

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

July 26, 2007

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

Roll Call was answered by Mueller, Bob Maxwell, Glen Unrau, Kent Becker and Mary Avery. Jeff Bina, Ervin Ediger, Marquette Eilerts and Willis Ensz were absent. Zoning Administrator Bobbi Strait was also present.

Mueller asked for corrections or additions to the Record of Proceedings for the May 24, 2007, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Maxwell asked for a clarification on page two where Strait talks about waiving permit fees for county employees. Unrau made a motion to accept the Record of Proceedings with one clarification and Becker seconded the motion. In favor: 5; Opposed: 0; Motion carried.

Item 4: An application by U.S. Cellular for a Conditional Use Permit (CUP) for a new cell tower site. Guy Smith, of U.S. Cellular, was present to speak about the application. He said this tower will provide coverage for the town of Florence, as well as highways 50 and 77. He said the tower will have dual FAA (Federal Aviation Administration) approved lighting, and a chain link fence. Mueller reminded members they are acting as the planning commission for this application, for a recommendation to the county commission. Mueller noted this application was published in the July 4, 2007, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Mueller asked if any member has a conflict of interest for this application, or if anyone had any outside communications concerning this application. Mueller asked, and Smith showed members on a map where the tower will be placed. The location is one and a half miles south of Florence. Mueller asked, and Smith said the tower will be 300 feet high. Mueller asked Smith if they checked on other locations and towers in the area. Smith said there has been some interest from 911 to locate equipment on the tower. Smith said he noticed driving in that there is much need for service in the area. Becker asked about the time involved, as he noted the tower has been planned for a while. It takes a year just to get the application, so a year or two is not uncommon, Smith said. Strait explained the intent to permit shared use document. Mueller asked about the FAA and FCC (Federal Communications Commission) approved lighting. Smith said lighting is required for anything over 200 feet high. Mueller asked if the possibility of working with 911 is not a problem and Smith said it would not be a problem. Maxwell asked if there will be room for more additions for service on the tower. It has the capacity of three additional carriers, Smith explained. One could be 911 for the county,

Mueller said. Members reviewed FCC and FAA approval requirements. Maxwell asked about the size and Smith said it is 500 feet by 500 feet by 500 feet, in a rectangle. Smith said 11 x 19 is the actual size. They lease a big area in case they need it, Smith explained. Strait explained the triangular layout, and Maxwell said okay. Maxwell asked about the fall length. It is built to collapse, not fall, Smith said. What kind of distance?, Maxwell asked. Usually they are made to bend and break every 25 feet, Smith said. It is very uncommon, except like in a hurricane, Smith said. Mueller asked about the distance from highway 77. You turn off 77 and the site is 153 yards east of U.S. 77, Smith said. Maxwell asked and was told the fence encloses the site and will be an open mesh chain link fence. Mueller asked how soon construct will begin, and Smith said around the first of October. Maxwell asked about a tower on the west side of Hillsboro that was approved. Maxwell questioned if they had agreed to put in additional pieces of accessory slats of fencing to better close off the view. We do that some places, and other places don't like it, Smith said. Are you thinking it should have those inserts?, Mueller asked Maxwell. Isn't the highway below there?, Becker asked. It's up on a huge hill by the highway, Strait said. You'd have to look up toward the sky to even see it, Strait said. In that case I don't think it will be visible, Mueller said. We need to note in a motion that we waive that requirement and accept the fencing as submitted, Strait said. Maxwell asked about the company's name change. U.S. Cellular bought out the company that has put the other towers in this area, Strait said. Mueller asked if there was any other information or questions. Mueller asked if anyone from the public wished to speak about this application. Stephen Gayle said you will not see it from the highway. Pat Sauble asked if the tower is for cell phones, or for other things, too? Mueller explained the tower is just for cell phones. Strait explained it will be used for 911, too. Members of the public agreed there is much need for a tower in this area. Smith explained to the public the coverage area that will be provided by the new tower. Mueller asked if there were any other comments from the public. Mueller asked Strait for a staff recommendation. Strait said there is no hindrance, this is ag land and it will not require a change of ag use except the area that is fenced. From previous experience, they don't want to mow the extra space and they usually allow farming up to the fence, Strait said. So, there is minimum intrusion on land use, Strait said. Strait referred to number seven in the staff report, concerning the comprehensive plan and two objectives that will be served by approving this application. Strait explained this will serve the public's safety and welfare and has the capability to serve 911. It expands Marion County's capability to serve and protect its constituents, Strait said. Strait referred to number three in the staff report. Strait recommended requiring the ability to have an agreement between U.S. Cellular and Marion County Communications, and said that Shelley Abbott-Becker will set it up. Mueller asked if there were any other comments. I think everything was covered, Smith said. Mueller closed the public hearing for this application and asked members to begin deliberating.

