all of it, Larry Lalouette said. Dunnegan said he thinks we need some young people at the lake. Betty Sklenar asked how large the homes will be, and

Dunnegan said 800 square feet. Jack Boese asked if this is an open building program where anybody can build here as long as everything is to unified building codes. We don't have building codes in the county, Richards said. They would need to hook up to the Improvement District, and they can't put a mobile home in, Yearout said. We don't short cut and all is to code, Dunnegan said. We try to build something that is going to be there a long time, Dunnegan added. We want little cabins in here, he said. I think 800 square feet with a loft area, Dunnegan said. You would end up with 1,000 square feet, he added. I would love to build the first one for myself, he said. Bonnie Vinduska said she thinks she understands the first concept, but if you build on up to the north how will you get access? Brosemer showed a county road on the map, and said it would need to be addressed. Yes, that is a big issue, Vinduska said. Ken (her husband) spends a lot of hours going up there and pulling people out with his tractor, she said. Ultimately, it would be the county commission giving final approval, Brosemer said. Anything has to have the county commission's final approval, Yearout said. Sklenar asked what Dunnegan plans for the flood zone area. That area can be a walkway down along the creek, Dunnegan said. This will create taxes and jobs, Dunnegan said. It is good for the lake and good for the county, he said. Judy Dannenfesler said the lake people spend money in the stores. She said she is concerned as a homeowner on a limited budget, how much taxes will go up. Taxes have gone up for everyone in the county, Richards said. The more houses you have to tax, the less tax per individual, Dunnegan said. When homes sell for a lot, taxes go up, Sklenar said. Your home tax will not automatically go up because one home sold high, Yearout said. There are variables on taxes, more than variables on the weather, Yearout said. It is just a reality, if you don't grow your tax base by adding more properties, taxes go up, Yearout said. One factor used to determine tax value is comparing your house to another, Paul White said. You have my word we will make this place look how it ought to look, Dunnegan said. It will be a nice addition to the lake, he added. You've proven that, Dannenfesler said. If you sell, there is no way to guarantee the future, Yearout said. Mueller asked, and White said utility-wise everything should be okay. White is the treasurer of the Improvement District. Mueller asked Richards about setbacks. Richards said setbacks are: 20 feet roadside; eight feet on the side; and 10 feet for the alley. Mueller asked, and Richards said the maximum size a house would be is 44 feet wide. Or, someone could buy two lots, Mueller said. Avery said we have had lots of applications from people wanting to build full-size houses at the lake, and there have been lots of issues with people wanting large homes on small lots. Dunnegan said he has taken that into consideration. Someone else buys a property and wants to add on, when originally the home was for a weekend cabin, Avery said. It is important as a community to grow a little bit, Dunnegan said. I'm just saying the history of what we have struggled with, Avery said. We are going to have stipulations on the plat trying to address those things in the plat, Dunnegan said. I have worked on two similar WPA (Work Projects Administration) lakes, Brosemer said. You are correct, the usage has changed over the years, but the land did not magically grow, Brosemer said. We have not had a variance for a long time, Richards said. Since you denied the last one, Yearout said. Two or three years ago, Richards said. Kraus asked about road access, and Dunnegan showed him on the map. Paul Morse said in 1965 they build right on the property line. He said they built a new house so they could have more room. Morse said he thinks it is good to have a place

where you can build a new home and that he has always liked it out here. He said he thinks it is nice the lake has grown and instead of 25 year-round residents, now there are a couple hundred, or so. Kraus asked if there were any other comments from the public. Kraus closed the public hearing for this application and asked Richards for her staff recommendation.

Richards said she recommends rezoning and continuing the plat to next month's meeting. Mueller moved to recommend rezoning from "A" Agriculture to "SR" Suburban Residential for the northernmost lots and "LL" Lake Lot for the southernmost lots of property generally located at 77 Lakeshore Drive, Marion, Kansas, with consideration of the plat continued to the August meeting. Mueller noted the application met the requirements for a rezone and would be a benefit to the area. Vannocker seconded. In favor: 7; Opposed; 0; Motion carried.

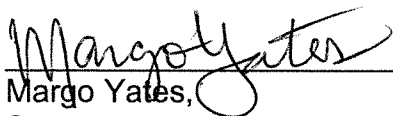
Richards explained there will be no other publication notices for the next meeting, which will be August 22, 2013, at 7:30 p.m. again at the county lake hall, to present the plat. Kraus asked if anyone had any off agenda items, but there were none. Mount moved to adjourn the meeting and Bina seconded. In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 9:11 p.m.

#### MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



---

Nick Kraus,  
Chairman



---

Margo Yates,  
Secretary