

MARION COUNTY PLANNING COMMISSON/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

March 26, 2009

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

Roll Call was answered by Mueller, Marquette Eilerts, Bob Maxwell, Mary Avery, Kent Becker, Jeff Bina, and Dan Mount. Zoning Administrator Bobbi Strait was present.

Mueller referred members to the agenda. Mueller explained that Item three on the agenda, the oath of office for members, will be postponed to next month's meeting. Mueller asked for a motion to change the order of the Items on the agenda by moving Item seven ahead of Item six. Mount made the motion to amend the agenda, and Eilerts seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Mueller asked for additions, or corrections, to the Record of Proceedings for the December 4, 2008, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Maxwell asked about the intent of the word "impervious" on page 160, under 31-109, #7-F in the zoning text amendment changes. Strait explained it refers to a hard surface road. Becker asked what if a black top road becomes a gravel road. Then, it is no longer impervious, Strait said. Strait and Mueller pointed out that the changes have been adopted. Mueller asked if there were other questions. Avery made a motion to approve the Record of Proceedings as written, and Bina seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Mueller asked for additions or corrections to the Record of Proceedings for the January 22, 2009, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Becker made a motion to approve the Record of Proceedings as written and Mount seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Next on the agenda was an application for a Conditional Use Permit (CUP) for Dale Peterson, for feed yard operations. Muller reviewed the reasons why Peterson has withdrawn his application, since he does not need a CUP after all. Mueller referred to Article 21, for supplemental uses for commercial stock, and to Item 95 for the definition of a commercial feed lot. Mueller explained the original statute was written in the 1950's, and then in the 1990's the regulatory agency began using animal units as the measure. Mueller explained each type of animal is different when using animal units. Strait helped explain the use of animal units. Mueller referred to a court case in Norton County in 2004, where they dealt with the county trying to be stricter than KDHE (Kansas Department of Health and Environment). In that case the Supreme Court ruled the county could not be

stricter than the federal regulations, Strait explained. Peterson is licensed for 999 animal units, Strait said. Mick Summervill asked from the audience if Peterson applied for a state or a federal license, and Strait said a state license. So, he is not required by the county to have a CUP, Bina said, and Strait said that is right. Cindy Ragland said from the audience that it is public record that Peterson has more than 1,000 animal units. There is no CUP application at this point, Mueller said. KDHE is the authority, he added. Who is the authority in Marion County?, Ragland asked. There is no need for a permit in Marion County, Mueller said. Someone is watching the numbers?, Ragland asked. That falls under KDHE, Mueller said. Until he reaches 1,000 animal units, Marion County does not require a permit, Strait said. Harry Bennett asked from the audience, what is the definition of a feed lot in KDHE's eyes. We have been advised to use that reference, Mueller said. If it is under 1,000 animal units, it is a state agricultural use feed lot, Mueller said. If it is over 1,000 animal units, it becomes a commercial feed lot, Mueller said. If Marion County wants to change the regulations, we would need to go through that procedure, Mueller said. This concludes this item on the agenda, Mueller said.

Let's move on to the application for Mike Beneke, for feed yard operations, Mueller said. Members are acting as the planning commission for this application, to make a recommendation to the county commission, Mueller said. This application was published in the March 4, 2009 issues of the *Marion County Record, Hillsboro Star Journal and Peabody Gazette Bulletin*. Mueller asked members if anyone had a conflict of interest for this application, and no one did. Maxwell asked about the property description. Maxwell was shown where the lot is located. Mike and Cindy Beneke were present to speak about their application. There is 150 animal unit capacity only, left at the house, Beneke said. The staff report is based on the address, Strait explained. Mueller showed everyone where the property is located. Strait apologized for the confusion. Maxwell said it is okay; he just wanted everyone on the same page. Mueller explained the procedure for this application. Beneke said the only reason he is aware that he needs a CUP is through the process he has been going through to be compliant he was asked if he has a CUP, so he will have 11 permits when he is done. Beneke explained the original pens around the house started in the early 1990's. Beneke said he started building the west facility in 2001 through 2003. Beneke said he spent about \$800,000 to build the facility on the west side. We are probably about 90 percent done, he said. There is \$20,000 worth of concrete that I can't move, so my son is going to utilize it, Beneke said. There are two small pens and a working area by the house, and the rest will be put back to grass, Beneke said. The \$20,000 the state allowed me to move the pens will maybe cover putting grass back in, Beneke said. This has been three years of major frustration, he said. It has worked out better because the prices on some of the material went down some, and if I had done this earlier it would not have worked as well, he said. We buy about one and a half million dollars worth of feed from the neighbors, Beneke said. I turn money over, as I signed my name to \$18 million worth of checks last year, he said. It's not a game, he added. It's pretty serious business, Beneke said. Mount asked if the EPA (Environmental Protection Agency) can come in and do checks. KDHE is the