Mueller told Strait she did a good job on the staff report and covered all the bases. This will be a tremendous advantage to the county, Mueller said. They

met all the requirements to the regs, Mueller said. Mueller asked if there were any questions. Becker made a motion to recommend the county commission approve the application by U.S. Cellular for a Conditional Use Permit (CUP) with two conditions: first they negotiate with 911 available space for Marion County Communications; and second that the requirement for screening with the fencing be waived. Unrau seconded the motion. In favor; 5; Opposed: 0; Motion carried. Strait explained the timeframe, with 14 days for appeals and a resolution going to the county commission on August 13, 2007. If it is approved, it will be published August 15, 2007 if there is time and space available, and if not it will be published August 22, 2007, Strait said.

Item 5: An application by Denis and Kathy Wilson for a Conditional Use Permit (CUP) for a singlewide manufactured home on an existing home site. Mueller reminded members they are acting as the planning commission for this application. Mueller noted this application was published in the July 4, 2007, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Mueller asked members if anyone had a conflict of interest concerning this application. I am in the notification area, but I feel I can participate without having a conflict of interest, Avery said. Strait asked Kathy Wilson if she had any objection to Avery participating, and she did not. Wilson explained she wants to put a manufactured home on her property for her 73 year old sister to live in. We have hay on it, Wilson said. I think there used to be a home on it, she said. I'd like to keep an eye on my sister, she said. Mueller asked and Wilson said they own 80 acres. Mueller asked and was told this property is located outside Peabody. Mueller asked if the manufactured home would be on the same property where Wilson lives and he was told yes, at the end of the property. So, on 80 acres you have your home site and then this is another site where a home used to be, Mueller said. Mueller asked about rural water and Strait said there is the ability to hook up to it. Wilson said there is a lagoon and electricity has been run to the property in the past. And, there is a yard-type area already set up, Strait said. Maxwell asked if the home will be a new unit, and Wilson said yes. If something happens we will remove it, Wilson said. Maxwell asked for the dimensions and Wilson said the smallest one we can get. I'd take care of the yard, Wilson said. Becker asked about restrictions. Strait said it will have a HUD compliant pitched roof, typical siding and roof materials. All requirements that apply to a doublewide that are pretty much standard on a doublewide, Strait said. Maxwell asked and Strait said there is a 22 foot minimum width. We have considered other manufactured housing for temporary circumstances and then when the circumstances don't exist any more they remove them, Strait said. There is nothing in the regs that will allow a singlewide in anything but a mobile home park, Strait said. Maxwell asked if a 22 x 22 only needs a permit. and Strait said they might need a singlewide so we should cover it, just in case. You were saying that most applications from before have been for a caregiver, Becker said. Yes, we have done it in the past, Strait said. Mueller asked how soon and Wilson said as soon as possible. Mueller asked the location of neighboring homes and Wilson said the nearest neighbor is probably a mile away. We don't really have

