

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

March 21, 2013

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

Mueller welcomed Marty Dalke to the board. Mueller said even though she is not present he wanted to express appreciation for Marquette Eilerts as she has retired from the board. Mueller noted that Mary Avery will serve one more year and there is one more position still open.

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

Mueller noted board reorganization is next on the agenda and he is ready for a change. Mount nominated Nick Kraus for Chairman. Vannocker moved for nominations to cease and to cast a unanimous ballot for Kraus. Schmidt seconded.

In favor: 7; Opposed; 0; Motion carried.

Mueller offered to turn the meeting over to Kraus. Kraus asked Mueller to handle this meeting and Mueller agreed.

Mueller asked for nominations for Vice Chairman. Mount nominated Bina. Schmidt moved for nominations to cease and to cast a unanimous ballot for Bina. Vannocker seconded. In favor: 7; Opposed: 0; Motion carried.

Mueller explained the Secretary does not have to be a member of the planning commission. Mount nominated Margo Yates for Secretary. Kraus moved for nominations to cease and to cast a unanimous ballot for Yates. Vannocker seconded. In favor: 7; Opposed; 0; Motion carried.

Mueller asked for corrections or additions to the Record of Proceedings for the October 25, 2012, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Vannocker moved to approve the Record of Proceedings as written and Mount seconded. In favor: 7; Opposed: 0; Motion carried.

Mueller thanked members of the public for their patience while board members dealt with some housekeeping items, and said members are now ready to address the application.

Item 5: An application for K&S Land, LLC, requesting a Conditional Use Permit (CUP) for an amendment allowing the expansion of Marion Marietta Corporation rock quarry located at 2052 Timber, Marion, Kansas. Kraus noted his mother is part of the LLC and his family has rented ground around this property for years, and he is in contact with the

Harshman's from time to time. Mueller suggested Kraus not excuse himself from the meeting. Mueller suggested Kraus participate in the discussion but not vote on the application request. Warren Harshman explained that several years ago his company took over the quarry north of Marion's Pizza Hut on U.S. 56. We have quarried all the rock, finished up the northeast end and also at the south, Harshman said. We think there are sufficient reserves south of where Martin Marietta leased, Harshman said. There will be minimum ground and air shock and no chance of harm to Pizza Hut, or anything, Harshman said. We still strip, drill and blast, he said. We will only have the primary crusher in that area, he added. We will finish up in the existing zoned quarry area in April, Harshman said. This will extend operations two to four years more to the south and save Marion County money due to the high transportation costs, he said. Mueller asked if there are 40 acres to the south, and Harshman said yes. Mueller asked about setbacks. Richards said there is a strip of K&S land north and south from U.S. 56 that is within the city limits. Kraus said the city annexed out to it. After consulting with Dave Yearout, there is no CUP setback as the land is actually owned by the same party, Richards said. They can mine right up to the property line, Richards said. Yearout said 165 feet is annexed to the city. Kraus said the county setback is 100 feet, so if needed the setback is just 65 feet. Rocky Hett of Marion was present and said all his property is in the city limits, and his property borders this property on the north side. Richards said it is the west 165 feet of the southwest quarter. From the middle of the road, Hett said. Less than 165 feet from the fence line, Yearout said. I see no reason to place a setback restriction because it is the same owner on both sides, Yearout said. Mueller asked, and Richards said we just need to make that a condition. Yearout said to get someone out there to pin this. The county can approve up to 165 feet and if you want more you need to go to the city, Yearout said. Mueller asked if there were other questions. Mueller asked about visibility from the road. Kraus said you cannot see it from the highway. Mueller asked, and Richards said Pizza Hut is greater than 1,500 feet from this location. Bina asked if they will run out of rock this April, or next year. Harshman said this April, or maybe May. Mueller apologized for postponing this meeting for one month. Harshman said their stockpile was getting full so they needed to move the crusher out, so it did not bother them one bit. Mount asked and was told there are 400 acres in the city limits. Mueller asked if there were other issues. Mount asked about the location and Hett showed him on a map. Hett showed members which direction his property is located. Mueller asked if there were other questions. Mueller asked Richards to give her staff report. Richards noted that Harshman is in compliance with a current Kansas Water Pollution Control Permit Authorization to Discharge under the National Pollutant Discharge Elimination System (NPDES), which expires December 31, 2013. The permit is on file in the planning and zoning office, she said. Richards noted they will need to provide her office with a new copy after the current permit expires. Richards noted the reclamation plan on file says the intent is to spread the retained topsoil on the leveled excavated area filled with unused overburden materials and then seed the area with grass. She has inspected the site in the past and land reclamation had been conducted in several areas adjacent to Hett's property. The reclaimed land is currently being used for milo, corn, wheat and native grass. Richards said the existing infrastructure, utilities and services are adequate to support the proposed CUP and there are no homes within 1,500 feet of the application area. Richards added this

property is not in a flood zone. Richards recommends approving the CUP request. Mueller asked if anyone from the public had any comments. Hett said Harshman's do a great job. Hett said he has been pleased with how they have operated on his property, and he is pleased with their family, and likes to deal with them. Mueller asked if there were any other public comments. Mueller said since there are no other public comments he will close the public hearing at this time and ask members to begin deliberations. Mueller explained the public may no longer comment but the planning commission members may still ask them questions if necessary.

