

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

November 15, 2007

Chairman David Mueller called the meeting to order at 7:30 p.m. Mueller welcomed the public and asked everyone to please sign in.

Roll Call was answered by Mueller, Glen Unrau, Jeff Bina, Ervin Ediger, Willis Ensz, Marquette Eilerts, Kent Becker, Mary Avery and Bob Maxwell. Mueller noted that all members were present. Zoning Administrator Bobbi Strait and County Commissioner Dan Holub were also present.

Mueller asked for corrections or additions to the Record of Proceedings for the October 25, 2007, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Strait had two corrections on page two. Bina made a motion to approve the Record of Proceedings with two corrections and Ediger seconded the motion. In favor: 9; Opposed: 0; Motion carried.

Item 4: An application for Larry and Marilyn Hamler, requesting a variance from set backs for a deck on property located at Marion County Park and Lake. Mueller reminded members they are acting as the Board of Zoning Appeals for this application. Mueller explained the Board of Zoning Appeals has seven members by statute, and the seven most senior members serve on this board, so that means Bina and Becker will sit out for this application. Avery said she is in the notification area as she owns property at Marion County Park and Lake and she would be glad to step aside for this application if members wish her to do so. No one objected to Avery participating on the Board of Zoning Appeals for this application. Mueller noted this application was published in the October 24, 2007, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Mueller asked members if anyone had any other conflicts of interest with this application, or if anyone had any outside communication concerning this application, but no one did. Larry Hamler was present to speak about his application. He explained he wants to construct a 12' x 17 ½' freestanding deck on his property at Marion County Park and Lake. Hamler said there is no way he can add anything to his lot without a variance as his entire lot is only 58 feet. He said the deck will be constructed of pressure-treated wood. He said he plans to use composite deck rails and PVC pipe for a trellis for flowers. Hamler said the property to the north of his property is owned by a judge from Wichita and her partner. Hamler read a letter from his neighbors that said they have no objection to his plans. Hamler showed members plans for his property, along with a photo of the property. He also showed members an aerial photo of his property and several photos of properties in the area, from different directions. Mueller asked, and Hamler said yes, the property line has been established. Basically, what we

are asking for is within our property lines, Hamler told members. The deck will be located seven feet from the west property line and six feet from the north property line. Strait reminded members that set backs are 30 feet on the front, 20 feet at the rear, and 10 feet on the sides. Avery asked if the encroachment issue has been settled, and Strait said the improvements are grandfathered-in. Mueller asked and was told it would be a four foot, and a 13 foot variance. Mueller asked how the deck will line up with the garage and the retaining wall, and Strait showed him on a photo, explaining Hamler will build it flush with the house. Strait also show Avery on the photo where the deck will be located. Eilerts asked about the retaining wall. Maxwell asked about the property line. Maxwell also noted irregularities in the sketch. Strait explained the judge from Wichita and her partner initiated the retaining wall. Strait showed members a sketch of the retaining wall. Strait took measurements and she thinks the easement has moved. She explained the easement curves inward toward Lakeshore Drive, toward the end of the wall. Strait said it is actually better for the traffic issue as it gives a better view when you pull out there at Lakeshore Drive. Mueller explained the process and thanked Hamler for his presentation. Mueller explained that everyone will get an opportunity to speak. Mueller asked Dan Crumrine, from the lake's improvement district, for his comments. Crumrine said the zoning board is coming up with set backs and they are getting more fulltime people out there at the lake and the lots are not getting any bigger, they are getting smaller. Crumrine said when folks are given the set backs they want, some are taking more space than what they should be taking. He said some have planted gardens out in the roads. He said someone builds a retaining wall, and others think that is a good idea, so they build one, too. Mueller explained that the whole idea of set backs is to give folks room. Crumrine said someone needs to inspect improvements. There is nothing we can do about gardens in the roads, Mueller said. Paul Morse last time wanted a five foot set back, but how is he going to work on his house if the pasture behind him becomes a development?, Crumrine said. The Kruse property is looking more like it is going to become a development, Crumrine said. A variance gives some relief, and that way folks don't interfere with the safety of others, Mueller said. As far as this property, I think utilities are a concern, but as far as sewer and water there is no problem, Crumrine said. Lake resident Margerie Richardson said the retaining wall was built two years ago and it blocks her driveway. We live across from them and we have no problem with the deck, she added. Lake resident Teny Williams said they use that space all the time as it is, so what difference will it make if there is a deck there. Lake resident Terry Richardson said he agrees as far as the deck and everything goes, but he wants to know where it is going to stop because your property line is your property line. I built in '95 and I abided by the set backs, Terry Richardson said. I don't have a problem, but we need to watch and get it corrected if people are in the way, he added. Lake resident Dwight Beckham said the deck is not a typical three foot high deck, it is only a foot and a half tall, so it is not in the way of anything. Hamler explained the holes for the deck were dug, and the materials were delivered, and then we stopped because we found out we needed a variance. We stopped immediately, he added. Strait agreed they