any close neighbors, Wilson said. Mueller asked if there were any other questions. Mueller asked if anyone from the public wished to speak. Strait said she received one call from Mr. Warkentine on Monday. Strait said he does not want a singlewide approved as he thinks this will open the door for more. Mueller asked Strait for a staff recommendation. Strait said she recommends approving this in keeping consistent with the board's decisions on these in the past. Strait said she recommends putting a time limit on it. This is typically statewide how they handle these, Strait said. In keeping with consistency, I would recommend we approve it, she said. Unrau asked if Strait explained to Mr. Warkentine the circumstances to ease his concern about these popping up all over the county, and that it is temporary for medical reasons. I did explain it is on a case by case basis with a CUP, Strait said. I wonder if it would be a good idea to write a letter to him, explaining that, Unrau said. Would something like a three year timeframe be acceptable, that could be renewed?, Mueller asked. I was hoping for a little longer, but that is okay, Wilson said. It's a way for us to confirm the condition still exists, and if you sell the property, it's those kinds of things, Avery said. Wilson asked and Strait explained you have to get a building permit no matter what size home. Mueller explained that tonight's meeting gives you the opportunity to bring in a singlewide, which isn't usually allowed. Strait explained Neighborhood Revitalization to Wilson. Strait agreed to write a letter of explanation to Mr. Warkentine. Mueller asked if there were any other questions, or comments. Mueller closed the public hearing for this application and opened the floor for deliberation.

Obviously it is a hardship and we've recently dealt with another one, Mueller said. I think a time limit is a good idea, Avery said. I think also it would reassure the community that it is temporary, Avery said. Three to five years I think is reasonable, but not longer than five years, Avery said. Members looked back in the minutes to the application they approved at the beginning of the year and it was a 10 year time limit on that application, with the stipulation that if it is vacant it must be removed. Mueller asked if there were other comments or issues. Becker made a motion to recommend approving the application by Denis and Kathy Wilson for a CUP for a singlewide manufactured home, with a required review in five years. Avery seconded the motion.

In favor: 5; Opposed: 0; Motion carried.

Strait explained the timeline to Wilson. Strait said there is a two week appeal period, it will be presented to the county commission on August 13, 2007, and if approved will be published on August 15, 2007, so after August 16, 2007 they may get their permit. Strait said she is not sure she will be able to squeeze it in the newspaper at the last minute, so if not they will hold all the resolutions to the following week for the newspaper.

Item 6: An application for Jim Klaassen for a Conditional Use Permit (CUP) for a temporary junk yard permit. Bill Brown, an attorney from Newton, was present to speak about this application. Klaassen was also present. Mueller reminded members they are acting as the planning commission for this application. Mueller

noted this application was published in the July 4, 2007, 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 and no one did. Brown said Klaassen has been living on this property since 1994. Brown said this property is located one mile south and a half mile east on the north side, from Peabody. Brown said Klaassen is 64 years old and has been in the salvage business most of his adult life. Brown showed members photos of the property. Mueller asked how large of an area is involved and Brown said five acres. Mueller asked if this property is located on a gravel road and Brown said yes. Avery asked about a license and Klaassen said not on this property. Mueller asked if Klaassen has other salvage yards, and was told yes, in the past. Unrau asked if he had a salvage yard in the past, why move to this location. Brown explained Klaassen split with his wife and got the deed to this property in 1994. The junk was not there when he moved in, Strait said. Mueller asked and Strait explained the options and timeframe. He does not have the right to be grandfathered because it came into existence after the 1992 zoning regs, Strait said. The fact that he has accumulated this over the years makes him non-compliant and by being non-compliant he is also not compliant with the state, Strait said. Maxwell asked for clarification on the time needed to clean up the property. Why request two years to clean up?, Maxwell asked. And, why the CUP request if the state can require it be cleaned up?, Maxwell asked. He has about 25 cars there, Brown said. What you see is not all that is there, Brown said. Two years is a lot of time, Maxwell said. Strait review number eight in her staff report for this application. Mueller asked and was told there is iron, farm machinery, lumber, tin, air conditioners, aluminum, etc., on the property. We almost need a better feel of how much material is there to determine a timeframe, Mueller said. Where I live we have three or four junk yards, but they all have different purposes, Unrau said. One is for antique vehicles and people go there for parts, Unrau said. If you require him to clean up in 45 days, his profit is gone because he needs time to cut things apart with a torch, Unrau said. The others do not deal in parts, Unrau said. Mueller asked the purpose for this junk yard in the past, were things cut up for salvage? Klaassen said he stripped a lot of the air conditioners for copper, and brass and aluminum out of the rest. At the time it was not worth anything, but now it is worth something, Klaassen said. Anyone who has been out there in the last 30 days can tell I have made progress, Klaassen said. In 1972 I had 26 acres and I had to clean it up and had a two year contract, Klaassen said. I went nine months over the contract, Klaassen said. I got five acres now and I would think in two years I could have it done, even being 30 some years older, I can do it, Klaassen said. Do you need a full two years?, Mueller asked. I would like a full two years, Klaassen said. How long have you been working with the state on this issue?, Avery asked. A year ago?, Avery asked. Last fall, Strait said. Six months, Klaassen said. Everyone else got their letters in September or October, Strait said. The letter is dated February 15, 2007, Brown said. Is that the first letter they sent, or the second one?, Strait asked. I have an illegal salvage open file in my office, I have the wrong file here, Strait said. Mueller suggested a 10 minute recess so Strait may go get the file.

