

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

May 28, 2009

Chairman David Mueller called the meeting to order at 7:30 p.m., at the Marion Senior Center. Members were asked to note that Mary Avery's correct e mail address is: msa4648@gmail.com

Roll Call was answered by Mueller, Avery, Bob Maxwell, Jeff Bina, Dan Mount, and Jim Schmidt. Marquetta Eilerts and Kent Becker were absent. There is still one position open in District One. Zoning Administrator Bobbi Strait was present. Consultant David Yearout was also present.

Mueller asked for additions, or corrections, to the Record of Proceedings for the April 23, 2009, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Bina made a motion to approve the Record of Proceedings as written and Mount seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Mueller asked members of the public to please sign in on the attendance sheet.

Item 4: A variance request for set back requirements for an ag shed, located at 1028 Alamo, Newton, for Joseph and Elaine Goossen. Mueller reminded members this is a final decision from the Board of Zoning Appeals. Mueller noted this application was published in the May 6, 2009, issues of the *Marion County Record*, *Hillsboro Star Journal*, and *Peabody Gazette Bulletin*. Mueller asked if any member had a conflict of interest with this application, or any outside communication regarding this application. No one did. Mueller explained the process to the Goossen's. This property is located one and three quarter miles south of Goessel. Goossen's are the fourth generation of their family to own this property. An aunt sold four acres out of it to Tony Young. They want to put up a 24x30 building with a wind resistance of 110 mph, for storage. The building will be located about 190 feet from the road, and 20 to 25 feet from Young's property. Goossen's said Young did not object to their plan and that he would write a letter and send it to Strait's office. Young has buildings within four or five feet of Goossen's property. Joe Goossen showed a photo of the building he wants to construct. Mueller had Goossen show his plans on a map of the property. Mueller showed members where Young's property is located on the map, and where Goossen's property is on the map. Avery asked Goossen if he plans to keep the existing buildings, and he said yes. Mueller asked if there were other questions. Maxwell asked if the building will run east and west, and Goossen said yes. Mueller asked if anyone from the public wished to speak about this application. No one did. Mueller asked Strait to give her staff report. Strait read the letter from neighbor Charles A. "Tony" Young, of 1034 N. Alamo, Newton. Mueller asked if there were any questions for Strait. Goossen asked if he decides to construct a 24x36 building instead of a 24x30 building, if that makes a difference, or not. Mueller explained to Goossen that he needs to know what size he is

planning on when he gets his building permit. Mueller explained members are looking at the set backs. Maxwell asked if the building would protrude into farm ground. No, it would be in a grassy area, Goossen said. And, you would stay within the property line?, Mount asked. Yes, I want to maintain the lane between the properties, too, Goossen said. The distance between the building and the property line is 24 feet, so 26 feet would be the variance, Mueller said. Mueller closed the public hearing for this application and asked members to begin deliberations.

It will be situated with existing buildings, so he is staying within the existing buildings, he is keeping the lane between, he is conserving the wheat field, and it meets all five conditions necessary to grant a variance, Mueller said. Yearout suggested having the condition that the new building line up with the existing buildings. Mount asked, and Goossen said the existing building is 12x18. Mount made a motion to approve application number PC-0902 for a 26 foot side variance for Joseph and Elaine Goossen, of 1028 Alamo, Newton, to be lined up with the north wall of an existing building, so the side set back of the north wall will be consistent with the existing building. Avery seconded the motion. In favor: 6; Opposed: 0; Motion carried. Mueller asked Strait to explain the timeline to Goossen's.