stopped right away. Strait said they called in and asked what the problem is and she explained she didn't realize they were at the county lake when she talked to them and she said they were very cooperative and came in and applied. Terry Richardson said he was told any adjustments made from the original footprint had to adhere to code and that is what he wants to see happen. Mueller asked if there were other questions or comments. Mueller asked Strait for a staff report. Strait explained that yes, if someone changes the footprint of a house it has to be by code, and sometimes there are restrictions on lots that make it impossible to comply. One example is, if you have a very narrow house on a lot, Strait said. Strait said she received a letter from the neighbor on the side of this property, saying they are okay with the plans. Strait said there were no written comments except that one, as of November 1, 2007, when she wrote her staff report. Strait said Terry Richardson brought into her office a complaint about a 20 foot easement. I had not seen the corner pins, or received a plat map, so I didn't know where the 20 foot easement started, or where it ended, Strait said. The document does state there is a 20 foot easement, but it doesn't say where, Strait said as she read from the document. Strait reviewed the zoning regulations that must be met in order to grant a variance. Strait said she researched the complaint and the only violation that allegedly happened is they built the retaining wall without a permit. There was a \$50 fine to pay for the building permit after the fact, Strait explained. A hardship is they have to walk out now and step off two feet from their house, and decks are a common thing at a lake, Strait said. I don't know anyone that does that, Strait said about the drop off. By building the deck they are not going beyond the retaining wall that already exists, Strait said. Strait explained she wrote her staff recommendation before she located the corner pin on the property. Strait explained the initial recommendation said to table the application, but she did find the corner pin, and the wall has existed for three years. In the court case they recognized the need for the wall to be there, Strait said. Bina asked if there should have been a variance for the retaining wall. In doing research, Strait said, there was a wall there made out of logs. Hamler said they were telephone poles. They put concrete ornamental blocks in there instead, Strait said. They were concerned about the water, so they took out the ornamental concrete wall and replaced it with the current wall, Strait explained. Hamler explained it was the same footprint, so they did not apply for a variance. We actually moved it closer to the house when we redid the wall, he added. Hamler read state statute 60-501. Eilerts questioned the statute number and Strait said she got it off the Internet the other day. Strait said she does not think there are any discrepancies because the court did not make him move the wall. Hamler explained he has had a lot of experience with walls, and he gave up some property to do it. Every time it rained we had water in the house, and once we put the concrete blocks up it stopped, and the retaining wall improved it even further, he said. Hamler asked why we are talking about the retaining wall when we are here for a deck. Mueller asked if they need help establishing a property line, and Strait explained this application can go without a survey. The garage was grandfathered-in, but the retaining wall wasn't, Crumrine said. It doesn't bother me, I got two loads of millings, Crumrine said. But how many other people

do things out there without a permit and don't get called on it, he added. Do you know how much revenue the county gets from the lake?, Hamler asked. With the set backs we have to take a hard look, because we can give them a little and they take more, Crumrine said. Mueller asked, and Crumrine said he had no issue with the sewer, or water, or public road. No problem, Crumrine said. Mueller asked if there were any other comments, and there were none. Mueller closed the public hearing for this application. Mueller explained the public cannot respond at this point. Mueller asked the board to begin deliberating.

