

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

July 26, 2012

Chairman David Mueller called the meeting to order at 7:30 p.m.

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

Item 3: Board reorganization with election of Chairman, Vice-Chairman, and Secretary. Avery moved to cast a unanimous ballot and for nominations to cease to re-elect Mueller as Chairman. Funk seconded. In favor: 6; Opposed: 0; Motion carried. Schmidt moved to cast a unanimous ballot and for nominations to cease to re-elect Avery as Vice-Chairman. Vannocker seconded. In favor: 6; Opposed: 0; Motion carried. Bina moved to cast a unanimous ballot and for nominations to cease to re-elect Margo Yates as Secretary. Vannocker seconded. In favor: 6; Opposed: 0; Motion carried.

Mueller asked for corrections, or additions, to the Record of Proceedings for the December 1, 2011, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Avery moved to approve the Record of Proceedings as written, and Vannocker seconded. In favor: 6; Opposed: 0; Motion carried.

Mueller asked to move agenda Item 6 to Item 5, and this was agreed to by consent.

Item 6: An application for Kevin and Angy Jost, requesting a Conditional Use Permit (CUP) to allow a temporary singlewide manufactured home at 761 210th, Hillsboro, in Risley Township, in an "AG" Agricultural District. Mueller reminded members they are acting as the planning commission to make a recommendation to the county commission. Mueller noted this application was published in the July 4, 2012, 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, or if anyone had any outside communication concerning this application. No one did. Kevin Jost and his son Tracy Jost were present to speak to members about the application. Kevin explained his son Tracy has been working the property and remodeled the garage. Kevin said he and Tracy work together farming. Kevin explained that Tracy wants to establish residency at the property and eventually establish his home there. So, this would be a transition period, Mueller said, and Kevin said yes. Kevin explained Tracy has pets on the property, so he has invested time and money. Kevin explained Tracy is trying to set up close to the original homestead. Kevin said the yard is fenced off. Kevin said the Warren Goentzel family used to live on this property. Kevin explained the location of the structures on the property by showing members on a map. Kevin said the

water and sewer are right there where the old home was and this is where Tracy plans to set up the manufactured home. Avery asked, and Kevin said there is a septic system on the property. Avery asked about the condition of the sewer system, and Kevin said it is a little unknown because they have never explored or used it. Kevin said they have not seen the laterals, but they would prefer to have another septic system if possible. He said they want it up to code so if it has to be redone that is what they will do. Mueller asked Richards for her staff recommendation. Richards said this property involves 80 acres and is zoned as an Agriculture District that is used as a cattle operation. They are willing to get the wastewater up to code, Richards said. Richards said there is a second house on the property but it is not for residential use. Richards explained to the Jost family that our county's zoning allows for one residence per 40 acres. So, we will need both the manufactured home and the second home to be removed if Tracy builds a new home and does not remodel the second home on the property, she said. Richards explained they are not moving the manufactured home in; it is currently located in the county on K-15. Mueller asked how long Tracy will need to use the manufactured home as a temporary residence, and Tracy said five years. Right now I rent in town, so I'm not getting anything done, Tracy explained. If I am there on the property, I can work on it, he added. I need to decide if I want rural water, Tracy said. He said the estimate to get rural water to the property is between \$10,000 and \$11,000. Tracy said there is a hand-dug well on the property, but currently it is getting low, so he needs to figure out the water situation, and the location for his home. But this is where I want to start, he added. Angy Jost, Kevin's wife and Tracy's mother, said they went through the manufactured home and it seems to be in fairly good condition. It is a 1983 manufactured home. We're not interested in bringing something in that looks like an old beer can, Kevin said. We raised two boys in a trailer, he added. Avery asked about HUD (Housing and Urban Development) certification. Yearout said starting in 1976 such structures were built to HUD standards, so this is built to HUD standards. In 1994 the HUD National Code was modified for stricter storm and building standards, Yearout said. There are a couple of things I want everyone to understand, Yearout said. As an Ag property, technically the singlewide is exempt, so you couldn't stop it even if you wanted to, Yearout told members. It can be a primary residence, and it is permitted, Yearout said. Technically, what the CUP is addressing is whether or not you are willing to pass on a recommendation that you are accepting this standard, Yearout told members. The general appearance to people passing by will raise questions, Yearout said. They will ask Tonya why they can't do it, too, but it is the situation which allows it, Yearout said. You need to give relief on the age of the structure, Yearout told members. Yearout said manufactured homes built in 1994 and newer cost more because they are built to a higher standard. Kevin said they are not trying to hide anything, but in this location it will be very hard to see the manufactured home if you are passing by the property. It is not like where it is located now on K-15 and you can see it when you drive by, Kevin said. Avery explained the safety issues to Kevin and Tracy. Avery also explained the issue of setting a precedent and the need for consistency, as well as the need to look to the future. Bina asked if the manufactured home was built in 1994, or newer, if they would need to come to the planning commission. The second home on the site is the other issue, Yearout explained. Mueller asked if there were other questions, or concerns. Richards commented about the precedent issue. She said there

