

# MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

## RECORD OF PROCEEDINGS

May 23, 2013

Chairman Nick Kraus called the meeting to order at 7:30 p.m., noting member Jeff Bina is on his way to the meeting from a school board meeting.

Roll Call was answered by Kraus, Dan Mount, David Mueller, and Mary Avery. Marty Dalke, Brad Vannocker, and Jim Schmidt were absent. Zoning Administrator Tonya Richards and Consultant David Yearout were both present. Kraus noted there is one seat on the board remaining open.

Kraus asked for corrections or additions to the Record of Proceedings for the March 21, 2013, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Mount moved to approve the Record of Proceedings as written and Mueller seconded. Members needed to wait on Bina in order to have a quorum to vote so they moved on to off agenda items while waiting.

Richards asked the wishes of the board for direction in scheduling a Comprehensive Plan Review. Members do not usually meet in June. They discussed meeting in June on the regular day, which is June 27. Members are concerned they will be cutting wheat around June 27 and that would take five members from the meeting. Moving the meeting up a week to June 20 does not work for Richards. Bina arrives at this point. Richards suggested moving the July meeting up a couple of weeks. Yearout cannot meet the second Thursday of the month due to another monthly zoning meeting in another county. Members considered trying to meet July 10 on a Wednesday, and decided to tentatively plan on meeting then. Yearout said if members will not be able to have a quorum on July 10 they could just automatically continue the meeting until the regular meeting date on July 25. Yearout said if this change occurs there would be no need to republish anything. Richards explained the July meeting will be held at the Marion County Park and Lake Hall, due to an application from a property owner at the county lake and an expected large public attendance for that meeting.

Kraus asked members to go back to the Record of Proceeding for March 21, 2013, explaining there is a motion on the table to approve the Record of Proceedings as written. In favor: 5; Opposed: 0; Motion carried.

Members moved on to Item 5 on the agenda, an application requesting a Conditional Use Permit (CUP) for a private air strip in an Agriculture District located between Aulne and Peabody on 40 acres. Kraus noted this is application #PC-13-02 and it was published in the April 3, 2013 issue of the *Marion County Record*. Applicant Terry Chizek was present to speak about his request. Chizek said he is retiring in about four years and wants to put an air strip on his land, and said he is building an airplane once

he gets time. Richards noted Chizek has several neighboring property owners but he would fly only during daylight hours. Richards asked, and Chizek said he owns a Cessna 150. Mueller asked, and Chizek said he would need a 1,300 foot air strip. Bina noted that diagonally it would be roughly 1,800 feet. Richards said Chizek has an access building on the property that he got a permit for. Richards asked Chizek if he plans to house the plane, there. Eventually, Chizek said. Bina asked about the Federal Aviation Administration (FAA). Chizek said he has the FAA paperwork filled out. Richards said the FAA requires the paperwork from such air strips that are used more than once a year and she said that any locations where there are take offs and landings, the FAA considers that an airport. Chizek said if an air strip is not permanent you don't even have to regulate it. Richards said the FAA will make one determination. She explained the FAA will either have no objection to an air strip, or it could be approved with conditions, or it could be determined to not be permissible. Richards said the FAA will look at flight paths, not at the air strip itself. Yearout said the FAA will look at approach zones. Yearout said even privately owned air strips will be registered and if someone needs to land in an emergency they might land on a privately owned air strip. Kraus asked how far Chizek's property is from the proposed wind farm. Richards looked on a county map. Chizek located his property, and the proposed wind farm location, on a map. So, it is right on the edge of the overlay, Kraus noted. Yearout said the FAA will keep this in mind but the wind farm located in Beaumont, Kansas, is close to wind turbines. Avery asked if there are other private air strips in Marion, County. Bina said there are more than you might think. There are a lot of them, Kraus agreed. Richards said she went pretty far back in the planning commission meeting minutes and she did not find another application for a private air strip. Mount asked if the board needs to do anything until Chizek receives a response from the FAA. Richards said she thinks members need to take other factors into account that the FAA won't look at, such as the neighbors. Avery asked Chizek if it is a hardship for him to use Marion Municipal Airport. Chizek said he is looking at four or five years down the road before he gets his hangar done. Chizek followed by saying it would be three or four years before he will complete the hangar. He said he plans to build a pond and use the fill dirt to build up the land as needed. Mueller asked Chizek when the proper time is to talk to the FAA. Chizek said any changes the FAA wants would need to be taken care of before getting approval. Kraus asked Chizek if the FAA has a lengthy application. Not that lengthy, just detailed, Chizek said. Richards asked about livestock being spooked. Chizek said there are llamas and goats to the east of his property but that would not be in his flight path. Kraus asked, and Chizek said he normally will fly out to the south. Mount asked about liability insurance, and Chizek said he can't have it. Richards asked about power lines in the area. Chizek said RCA said they would put some balls up for me (on the power lines). Kraus asked if the lines need to go underground, and Chizek said it is expensive to bury lines. Avery asked if Chizek plans to build a home on the property, too, and he said no. So, this is strictly recreational, Avery said, and Chizek said yes. Kraus asked if there were other comments from members. Kraus opened the meeting to the public for comments. Shawn and Mary Crabb, of Peabody, were present to speak during public comment. Shawn noted power lines and a tree line in the area. Mary said their house is located directly to the east of this property and they have alpacas and other animals. Mary said she didn't think it would be a problem unless Chizek did something like crop