EPA's authority, Beneke said. The authority comes back to KDHE, Mueller said. At this point, Beneke added. Maxwell asked, and Beneke said he has 5,000 head, or 3,300 animal units. You need so much room to manage them, Beneke said. They require so much water, so much bunk space, and so much feed, he said. For over 1,000 animal units, the state says 4,000 feet, Strait said. Maxwell asked how many permits are you required to have. Nine agencies had to sign off, Beneke said. You have to secure water rights to the feed lot, Beneke said. We will put meters on all four wells, he said. There is no irrigation in our area, so no one really is going to care, it is just a formality for me, Beneke said. Beneke said when he began this process he hired some consulting help, but \$7,800 later it was a big mess, so he figured it all out on his own. Once you spend the first \$300,000 to \$400,000, there is no turning back, he said. Talk about starting out in the hole, he added. Mueller asked Beneke about the four water wells. Beneke said there is not as much volume as he needs and he had to put in a \$48,000 underground water line. He said for an extra \$11,000, I own it. Rural Coop is not helpful, Beneke said. Mueller asked if there were other questions. Hopefully when we are done and everything is signed off on, we are as legal as we can be, Beneke said. Mueller asked if anyone from the public wished to speak. Harry Bennett said he has lived in rural Marion County for about 48 years on a small farm southwest of Marion. He said he owns both sides of a quarter mile where Spring Branch Creek feeds the Cottonwood River. He said he has taken on the task of making things better on his land. Bennett said his good friends Bob and JoAnn Good own two sections of pasture near this feed lot site, and his family has enjoyed nature on their property for many years. Bennett talked about working to conserve and improve the water. He mentioned the Clear Water Farms Program and USDA funds. Bennett had a written statement. He said it included addressing the Peterson application, but he would skip over that part since Peterson's application was withdrawn. Bennett referred to the county's zoning regulations, saying in Article 14 -103, Item 4, it states, "A development plan for any of the conditional uses listed below, or for any other use which significantly affects the quality of the environment, must be accompanied by an environmental impact statement." Bennett said the first item listed, labeled "A," is commercial stockyard or feedlot. He said that KDHE for purposes requiring a permit for a feedlot uses 300 animals, or more, weighing in excess of 700 pounds in a confined area, so the application fits this definition of a feedlot. He said the impact statement for a commercial feedlot should at least include the following items: 1) a plan to address drainage, including large rains and lagoon capacities; 2) a bond, or insurance, to cover possible environmental damage in case of leaks; 3) details of lagoon construction and maintenance; 4) water monitoring plans; 5) a closure plan; and 6) a dead animal disposal plan. Bennett said this feedlot facility has been operating for some years without any permits, and they are just now conforming to regulations. Beneke was fined \$31,000 over three years ago, Bennett said. Bennett asked why a CUP was not required at the time Beneke was fined, or before. Bennett said a newspaper article in July of 2006, quoted Beneke as saying, "Officials knew I was here before, but without any complaints, nothing could be done." Bennett said that was not a good reason, and he questioned Beneke's respect for the regulations, and if he could be