Mueller reviewed the factors to consider with members. Mueller asked members if there were any other questions, or discussion. Mueller said it seems to him this is almost a perfect fit and the ground is appropriate for this use. Mueller said he would entertain a motion to recommend approval of a CUP for application #PC-13-01. Mount moved to recommend approving application #PC-13-01 requesting a Conditional Use Permit (CUP) allowing the expansion of the quarry into the 40 acres located on the N1/2 of the N1/2 of the SW1/4 of 28-19-4, because the proposed CUP is important for the continuation of the quarry which benefits the community and the county, with the following conditions: 1) the quarry operator must continue to comply with all Federal, State and local regulations; 2) the existing blasting program days and times still apply; 3) dust is to be controlled by the operator in compliance with the Kansas Department of Health and Environment (KDHE) and the Environmental Protection Agency (EPA) Standards; 4) the quarry operator shall provide a Certificate of Comprehensive Liability Insurance in the amount of \$2,000,000 to Marion County; 5) restoration is to be performed in accordance with applicable Federal and State Regulations; and 6) if the quarry intends to mine on the west 165 feet of the southwest quarter (SW1/4) the City of Marion will need to address it. Bina seconded the motion.

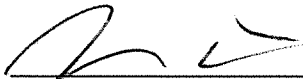
In favor: 6; Opposed: 0; Motion carried. Kraus abstained from voting.

Richards explained the timeline, saying the application will go to the county commission on April 8 at 10 a.m. Richards explained that Harshman may be present but does not need to be, and once it is approved by the county commission it will be published in the newspaper, and once it is published it is legal. Harshman said there will be two to four years maximum operations at this quarry and when it closes he expects customers to come to Florence. Harshman said when that happens they may only have 10 years of operations in Florence, so they would be open to expanding Florence at some point. Yearout told Harshman you just need to make application. Yearout explained it is not legal for planning commission members to comment if they would be for, or against this. Generally it is a favorable thing, but each case has to be looked at case by case, Yearout said. You have to go where the material is, Yearout told Harshman. My guess would be the county would look very favorably on keeping it open because of the cost factor, Yearout said. There are state law requirements on reclamation so it makes no sense to put a timeframe on something that is already regulated by the state, Yearout said. To me it is good business to put this in place, and if there is a 10 year lead time, who cares, Yearout said concerning applying for an expansion. It could prevent someone from building a house in the area if they know it is planned, Harshman said. It is not the quarry, it is the truck transportation that people get upset about, Yearout said.

We've been blasting for 35 years and we have never had one insurance claim, Harshman said. Our people are very well trained, he added.

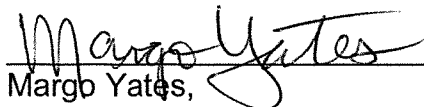
Members discussed off agenda items. Richards explained the county commission wished to go a little different direction for Homestead Agricultural Lot Splits. So, you don't need road frontage?, Mueller asked, and Richards said that is correct. It has to be a place that was actually a home site in the beginning, Yearout said. Richards told members about a property at the county lake. She explained the height restriction is 35 feet and the property is 35 feet four inches from the grade to the highest peak. Richards would like to propose new language because she does not think the building height language is enough. Is this after you bring in the new dirt?, Richards asked. Even with the new definition you measure to the highest point, Yearout said. Yearout explained the reason 35 feet is used is for the ability for most fire departments to fight a fire without a ladder truck. Yearout said 35 feet is pretty standard across the country and that is pretty tall. He said the new language is how they do it in Wichita, now. They use the height not to the highest peak but to the midway point between the eave and the peak, Yearout said. If that was the rule here this house would be about 28 feet, Yearout said. This is a more common sense approach, he added. Yearout recommends starting the process in April to resolve this situation. Mueller asked the wishes of the members. Yearout said to start the process they simply need to take a vote for the public hearing to be held at the next meeting. Mueller asked, and the members agreed. Members discussed waiting until the May meeting because there are no applications for April but Yearout explained they need to be under construction by a May 1 deadline set by the county commission to qualify for neighborhood revitalization. Or they could cut the height by four inches, Yearout said. Yearout said it would help to take care of this in April and members could also address an illegal private airstrip. Mueller asked members if they wish to have the public hearing in April and try to get this application in and Kraus said yes, do it in April. Mount moved to schedule the public hearing for the April meeting, and Kraus seconded. In favor: 7; Opposed; 0; Motion carried. Mueller noted the meeting will be held April 25. Mueller asked about scheduling a review of the comprehensive plan and Richards said not in April, so Mueller said it could be scheduled at a later date. Mueller asked if there were other questions. Vannocker moved to adjourn, and Dalke seconded. In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 8:33 p.m.

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



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Nick Kraus,  
Chairman



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Margo Yates,  
Secretary