spraying. Scott said it sounds like the FAA would address most everything that would be of a concern. Richards asked Yearout if he has seen a FAA study on something new like this. Yearout said no, this is the first new one I've dealt with. Chizek said he is not establishing an airport; he is just taking off and landing. Yearout said it is state law and federal law and ultra light owners try to say the same thing. Yearout told members he is not telling them yes or no, but they need to think about this. Once it's there, it's there, Yearout told members. Properties change hands, he added. This can turn into issues, Yearout said. As for frequency of use, you can't limit them, Yearout said. Ultra lights have caused some problems in the past, he said. Some are very noisy, he added. Livestock owners are sometimes not happy, Yearout said, as it would spook cattle. Around the state most air strips are on 80 acres because they want it to be on a half mile of land to have extra space, Yearout said. Yearout said Mount asked about liability and I have heard the FAA regulate air space rights on adjacent properties because of slope. If it is approved doesn't mean you can enforce what happens or changes of ownership, Yearout told members. Once it's on the map, it's on there, he said. Bina asked, and was told it could take up to three months to hear back from the FAA. Bina asked if the FAA would approve this with a pending CUP. The FAA decision is not contingent upon a local decision, Yearout said. If you recommend approval a condition would be for the FAA to give the okay. Mount asked about liability to protect the neighbors. Chizek said he is not planning on committing suicide, or anything. If someone is in trouble and needs to land, it's on the map, Mount said. Are you taking about liability on the plane, or on the strip?, Mueller asked Mount. Avery explained to Chizek that members have to consider the future. Most strips I've seen have been plowed back and put back to farm ground, Chizek said. Once you've said for one individual this is okay, and it may not be used much, but when the property changes hands the county would have a difficult time defending something if they ever got challenged on it, Yearout said. Richards said neighbor Matt Regier called and he is not in favor of the air strip. Shawn Crabb said Regier is concerned about power and tree lines but Shawn said he does not think it will directly affect his property. Mary Crabb said Regier's property is at a lower elevation than where their property is at. She said she thinks the Regier family are concerned about the take offs and landings because it would be directly over their property and you never know when something could fail. Kraus asked what a circle at the end of the runway is on a diagram map, and Chizek said it is just a wasted area. Kraus asked if there were other comments. Kraus asked Richards to give her staff recommendation. Richards said she does not think members should take action until they have seen the FAA report. If the FAA says no, it is a mute point, she said. If the FAA says okay we could come back and address the local issues, she said. Yearout said the FAA will look at flight safety issues. I think we need to address the overlay district because they are setting towers out there, Richards said. Mueller asked if the overlay district is a mile away from this property, and Richards said no, it is about a quarter mile away. Bina said they are required to keep the towers so far away from property lines. Mueller said there is a setback. Richards said requirements are 500 feet from a public road and no closer than 1,320 feet to a residence. Mueller asked about making it a condition that it is only for private use. Yearout said the difficulty is the enforcement side of it. Even if a friend comes in one time, Yearout said, it is hard to track. Chizek said he does not want the liability of other people coming in.

Mueller said he can try and ensure it will not be used frequently. Bina said if you are not invited to land you are trespassing. No, Yearout said, there are different rules in the air. Once you establish a facility that is capable of accommodating planes in the event something happens, someone in trouble will have the right to go in there, he said. In an emergency situation, Bina said. Mueller read aloud the FAA intermittent use of a site definition. Marion Municipal probably falls under that, Bina said. Intermittent use for "X" type of aircraft, Avery said. Yearout questioned the staff availability to monitor such. Richards said if there is a problem on the county level, and if the county decided to revoke it, that doesn't mean the FAA will revoke it, too. If the FAA says okay he could tell the county he has the federal okay, Yearout said. If the CUP is revoked it would still be there, Kraus said. Neighbors change hands, too, and they could complain even if he is not doing anything different than he's always done, Kraus said. I can see putting intermittent language in there, Bina said. I think what we are struggling with is this property is not quite long enough, Avery said. It is like at the county lake and we try to accommodate people's wishes and dreams for their land, but it's not big enough, she said. You have to balance it with the public, she said. If this were an 80 acre property, we wouldn't have quite this discussion, Avery said. Chizek said he is capable of taking off and landing in less than 500 yards. Even if it was 80 acres he would be flying over the same houses, Kraus said. I try to keep the neighbors happy, too, Chizek said. Without more information we have no other concerns, Mary Crabb said. We are concerned with safety in general and power lines, Shawn Crabb said. Why the change in the angle?, Shawn asked. So he would not land in a crosswind most of the time, Kraus said. There is more wind from the southwest than the southeast, Yearout said. I don't fly if it is windy, Chizek said. Richards asked since Chizek has no house on the property, has he had any problem with theft? Not yet, Chizek said. Power lines are not our issue, the FAA addresses that, Kraus said. There are no close houses to the southwest, Kraus noted. Richards said she did contact Westar Energy, and was told there are no lines of concern, except there are transmission lines to the north. Kraus asked Chizek what if he had 80 acres, would he put it in the middle or at the start of the property. I'm cutting through the middle because I'm planning on building a pond, Chizek said. Kraus asked if there were other questions. Mary Crabb asked if the pond was going to be a watershed. Shawn Crabb asked if the pond is spring feed, and Chizek said no. So, it will be dry most of the time, Mary said. Kraus closed the public hearing at this time and move on to deliberation. Kraus explained there may be no other comments from the public at this time but members may ask questions if needed.