Item 5: A request for a Conditional Use Permit (CUP) for a state gun permit for Donald Alcorn, of 71 Lakeshore Drive, Marion. This property is located at Marion County Park and Lake. Mueller noted this application was published in the May 6, 2009, issues of the *Marion County Record, Hillsboro Star Journal, and Peabody Gazette Bulletin*. Mueller reminded members they are acting as the planning commission, making a recommendation to the county commission for final approval. Mueller asked if any member had a conflict of interest with this application, or any outside communication regarding this application. Avery noted she owns property within the notification area, but she does not feel she has a conflict of interest for this application. Mueller explained it will be the same process as before. Alcorn told members he is almost 70 years old and he wants a hobby. He said he has been buying, selling, and trading guns for years. Alcorn said he keeps three, four, five, or six guns on hand. Alcorn said he has a state license and he wants to get an ATF (Alcohol, Tobacco, and Firearms) federal license so he can cross the state line and go into Missouri and Oklahoma. I use my van and trade mostly to dealers, pawn shops, and flea markets, Alcorn said. I don't carry ammunition, black powder, or hand guns, he said. They all have to be registered through ATF and they won't issue a license to a P.O. Box, he said. I have to give them an address as being my warehouse, he said. I have lived there for 37 years, Alcorn said. I don't repair, I don't reload, I don't carry black powder, and I only have three, four, five, or six at a time, he said. Mueller asked where Alcorn has been storing the guns. In my van, he said. So, in the house would be safer, Mueller said. I have gun belts, holsters, and accessories, but no ammo, Alcorn said. Do you sell out of your home?, Mueller asked, and Alcorn said no. Do you have a gun safe?, Mount asked. Yes, it is 4,000 pounds, Alcorn said. Maxwell questioned why Alcorn's permit application states it is for establishing gun repair, sales and service, and supplies. To me, ammo is supplies?, Maxwell said. What about sales?, Maxwell asked. Repair?, Maxwell asked. I keep them out of the house in the gun safe, Alcorn said. Strait explained it is listed on the

application that way because that is how it is listed in the regulations under supplemental use. You can narrow it down to just what he is doing, Yearout said. And, be very specific, Yearout added. Zoning is for land, not zoning for an applicant, Yearout said. Future owners will still have the CUP, but it could be very specific, Yearout said. Who is going to enforce it?, Maxwell asked. You can narrow it down as much as you want to, Yearout said. It's not an all inclusive thing, Yearout said. In Article 21 they do not speak of retail sales, it speaks of a warehouse, Maxwell said. I do not sell out of the house, Alcorn said. Strait explained Alcorn needs a federal permit so he can go to other states. Avery asked Alcorn to clarify how many guns he wants to warehouse. Could you live with four, if we went with four?, Avery asked Alcorn. One time I had 14, but right now I don't have any, Alcorn said. What would be the maximum number?, Mueller asked Alcorn. 15 maximum total guns, pistols and rifles, but mostly shot guns and rifles, Alcorn said. Avery explained to Alcorn that the CUP stays with the property so she feels a need to balance this out with the rights of the community. What does your state license allow?, Maxwell asked Alcorn. My state license allows whatever I want as long as I don't cross the state line, Alcorn said. That is why I want a federal license, so I can go to Kansas City, Missouri, Alcorn said. The state license allows him to have ammo, but he chooses not to, Strait said. Mueller opened the floor up to the public for comments. Mueller explained that Alcorn will get a chance to respond to the comments. Dan Crumrine, a county lake resident, said Alcorn stores pistols in the back of his van. Why not store them in the gun safe in the house?, Crumrine asked. I do, Alcorn said. They are in my van when I am on the road, Alcorn said. Where does he store the guns after a show if they are not all sold?, Crumrine asked. I transfer them to the safe when I get home, Alcorn said. Is the safe large enough to hold 15 guns?, Crumrine asked. It is six feet tall, five feet wide and 48 inches deep, and weighs over 4,000 pounds, Alcorn said. I used a crane to put it in there, Alcorn said. Do you still have a place in Herington?, Crumrine asked Alcorn, and Alcorn said no. How many times have the police been to your house to solve problems with your son?, Crumrine asked Alcorn. It was my son-in-law, and it was the only time in 37 years the police have been there, Alcorn said, except for donations, and stuff. Frances Smalley, county lake resident, said Alcorn's garage is attached to his house and she wondered if that is an issue, or not. No, Strait said. It is the address, Strait added. No retail sales, but what about sales at gun shows?, Smalley asked. No sales at the home, Mueller said. If you approve this, and ATF turns it down, what happens?, Smalley asked. It is already approved, Doris Alcorn said. Paul White, county lake resident, asked about assault rifles. No assault or automatic rifles, Alcorn said. Mueller asked about semi-automatics. Yes, I do have them, Alcorn said. Anyone can, Alcorn added. You can buy a semi-automatic across the counter, Alcorn said. You can't buy a gun at his house?, White asked, and Mueller said no. I did not know he had guns prior to this, White said. Now everyone will know, and that bothers me, White said. That is part of our society, public knowledge, Mueller said. Kermit Dirksen was next to speak, and he explained he lives next door to Alcorn. We will never know what he elects to sell, Dirksen said. We have a unique area for family camping, and fishing, Dirksen said. The setting is family oriented and I find it hard to understand that gun permits belong in such a setting, Dirksen said. If this goes on record that whoever owns the property has a gun permit, it will be detrimental to my property value, Dirksen said. It will be a different environment, he added. There are