was one application with a manufactured home that was built in the early 1990's. She said there was one that was denied, as it was almost 15 years older than this one. Avery said it is important to have that in the record. Bina said he thinks this case is different since they are moving the manufactured home within the county, instead of bringing one in from Harvey County, or somewhere else. Yearout said things need to be consistent with the county lake. Angy Jost asked, and Richards explained our county zoning allows for one home per 40 acres. Years ago we thought we would fix up the second home on the property, but we just never got the work done, Angy said. The concern is people have good intentions, but changes occur and people come and go, and you never know what might happen in the future, Mueller explained. The intention is, if it is approved now, will it survive time, Yearout said. So, it would be against the law to have two occupied homes on the property, Kevin said. Within six months of completion of the home, the manufactured home would need to be removed from the property, Mueller explained. This is in everyone's best interest, including your best interest, Mueller told the Jost family. I was raised in a trailer house and I always said I would not move back into one, Tracy said. I don't want to come back and ask for an extension, Tracy said. The second house is an option, and if I decide to live in there I will remove the manufactured home, and that is solved, Tracy said. He said about six or seven years ago he started cleaning up the property after an ice storm, and he was hooked, and knew this was where he wanted to live. Richards asked Kevin if he is okay with being taxed for the manufactured home, since he owns the land. Angy asked if the sewer has to be a septic system. Richards explained she will examine a soil profile hole five feet deep on the property to check the layers of soil. If there is clay, I will not permit a septic system, she said. This is because with clay soil the system will fail and people are sorry they put money in it, she explained. Your budget sometimes determines your choice of system, she said. Sand is best because sand treats the wastewater, she explained. There is a good area if we have to dig a lagoon, Angy said. Some soil in lagoons won't hold water, so sometimes that doesn't work, Yearout said. Mueller asked if there were other questions. Yearout asked if they are using the singlewide just because it is quick and available. It is close to the property, so the cost to move it is affordable, Kevin said. I don't want to pay to move something from Wichita, or from out of the county in, and I won't need to put money into it for it to be livable, Kevin explained. Is it occupied now?, Yearout asked. No, not for two or three years, Angy said. Mueller asked Richards to go through each of the factors for members to consider for allowing a CUP. Richards read aloud the list of factors. Richards gave her staff recommendation. Members discussed the precedent issue and the fact there were recently two similar cases. Members discussed the need to renew this every five years and to give relief for the age of the structure. Also discussed was the intent to build new, or remodel the second home, and if a new home is built it will be a requirement to remove the manufactured home and the second home. Members also noted the need to get the wastewater and well up to code. Funk asked if Richards will know when this is up in five years. Richards said there is no good system yet for tracking, but she could flag it through GPS (Global Positioning System). If staff changes, that's where a problem might be, Richards said. Richards said she is in the process of getting a system in place through GIS (Geographic Information System), and she has pulled all the past zoning actions so you can look at a parcel and see all the zoning changes.