Kraus asked Richards to go over the factors to be considered for a CUP. Richards read the factors. Mueller said there are air strips in his area that hasn't been used for a long time, and Bina agreed. Bina added that he has never heard of any issues. Avery asked how this will affect planning and zoning. Richards said other air strips are grandfathered in, but this would create a precedent from now on unless there have been others since 1992. Mueller said he likes how he laid out the plan. At this time, Avery said. Kraus asked if this would affect property values. Yearout said all were notified. Mueller said an obvious condition would be for FAA approval. Bina suggested adding intermittent use. Richards asked about the overlay district. Mueller asked if it adjoins the overlay. Mount said his big concern is if we allow one on a 40 acre tract, and get another somewhere

with people and houses, and they will say we allowed this one. Each has its own merit, Bina said. Mueller moved to recommend approval of application PC-13-02 for a Conditional Use Permit (CUP) for a private air strip with two conditions: 1) FAA approval must be obtained; and 2) intermittent use as defined by the FAA; also Richards is instructed to inform the overlay district of these plans. Bina seconded.

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

Kraus asked Richards to explain the timeline. Kraus explained this action is a recommendation to the county commission for a final decision. Richards said she will go to the county commission meeting with this application on June 10, 2013. Yearout explained there is a 14 day protest period, starting tomorrow, and any landowner will have 14 days to file a protest with the county clerk.

Members went back to Item 4 on the agenda for a public hearing regarding amendments to the Marion County Zoning Regulations to address proposed language concerning the definition of height. Kraus read aloud the existing language and the proposed language. Yearout said the issue is the ability to fight a fire. Yearout explained Richards had an incident with a new house at the county lake where the house was going to be four inches too tall. I think the proposed language works much better, Yearout told members. Kraus told Richards establishing the grade is a judgment call on her part. Yearout said this says the height is measured along the front. Kraus asked what the fire issues are as departments are not required to have ladder trucks. No, they are not required to have ladder trucks, but they are aware that if a structure is too tall they can't fight the fire, Yearout said. This recommendation must come from the majority of the board, so since that is a minimum of four for a quorum, you all must be in favor of this, Yearout explained. Kraus asked if there were any comments from the public. County Commissioner Dan Holub was the only member of the public present at this time. Mueller moved to recommend amending the language as proposed and Avery seconded. In favor: 5; Opposed: 0; Motion carried.

Members now moved back to Item 6 on the agenda to continue discussion for off agenda items. The second off agenda item was an upcoming subdivision and plat application. Yearout asked members not to talk substance, please. We have not seen the proposed plan, he added. Kraus said members mainly need to discuss what to do about the date of the meeting. Members had suggested meeting July 10 at 7:30 p.m., and if there are not enough members available for a quorum the meeting may be moved to the regular meeting date. Avery asked if there are other applications would they be put on the same agenda, and Richards said yes, if she has time to publish them. Mount asked what if someone is counting on the regular meeting date. Richards said she does not know of anything, and she usually has an idea if something is coming up.

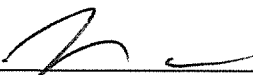
Mount moved to meet on July 10, 2013, and Bina seconded.

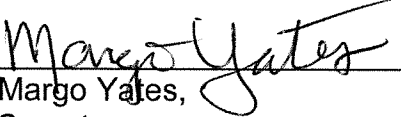
In favor: 5; Opposed: 0; Motion carried.

Kraus asked about the Comprehensive Plan Review. Avery said she thinks members should put it off until fall. Kraus asked if there was anything else.

Mount moved to adjourn and Mueller seconded. In favor: 5; Opposed: 0; Motion carried and the meeting adjourned at 9:15 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

  
\_\_\_\_\_  
Nick Kraus,  
Chairman

  
\_\_\_\_\_  
Margo Yates,  
Secretary