several things that could be different, though, such as if we limit the number of guns, and there are no sales at the house, Mueller said. Would you still feel the same?, Mueller asked Dirksen. Yes, because it is not attached to Alcorn, it is attached to the property, Dirksen said. Mueller asked about the CUP staying with the property. It would expire if he is non-compliant, Strait said. Just because he has no guns for a while, it would not stop, Strait explained. Bina asked if the ATF license would be for the property and not to the owner. The CUP is to the property, Strait said. The next person that comes in would have to obtain a state license, or an ATF license, or both, Strait explained. You could put on there that it is active as long as he maintains a state and federal permits, but if there are no permits the clock starts, Strait said. If it reaches a point where the applicant moves, or passes away, and no other action is taken, the actual permit does not go away, Yearout said. In the instance if it is approved and no longer maintained, the county can always take a formal action to take it off the map, Yearout said. It does not automatically go away, Yearout said. The class action does not change, he added. Can we tie a timeline to it for review?, Mount asked. Yes, you can revisit it, in say two years, Yearout said. In all the years that I have done this, this is the first time I've heard this from the ATF, Yearout said. What we have been hearing is right, because everyone is going to know this is going on now, Yearout said. It could be classified as a home occupation, Yearout said. It could be possible to sign off, and a CUP would not be necessary, Yearout said. It might be worth exploring a little more and this could be withdrawn and all handled administratively as a home occupation, Yearout said. Home occupation is what I do, Yearout said. I operate out of my home, he said. There are sales people and beauty shops that have things for sale, and they make an exception for that, but a flower shop is not a home occupation, Yearout said. That is what we ran into on the Barkman property, Strait said. He can keep doing what he is doing right now, and no one would know, Yearout said. What he wants to do for his business is not my concern, Dirksen said. My concern is putting a CUP on the property, Dirksen said. So, if we could do without the CUP, that would help keep your property value?, Avery asked, and Dirksen said yes. Why do we need a zoning change for something that has been going on, anyway?, Dirksen asked. My concern is this is a recreation place, and would the crime rate pickup?, Crumrine asked. I would hate to see problems begin, Crumrine added. I wasn't sure if I was in favor of it, and I am still not sure, White said. But, why do we need a CUP if he has been doing this anyway?, White asked. Strait explained ATF required it. They want a street address, not a post office box, Alcorn said. Nothing really changes from what he has been doing except the public knows now, and that bothers me, White said. Could it be for him, and not the land?, Smalley asked. If it is a home occupation, I can sign off on it, Strait said. The federal government wants the local government to okay it, Yearout said. The feds will not act on the application until local authority signs off on it, Yearout said. Whether you recommend approval or denial at this point, the public knows it is out there now, Strait said. If it is denied, it will never come on record, Dirksen said. If it is approved, it will show up as a CUP on a zoning map, Dirksen said. That is what I don't want to see, not only for me but with the other properties, too, Dirksen said. Mueller asked if Strait would recommend tabling this application. Yes, table it and we will report back at the next meeting, Yearout said. It would be in two months as there is no June meeting, Mueller reminded everyone. I would like to see it get resolved, Maxwell said. If you were to deny