Mueller explained to the Jost family about closing the public hearing and that once it is closed they may only comment if they are asked a question by a board member. Mueller asked Tracy if what Richards recommends sounds workable, and Tracy said yes. Mueller closed the public hearing for this application.

Avery asked about making an exception for the year the manufactured home was built. I think you have satisfied this for the record, Avery said. Richards said she can get the addresses of the properties for the record. (2430 310th, Lost Springs, owned and operated by Kenneth Shields and 1709 150th, Marion, owned and operated by Roger and Betty Richmond) It is important that we establish that, Avery said. Avery said there are five issues that need to be included. First, that it be a five year temporary permit. Second, the manufactured home must be removed within six months after completion of the new home. Third, the well and wastewater system must be up to code. Fourth is to give relief on the age of the structure. And fifth is the second home must be removed along with the manufactured home if the second home is not remodeled and used as the residence or if the second home is not converted to a non-residential use. You need to authorize placement of the singlewide as a second dwelling while plans are finalized for a new principle dwelling or the remodel of the currently uninhabitable home on the property, Yearout told members. Muller asked if there were questions, or concerns. Bina asked if members have put a certain number of years on prior recommendations, and Mueller said yes, so the applicant knows what is expected. Mueller asked if there were other concerns, or issues. Avery moved to recommend approving a CUP for a singlewide manufactured home as a temporary second residence for five years while plans are finalized for a new principle dwelling or the remodeling of the currently uninhabited home on the property, upon completion the manufactured home must be removed from the property within six months, the well water and wastewater system must meet Marion County Sanitation requirements, there must be adequate ingress and egress easements, and the manufactured home is for ag purposes only, with the tenant living there for free in exchange for farm hand services, relief is given for the age of the manufactured home, and the existing home must be removed along with the manufactured home if the existing home is not remodeled and used as the residence or converted to a non-residential use for storage purposes only. Funk seconded. In favor: 6; Opposed: 0; Motion carried.

Richards explained to the Jost family this recommendation will go to the county commission on August 13, 2012, at 10 a.m. Richards explained they do not need to be present at the county commission meeting.

Item 5: An application for XCell, LLC, requesting a Conditional Use Permit (CUP) to allow a proposed cell tower at 320th and K-15 in Blaine Township, in an "AG" Agricultural District. Mueller noted this application has been published but we are waiting on additional information. Mueller asked Richards to update members on this application. Richards told members when she received this application the company already had the property staked out. She said the plan did not meet set back requirements due to the height. They proposed a 400 foot high tower to be located only 150 feet from the center of K-15. Richards said the Santa Fe Trail Board got wind of this proposed tower to be located within a half mile of the trail, so letters started coming to

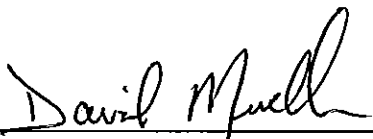
the cell tower company. So, they decided to try and meet the county's requirements and address the other concerns by the trail committee, Richards said. A new location about 500 feet from the road is now being proposed, Richards said. She said she did a 1,000 foot radius check to make sure she got all the property owners in the area notified, but there were no new, or additional, residents located within the larger area. Yearout explained according to the cell tower company's set of construction plans they only show 24 antennas and cables on the tower on the drawing and our regulations require the ability to have up to 48 antennas and cables on a tower. They have got to design the tower to accommodate 48, not 24, Yearout told members. The reason is the new technology pushes a lot more data so towers are now designed for capacity on a single level for 16 antennas, Yearout said. You have to identify the number of antennas a tower is capable of carrying, he said. You need to learn how to look at this to show the number of antennas, Yearout said about the drawing plans. The Santa Fe Trail National Historic issue gives grounds for a lawsuit because it is a historic site, Yearout said. If the tower company is sued, it immediately goes to federal court and there are huge fines, he added. Who decides how far away they have to be from a historic site?, Bina asked. It's a moving target, Yearout said. I will not be here in August, Avery said. Richards said the tower by US 56 north of Marion, and another near 160th and Timber, are now both going to be digital towers. Richards said the tower near 160th and Timber now has a red light after she sent a letter to the tower company requesting the change. Schmidt moved to table this application to the next meeting. Vannocker seconded. In favor: 6; Opposed: 0; Motion carried.

