

April 1, 2009

Marion County Commission  
Marion County Courthouse  
200 S. 3<sup>rd</sup> St.  
Marion, KS 66861

To the Marion County Commission:

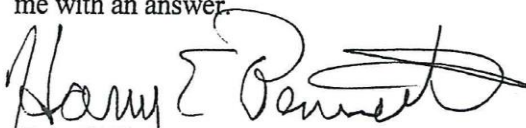
This letter is a request that the Marion County Commission set aside the decision made at the March 26, 2009 meeting of the Marion County Planning Commission on the basis that the Marion County, Kansas Zoning Regulations were not followed and the Planning Commission voted on an incomplete Conditional Use Permit application for a Feed Yard Operation by Mike and Cynthia Beneke.

In Marion County, Kansas – Zoning Regulations, Article 14 – Plan Approval Guidelines, part 14-103 Development Plan, item #4 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.” The first item listed (labeled “A.”) is “Commercial stockyard or feedlot.” An Environmental Impact Statement for the applicant’s commercial feedlot was not included in the materials provided to the Marion County Planning Commission. In the public hearing portion of the meeting I presented a statement both written and oral pointing out the Zoning Regulation requiring an environmental impact statement be prepared for certain listed “conditional uses” and that the Feed Yard Operation was one of those uses. Ms. Strait, Marion County Planning Commission Technical Advisor, at this point advised the Planning Commission that they were not to consider any environmental factors in their deliberations and that there was no need for an environmental impact statement with this application. Later in the meeting after the public hearing portion of the meeting was closed, Planning Commissioner Kent Becker asked if some environmental statement could be provided, and Ms. Strait stated that she would procure an environmental impact statement from the Kansas Department of Health and Environment and have it available for public viewing in her office. On Friday, March 27, 2009 I called Mr. Terry Medley, Head of the Department of Livestock Waste Management, Kansas Department of Health and Environment in Topeka, Kansas and asked if his agency would provide an environment impact statement for the Beneke Feedlot in Marion County. He said that KDHE does not produce environmental impact statements within the scope of their permitting work; the closest thing would be a “Statement of Basis”. An environmental impact statement is a much more encompassing, holistic study that would take into account site specific items like drainage and lagoon plans but would also have information on downstream effects to fisheries, endangered species, and plans to prevent damage. The fact is that the Marion County Kansas Zoning Regulations has very specific language written in the manual, and the Planning Commission chose to proceed with an application that did not meet the requirements. A review of past Conditional Use Applications reveals that the environmental impact statement requirement has been followed by the applicants and the information was helpful to the Planning Commission in making land use decisions. Because the Conditional Use Application did not provide the environmental impact statement document required in the Marion County, Kansas

Zoning Regulations the application is incomplete and the recommendation to the Marion County Commission by the Marion County Planning Commission made at the March 26, 2009 meeting is void.

The applicant, Mike Beneke, provided the Planning Commission a lot of information in his testimony about the economic activity of his operation, giving a figure of \$18,000,000 in checks that he had written in the last year. After the public hearing portion of the meeting was closed and the planners were deliberating the application, several mentions of the economic benefit of the operation were made. One of the planners, Dan Mount, even said that he favored the feedlot operation because of its economic activity in the area. I have been told in the past that economic considerations are not to be part of the process of deciding a conditional use permit. Neither the Technical Advisor nor the Chairman of the Planning Commission cautioned the planners on this point.

I made another request in my statement to the Marion Planning Commission at the March 26, 2009 meeting. Both of the applicants (Dale Peterson, the other applicant, withdrew his application right before the meeting) have been operating feedlot facilities for some years without State or Federal permits and are only now obtaining the permits and doing the necessary work to conform to regulations. Both applicants have been cited by KDHE for improper operation of a confined cattle feedlot, and in the case of Mr. Beneke fined \$31,000. Since these actions took place over three years ago and involved Ms. Strait, Marion County Sanitarian and Planning Commission Technical Advisor, who is familiar with zoning regulations, why were the applicants not required to apply for a Conditional Use Permit three years ago or even earlier? Is it normal procedure to postpone zoning applications and did the Marion County Planning Commission make the decision to postpone the application request? In the Peterson case, a lawsuit was tried in February, 2009 that might have been prevented had a Conditional Use Permit Application been considered in 2006 with an environmental impact statement. The public hearing portion of the Conditional Use Application process would have allowed the applicant and surrounding landowners to have discussion and resolution of water quality concerns before the expense and pain of a lawsuit. The Planning Commission did not provide an answer to these questions nor have any discussion at the March 26, 2009 meeting. I would appreciate the Marion County Commission looking into this matter and providing me with an answer.



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Enclosures:

- #1. Copy of March 26, 2009 statement to Marion County Planning Commission
- #2. Copies of page 68 and page 69 of Marion County Kansas – Zoning Regulations

cc Ms. Susan Robson, Marion County Attorney  
David Mueller, Marion County Planning Commission Chairman