the application, would it mean he has to stop what he's doing?, White asked, and Strait said no. I don't see what would hurt in getting more information, Mueller said. I have never come across anything like this, and I am not sure what the best way to handle it is, Strait said. That is why there is no staff report for this application, Strait said. Strait questioned if it would need to be renewed every year. Every three years, Yearout said. I don't have all the answers right now, Strait said. Maybe we can find a way to address the concerns and still allow Alcorn to continue doing what he's doing, as I have not really heard any objections to what he's doing, Avery said. But, I don't think we have enough information to act tonight, Avery added. Strait said she could bring back an update to the next meeting, and explain the details with a final report. Strait could inform you if the application was withdrawn, or you could continue on, Yearout said. You want to make sure the action you take is not in conflict with ATF, Yearout said. We need to know what ATF allows, and if the county can act on this administratively, Yearout said. Is he going to be monitored to be sure he's doing what he's supposed to be doing?, Crumrine asked. He would be monitored by ATF, Strait said. Every month, Alcorn said. Avery made a motion to table application #PC-0903 until the next meeting, and for Strait to report back with more details. Bina seconded the motion. In favor: 5; Opposed: 0; Abstained: 1; Maxwell abstained.

Item 6: A request for a rezone from commercial to village for property located at 1725 Upland, for Garry Dunnegan. Mueller noted this application was published in the May 6, 2009, issues of the *Marion County Record*, *Hillsboro Star Journal*, and *Peabody Gazette Bulletin*. Mueller asked if any member had a conflict of interest with this application, or any outside communication regarding this application. Avery noted she owns property in the notification area, but she does not feel it is a conflict. Mueller thanked Avery for letting members know. The applicant was not present to discuss the application. Mueller asked Strait to explain that this property was formerly known as The Kingfisher Inn, at the county lake. Strait said there were several attempts to reopen the property as another restaurant, bar, or family operation. The purchaser could not get a clear title, so the property went to a Sheriff's Sale, Strait explained. Dunnegan worked on the property for several months, prior to the Sheriff's Sale, she said. Dunnegan decided to make it into a private residence, Strait said. He asked if he could have permission to put a new roof on, and Strait told him yes, go ahead so it will protect what is left. Strait said there were no tables, chairs, kitchen equipment, etc., left in the building, as they were all sold at an auction. He built a garage in what was the bar, and they have already changed the occupation of the building, although no one is currently living there, she said. They are in the process already of converting it into a residence, and they want to retire there, Strait said. They also put an addition up, Maxwell said. There is a room on top of the garage, Strait said. They said it's a library, Crumrine said. There is also a deck on there, White said. I know they've put a lot of money into it, Strait said. Avery asked about a building permit. They have not changed the footprint, so they do not need a building permit, Strait said. We do not have building codes, Strait reminded members. Maxwell asked about the trail road between the lot and the house. It is a platted road, and we are not changing the plat, Strait said. It is a platted lot and it is still zoned village, Strait said. We are just changing the lot the building sits on, Strait said. Lot 23 is where the parking lot is, Strait said. Lots 11, 12 and 13 are where the