Off agenda items were next. Richards discussed considering a lot split text amendment, due to an increased demand for current home sites located in the middle of a section with no road frontage, causing a landlocked parcel. She gave an example of a property and said there is no minimum road frontage and it would remain the landowner's driveway. It is an old existing home so there is not a lot you can do, she said. She said she talked to the county commissioners and they said maybe this should be a possibility with existing home sites because there are not a lot of options. So, the county commission said to bring it to your board to see if you all think we should amend the regulations to accommodate this, Richards said. There are other places like this, so the county commission is okay with amending the regulations, Yearout told members. It could be the same situation with the application we just had, he added. It must be an existing farmstead that does not carve off a piece with frontage on an existing road, Yearout said. You would need access for utilities by way of easements, Yearout said. He told members he will put an amendment together where this kind of split can be done with approval, but it must meet the conditions. Rather than have it as an administrative thing, Yearout said. They still must have new lots being formed and need to be on roads, he said. Yearout said he will craft language to accommodate this but it does not box Tonya in so others think they can do it administratively, Yearout said. I like this process and am becoming more comfortable with it, Yearout said. It's not some artificial five acres or a line down the middle of a field, he said. Vannocker said the survey shows ingress and egress easements, and asked if it will also be shown on the deed, and Yearout said yes. There is also a companion document to go with the deed, Yearout said. Vannocker asked if the ingress/egress easement is there and if someone

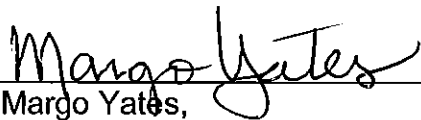
else farms the property, would they still have access? The rest of the quarter has ownership of it, Richards said. Electricity for the house actually comes in from the north side, it does not come along the drive, Yearout said. The requirement would be to make sure there are adequate utilities and a covenant in there would be put in the regulations as a requirement, Yearout said. Richards asked what the benefit is if it is covered in the regulations, why do they need to go to the board instead of just to the administrator. It is an exception because it does not have a frontage on a public road and it is not fair to put that on the zoning administrator, Yearout said. Yearout will bring language for this to the next meeting. They are waiting for us so could we e-mail changes to the members for review and schedule a public hearing for the next meeting?, Richards asked. But, it is a family deal and we don't want to rush, Avery said. We can make it in a timely manner, Avery added. They were not aware of the lot split requirement, Richards said. We can address the proposed amendment next month and then have the public hearing later, Mueller said. Yearout asked about the Jost property issue from tonight's meeting. Why not set up an amendment where they can get a CUP as a temporary permit while you build?, Yearout asked. It has to be a HUD home, but if it doesn't meet the 1994 date. It must be an existing non-compliant home within the county, so you can't bring one in, Yearout said. Yearout said he will bring language to the board. Yearout said the third item is a carryover of the home code at the county lake. He said this will bring it all together and will make it part of what you go on from here. You can't put a 1994, or newer, home out there because it won't fit, Yearout said. Yearout reminded members of the zoning conference on August 18 in Wichita. He mentioned fracking, and said it has huge impacts. Mueller asked Richards to remind members about the conference. Richards reported the violation at 21 Jerome at the county lake is gone. He sold it and the new owners took it down, Richards told members. Mueller noted the next meeting is scheduled for August 23, 2012, at 7:30 p.m. Vannocker moved to adjourn and Bina seconded.

In favor: 6; Opposed: 0; Motion carried and the meeting adjourned at 9:15 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yates,
Secretary