The meeting was called back to order at 9:05 p.m. Mueller said he appreciated Strait going and getting the file. Strait presented copies of letters, one Strait sent to Klaassen dated February 7, 2007, and one the state sent to him dated February 15, 2007. Strait read the letters. Strait said the letter from the state that was sent in February, 2007, was the first letter. A second letter, dated April 16, 2007, was sent to Klaassen from the Kansas Department of Transportation (KDOT). Strait also had a letter from Brown to Strait dated May 2, 2007, requesting two years to clean up the property, and included an application for a state salvage license. Strait said on May 8, 2007, she returned the application and the check for the state salvage license, as Marion County does not issue state licenses. Strait said she explained they need to come to the planning commission and she included in her letter an application for a CUP. Strait said she explained there is no June meeting and she gave the deadline for applying in time for the July meeting. Maxwell asked about referring to it as a salvage storage site in one place, but not another. The intent is to clean up the site entirely, right Mr. Brown?, Maxwell asked. Yes, Brown said. He is permitted, as I understand it, to have nine cars, Brown said. That is what is permitted with the state, Strait said. I just want time to clean it up, Klaassen said. I have been in the business of cleaning up salvage and farmsteads all my life and all I'm asking for is two years to clean it up, Klaassen said. So, the intent is to clean it all up, Maxwell said. And, that would be everything but the buildings, Becker said. There is a house and a barn, Klaassen said. Everything is going except anything that would be a permanent facility, Becker said. Everything that isn't fastened to the ground, Becker said. Mueller asked if there were other questions. Mueller asked for comments from the public. Bruce Smith said he owns the quarter that is a half mile to the east of this property. Smith said there used to be a house there. The junk has grown, Smith said. It seems no active work is going on, although there is a trail now, so someone has been in there recently, Smith said. He has been in this business and has known about needing a license and he ought to get the place cleaned up, Smith said. Strait received a letter from Juanita Richstatter dated July 25, 2007, expressing her concerns with this matter and that this may bring her property value down. She lives a quarter mile to the east of this property. She requests it be cleaned up in one year. She said friends and family have commented about how much junk is there, the smell, and sometimes even black smoke that is seen when you drive by the property. Mueller asked if there were any other comments. We all realize there is some value of salvage in our society, Brown said. He has had health problems, but people benefit from reuse of parts and metals, and he is making an effort but there is a lot there to clean up, Brown said. Mueller asked if Klaassen had any other comments, but he did not. Mueller closed the public hearing for this application and asked members to begin deliberations for a recommendation to the county commission.

Strait read her staff report. Strait said there is a travel trailer by the driveway and she was not aware of a home on the property. It is underground, Avery said. Mueller reopened the public hearing to ask Klaassen if he wanted to respond to the staff report. Brown said he understands the comments from the neighbors