building is, Strait said. Is it mandatory that they rezone?, Dirksen asked. There is no type of a residence occupied in a commercial zone, Strait said. It is a less restrictive use, but it is not permitted, Strait said. If there is ever a mortgage involved, and it is not zoned as a residence, no lending institution will touch it, Yearout said. If it is converted back, there would be a rezone involved, Yearout said. They plan to take out the parking lot cement, and put in grass, Crumrine said. They are leaving the concrete in place where the road is, Strait said. He has no authority to touch the road, Yearout said. Our sewer line goes down the middle, Crumrine said. Who has control of the road?, Strait asked. The trail road is the only road approved by the county at the county lake, but the county won't admit it, Crumrine said. We are dealing with a rezone of what building actually exists, Mueller said. Mueller asked if there were other comments from the public. Mueller asked Strait for her staff report. There is actually less traffic with it as a residence, Strait said. If the extensive water damage was bad enough, they would have had to tear most everything out and redo it before it would be okay to reopen as a restaurant, Strait said. It was vacant for two and a half years, she said. Ag and village zones are the two zoning classes in existence around the county lake, Strait said. Mueller asked if anyone had any questions for Strait, but no one did. Mueller asked if there were any questions from the public. Crumrine said he shut the water and sewer off to the property, and that the water damage inside was bad. I went ahead and hooked the sewer back up, but the water is still shut off, Crumrine said. He plans to make it into a real nice house, he added. Is that a comment in favor?, Mueller asked, and Crumrine said yes. Mueller closed the public hearing for this application and asked members to begin deliberations.

Mount asked about the water well. Not a problem, Crumrine said. I didn't even know the well was there, he added. The structure looks good, Maxwell said, about the building. It will be good to have it back on the tax rolls, and I can't see anything but benefits, Maxwell said. Mount made a motion to approve application #PC-0904 for Garry Dunnegan, of 1725 Upland, for a rezone from commercial (CP-2) to village (V-1). Maxwell seconded the motion. In favor: 6; Opposed: 0; Motion carried. Strait was asked to contact the county road and bridge department about the road, and have them contact Dunnegan.

Off agenda items: Several handouts were distributed. I did not put any language in here for feed lots, Yearout told members. Yearout explained some Articles from some place like Kansas City could be as long as 20 pages, but there is no need for such regulations in a rural area. One page listed definitions that Yearout said he is now using almost every where he works. Jefferson County wanted to be proactive so residents could install wind towers, and so manufacturers would come in and not feel overly restricted, Yearout said. They wanted to make it very accommodating, he added. You go with 199 feet because anything over 200 feet has to be lighted for FAA (Federal Aviation Administration) regulations, Yearout explained about towers. So, these are non-lighted structures, he said. If they have a long enough tract, and can meet set backs, you just issue a permit and go on, he explained. They were comfortable with a 25 kw capacity, he explained about one example. 25 kw is pretty good, and it would run a 25 horse motor, Mount said. The height plus a 50 foot set back, Yearout said. The set back is