trusted at this point to conform to the rules and report any problems. Bennett said the planning commission is the best place for us to come together and mitigate the best use of the land. Bennett said since planning commission members live here, they have a stake in this. The water resource is the most valuable thing we have, he said. We have to preserve it, he added. Our water source is in danger because of Marion Reservoir's non-point source pollution, Bennett said. Look at this and make the right decision, Bennett asked members in conclusion. Strait said KDHE is the exclusive authority here, and it is way beyond the planning commission's authority. It is not within our authority to regulate, and we do not have the expertise to act upon this, Strait said. We are simply here for zoning applications, Strait said. Eileen Sieger spoke from the audience, saying she lives east of Marion. Regarding Bobbi Strait's statements, you need to look at the regulations and make changes if needed, Sieger said. A development plan must be accompanied by an Environmental Impact Statement, Sieger said. Strait passed around photos and development documents prepared by KDHE. Maxwell asked about a drawing of the lagoons, including a 100 year storm plan. I'm not an engineer, and I'm not trained to be able to tell you all the answers, Strait said. That is why we rely on KDHE, she said. I don't have the training, either, Maxwell said, but it appears they have quite a bit covered here. He has listed all the information, Strait said. There is a set of files at KDHE, and we can have copies, Strait said. Everything we need has been approved by KDHE, she said. Strait reviewed her staff report. Strait said no written comments have been received as of March 23, 2009. Mueller asked Beneke if he had any comments about the staff report. Mueller asked if there were any other public comments. Bennett asked why the CUP was not applied for, at least in 2006. Mueller asked Beneke if he had any other comments. As for the CUP, I only knew a couple months ago that I needed one, Beneke said. Beneke said he appreciates the public's rights. If I did anything right or wrong in the past, I have been punished monetarily, Beneke said. And, I hope this will make a safe operation, because I am doing all this so it is done right, Beneke said. Mueller asked Beneke how much money he has invested to improve the water quality, and Beneke said it tops \$800,000. I do not live in the notification area, Sieger said. My point is I would like you to adhere to all regulations and follow procedures, Sieger said. I'm not calling foul on your operation, Sieger told Beneke. I hope you understand, I am just making a statement to follow regulations, Sieger said. Mueller closed the public hearing for the application and asked members to begin deliberating. Mueller said Strait will get a copy of the KDHE records and have them available in her office. We will have to pay to get a copy, Strait said. I think the county residents should have access to a copy, Becker said. I trust that they signed off on this, Strait said. There is some concern about having an environment impact statement, Bina said. I came in front of this board several years ago for the same thing and it was never brought up, so I'm not sure why it is being questioned, now, Bina said. It is not going to hurt anything to do it, Maxwell said. I think we should have it so we are in compliance, Avery said. We are applying for a FSA (Farm Service Agency) loan, Beneke said. The environmental impact statement should be covered in the loan application, he said. We tabled it until the permit was in hand, Beneke said. Once I have the permit we were going to un-

table it and add that requirement to get the government loan, Beneke said. Mueller explained to Beneke that once the public hearing is closed he cannot communicate with the board unless asked to answer a question. Mueller asked if there were other issues. If it passed KDHE, I'm satisfied with it, Eilerts said. I was impressed after Beneke explained how he changed the water flow, Mueller said. This improves the water quality in Marion County, Mueller said. It is a tremendous improvement and I feel it will benefit Marion County, Mueller said. I think he meets all factors required for a CUP, Mueller said. Maxwell asked who handles complaints. KDHE, unless he is in violation of zoning regulations, then it comes to me, Strait said. It is a benefit to the community to have this operation, knowing the dollars it can bring into the county, Mount said. Bina made a motion to approve a Conditional Use Permit (CUP) as presented for Mike and Cynthia Beneke, for application number PC09-01, for a confined animal feeding operation (CAFO) in an agricultural district in SW1/4 15-18-5, as it meets all conditions of a CUP, with the addition of an environmental impact statement to be added to the file. Maxwell seconded the motion.

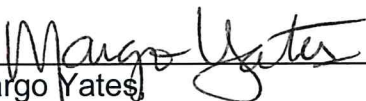
In favor: 7; Opposed: 0; Motion carried.

Mueller asked Strait to explain the timeline. Strait said the application will be presented to the county commission on April 13, 2009.

Off agenda items. Strait gave members a handout about Riley County's new green public works facility. All members also received new copies of the zoning regulations. Mount asked if he needed a copy of the old regulations for any reason, and Strait said no. Mueller reminded members the next meeting is scheduled for April 23, 2009. Strait said members will take the oath of office at the next meeting. Avery said members have never done that before. It was an attorney general ruling that came out recently, Strait explained. Mueller asked about open seats on the board from Districts One and Three, and if there was any word on getting these positions filled. No, Strait said. (County Commissioner) Bob Hein had talked to a couple people, and just needs to get back with them, Strait said. I don't know about (County Commissioner) Randy Dallke's appointment, Strait added. Mueller asked if there was any other business. Bina asked since he does not need a CUP after all, if he can get his \$50 permit fee refunded. Strait said she will ask the county commission about it. Mount made a motion to adjourn, and Becker seconded the motion. In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 9:03 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

David Mueller,
Chairman


Margo Yates
Secretary