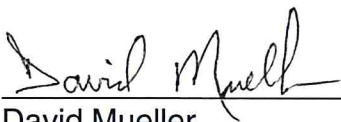
are a concern and if this is approved we would plan to go to the state and ask them to grant him a state license. Avery asked and Strait said a CUP stays with the land forever. Brown said as far as comments about rodents, etc., he is working on another case where they are trying to close someone down and there are a lot of ways to deal with rodents. Brown said he had a professor come out and found the presence of cats on a place completely controls rodents. The regs do not regulate rodents, they regulate rodent harborage, so it matters that this is a place for them to have as a habitat, Strait said. Mueller asked if anyone wished to respond to any of these other issues, but no one else wished to speak, so Mueller closed the public hearing and continued deliberating. In my mind I cannot see issuing a CUP if the state is going to force the cleanup to happen and the property will not change it will still be ag land, Maxwell said. I see no value, except maybe junk iron, Maxwell said. It's an abandoned storage site, so I would say no to the CUP, Maxwell said. I tend to agree with Bob if the state is going to mandate this, Becker said. I have seen two, three, four acres with multiple cars cleaned up in 30 days, Becker said. One would be the garage in Lincolnville and they came out and crushed the cars and they are gone, Becker said. So, the possibility of having that done and still maintaining some profit for the owner is there, Becker said. I believe there are options, and it's already taken place in the county, Becker said. I find myself in a dilemma, Unrau said. I think there is machinery there, also, that sometimes you don't need until down the road, Unrau said. It seems to me there has been a lot of non-enforcement, Unrau said. Now, it seems we are trying to enforce it and it has because a dilemma for junk people, Unrau said. Because I don't really know how a junk dealer operates, it's by observation only, Unrau said. Where does it leave the person and where does it leave the hard feelings, Unrau said. Junk dealers, if they are not dealing in parts they deal in weight, Becker said. There did not use to be a market for copper, now they steal it off the roof tops, Becker said. Farmers are now hauling off iron because now there is a market for it, Unrau said. So, what better time to enforce it, Strait said. I'm just doing what I was hired to do, Strait said. I understand that, Unrau said. It's just there has been no enforcement and now to give just 45 days is tough, Unrau said. He has had salvage operations before so it is assumed he knows what the regulations are and has just not complied, Strait said. I can see that, but I still feel sorry, Unrau said. If in 1994 he would have permitted it then, it would have been legal and we wouldn't be here now, Strait said. If there is substantial progress, the state will give more than two 45 day extensions, Strait said. If there is a good faith effort going on, the state isn't going to put money in there, Becker said. Glen did touch on the point there has been a change in the county and enforcing of regs, Avery said. Change is difficult, but in my responsibility as a member of this I have to weigh the points and if he is granted a CUP it's there forever, Avery said. If there is a way to grant this without a CUP, I would be in favor of that, Avery said. I also have to think this process started five months ago, Avery said. I think he had known he needed a license, also, and he started after zoning and that is also an important issue, Avery said. So, I have to feel it has to be denied, she said. It is a difficult issue, but what we do now sets a precedent, Avery said. Mueller asked if there were other discussions or

questions. Avery made a motion to deny the application for a CUP for Jim Klaassen for a CUP for a temporary junk yard permit. Unrau seconded the motion. In favor: 5; Opposed: 0; Motion carried.

Strait explained the timeframe. Strait said the 14 day appeal period will end August 9, 2007. Strait said appeals have to be based on the idea the planning commission made an error in their interpretation of the regs. Strait said on August 13, 2007, this will go to the county commission and if time permits, they can be at the meeting to appeal the case. The resolution will be published soon thereafter, Strait said. Brown asked if they file an appeal in Strait's office and she said yes. The county commission will hear the appeal and will determine if the planning commission made an error in their interpretation of the regs, Strait said. If so, they will send it back to the planning commission for further review, Strait said.

Mueller asked for off agenda items. Strait thanked members for allowing her time to get the file she needed, and she thought it benefited everyone. She also apologized for anyone who did not get the staff report via e-mail, and for the late mailing of the packets. Maxwell asked for cell tower diagram copies in the packets. We have a requirement of six copies in the regs, Strait said. We could change that and require more copies, Strait said. Diagrams include a site plan, a plan view which is looking down on top of it, and an elevation view. Aerial photos are very helpful, Mueller said. If we could have the staff report with the packet, that would be very much appreciated, Avery said. Strait said her secretary has been on vacation. County Commissioner Dan Holub said they are trying to get Power Point in the commission room and it would be helpful for discussion purposes. Mueller asked Holub if he has heard anything on acreages, and Holub said no, he thinks everyone is happy. Becker made a motion to adjourn and Avery seconded the motion. In favor: 5; Opposed: 0; Motion carried and the meeting adjourned at 9:59 p.m.

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



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David Mueller,  
Chairman



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Margd Yates,  
Secretary