twice the distance to the residence, he said. Seward County is a little more restrictive, and there is no distinction between commercial and residential, Yearout said. I have given two examples and two approaches, Yearout said. I am not saying you have to change it, I'm just saying there are other ways to approach it, he said. In the 80's units popped up every where, and they did not last, he said. The Kansas wind just tore them apart, Yearout said. A lot of people abandoned the facilities because the power companies would not buy the extra power, but now the technology is better and you see more people doing it, Yearout said. Were there any problems with the home unit from last month?, Mueller asked. No, just the set back was needed, Strait said. Is that necessarily a bad thing?, Mueller asked. It gives the neighbor more protection, Mueller added. I'm not pushing the language on you, Yearout said. I don't see any real harm in having neighbors notified within 1,000 feet, Mueller said. I just wanted to share with you some information on what some other counties have done, Yearout said. Mount told about a water tower accident where someone who was painting the tower had a heart attack and had to be rescued. People don't think about it until something happens, and there is a need for funds to get volunteers trained for rope rescue, but it probably is not part of the regulations, Mount said. But, accidents happen and the county needs to think about it, he added. There have been issues with grain elevators, Yearout said. Yearout referred to a handout titled, "Towers and Communication Towers." You can't talk about health issues related to such towers, he told members. The main concerns are with the appearance, Yearout said. If you are going to create vertical real estate, why not construct them so they can handle several carriers?, Yearout said. They are built according to the load, he said. There may be 32 cables coming down the shaft, he said. You cannot retrofit an existing tower because they are not structurally capable of any additional load, he said. I dictate the lights, Yearout said. The only time the FAA dictates is if the tower is by an airport, he said. I dictate because under the FAA you had to use alternating red and white lights, and they painted the lens, which was very expensive, and you get paint drift, too, he said. The new towers are galvanized and there is no paint used, he said. It is the nighttime strobes that people do not like, he said. It doesn't cost that much more for dual lights, he said. Who monitors the lights?, Mueller asked. Every tower has a company, and if it loses light they have to report it to the FAA immediately and they are monitored until it is fixed, Yearout said. County Commissioner Dan Holub arrived at this point in the meeting. You can deal with the appearance issues, Yearout said. Federal laws allow you to do this within reason, he said. Some communities have tried to push the appearance issue, and lost in court, he said. Bonding companies now sometimes will not write policies to counties or cities, so it is a real concern, and should be to the landowner, Yearout said. Most counties and cities are not going in and forcing the removal of dead towers, although the language allows that, Yearout said. Next Yearout talked about language for sign regulations. He said it should include new technology. Strait explained that KDOT (Kansas Department of Transportation) allows for signs saying restaurant, but not the specific name of the restaurant. You can name the type of business, but not the name of the business, she said. The last page of language that was handed out was recently added to deal with shipping containers, Yearout explained. You could be proactive before this comes up, as shipping containers are very handy to use but they do show up in people's backyards, etc., Yearout said. If you want you can add some language in there to

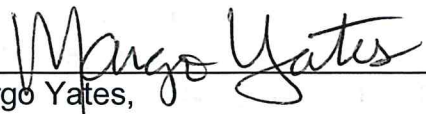
manage it, because you don't have anything that says you can't do it, and before you know it everyone has one, Yearout said. This is all something to think about, but before you do anything you will have to call a public hearing, Yearout said.

Strait said there is an issue with the Pilsen Cemetery where they want to replace a storage building. It is right on Bina's property line, she said. I said if it is on skids and could be moved around it would not need a permit, but they want it on a permanent foundation, Strait explained. You don't need a hearing, but you do need a construction plan, Yearout said. Strait could issue a permit, but there is nothing in the regs to allow it, Yearout said. Strait presented a plan, the deed, a survey, and an e mail from Bina's wife. So, if we approve the development plan, Strait can okay a permit, Mueller said. If it is an existing operation, and they are not going to do anything new, it can be handled administratively, Yearout said. Bina said this is the only plan and location that really makes sense. Strait asked who owns the adjacent property, and would he object? My first thought was, if the church would take it on their property, it would blend in a little better, Maxwell said. But they would have to put a gate in there, Strait said. Yearout said it can be done administratively. Even if it doesn't meet setbacks?, Strait asked. Was there a foundation there?, Mueller asked. No, it wasn't even anchored down, Strait said. I'll get with Strait and do it administratively, Yearout said. Minor adjustments can be handled administratively, Yearout said. Cemeteries have storage sheds, he added. Mueller thanked Yearout. Mueller asked about feed lots. The definition change uses the language of 1,000 head instead of 1,000 animal units, Yearout said. Mueller asked if there were other off agenda items. Mueller reminded members the next meeting is scheduled for July 23, 2009. Mueller reminded members there is no June meeting. Maxwell made a motion to adjourn and Bina seconded the motion. In favor: 6; Opposed: 0; Motion carried and the meeting adjourned at 10:22 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yates,
Secretary