Maxwell asked, and Hamler said when you step off the deck you are going to the east. Maxwell confirmed the measurements of the deck with Hamler. Mueller asked if anyone had any concerns. Ediger said if he comes out 12 feet with a deck that leaves six feet to the property line. How close to the house itself?, Ediger asked and Hamler said about 25 feet. So, you could get a fire truck in there?, Ediger asked and Hamler said yes. Fire codes only require a six foot set back from property lines, Strait said. It is pretty close, Ediger said. Yes, but it gives you 12 feet, Strait said. I see no problem with the deck as it is, Maxwell said. It is not encroaching on any utilities, and everything is restricted out there anyway, Maxwell said. Can we go to off agenda later and talk about a couple items about the county lake?, Maxwell asked. We can do that right after the deliberation, Mueller said. I think Dan Crumrine is right in urging us to always look to the future, Avery said. As far as I heard no one really had a problem with the deck, it was the retaining wall, which really doesn't come into play with our decision on the deck, Avery said. Mueller asked if there were other comments or concerns. Mueller asked if someone was ready with a motion. Avery made a motion to approve a four foot side variance and a 13 foot rear variance for Larry and Marilyn Hamler, for application #ZP07-055, as the variance does meet all five conditions. Maxwell seconded the motion.

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

Strait explained the timeline. Mueller thanked the public for coming and commenting.

Mueller suggested members take 15 minutes to discuss issues at the lake. Crumrine said he thinks we just need to take a close, hard look at what we are doing now, as we keep getting bigger and bigger. The county has got a lot of things going, we're putting up a new water tower out there, and a new maintenance building, we don't want to get too crowded, Crumrine said. Mueller asked about the set back issue. Mueller asked if access is an issue. Mueller asked what the priority on the concerns is. Crumrine said the roads are the top priority. We can't do anything about that, Mueller said. What would happen if Larry would want half his road?, Crumrine asked. The road behind our house is not a road, Hamler said. It is an easement, Mueller said. Mueller asked Maxwell for his comments. I hear Dan (Crumrine) looking to the planning and zoning board, and the director, to be an enforcer, Maxwell said. We are not prepared to be an enforcer now, but there could be something in the future where we could have an enforcer, Maxwell said. For now, you people at the county lake have a

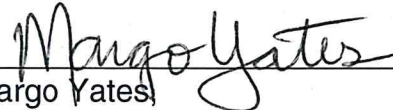
responsibility to let Bobbi Strait know when there is a problem, Maxwell said. She is busy, and we don't go out looking for problems in your area, Maxwell said. The other thing they can do is have a landowner's association and enforce their own area, Strait said. Their representative can bring us their thoughts and concerns, she said. As for the roads, that would be their responsibility, and they would have a community that is in charge of them, she said. In cities they have to have landowner associations in place before they will allow you to plat the land, she said. They could require everyone to survey their property, she said. Until there is a reason, some people never come before the board, as they never have a need to get a variance, or something, Strait said. Building a deck is not a problem if it is not hurting anyone, but as far as going out on a utility area, or something, that is another thing, Maxwell said. If we start maintaining the roads, we have a state statute we have to follow, and we would be taking out houses and things they don't want there, or we will be establishing property lines all over out there, Holub said. The county can enter into an inter-local agreement with a homeowner's association, and we could improve on the roads, Holub said. We could do it on a regular basis, but we can't do it now, Holub said. Snow removal is another issue, as some equipment is too big to use out there, Holub said. A homeowner's association would be a big help, he added. Hamler said Chat and Dine is the only group we have. There have been lots of positive things from the group, and it could grow, Hamler said. Crumrine said they need someone who has time to do it, and to report to the county commission on what needs to be done. Holub said they need to establish a group with by laws, and everything. There is a huge desire to improve not only our own properties, but the lake as a whole, Hamler said. Maxwell asked Holub if someone could do an assessment. They could do it by assessment, but it would have to be private contractors, Holub said. Hamler showed photos of problems at the lake. Mueller thanked the public for commenting. We need one, or two, fulltime people, and the rest could be part-timers, Crumrine said. Hamler asked who is on the lake board. No one who lives at the lake is on the board, Hamler said. We are aware of that, Holub said. I'm on that board, Becker said. It never had anything to do with residences, Becker said. We dealt with fishing and camping, only, Becker said. It needs to be explained, Becker said. There were two people from each district of the county, because it is a county lake, Becker said. Sometimes we meet one time a year, Becker said. The only thing I ever voted on was how many catfish to buy, Becker said. Mueller asked members if everyone turned in their mileage sheet for the year. Strait said she needs the mileage sheets by December 15, 2007. Mueller said December 8, 2007, is the county Christmas party. Maxwell encouraged members to attend. Avery said she has a conflict. Mueller asked if anyone is going to an upcoming workshop. Strait said no one else is going, but she will go and will bring back complete packets for the new board members. Mueller reminded members that on December 10, 2007, at 11:20 a.m., Strait will give a building code presentation to the Marion County Commission, during their regular meeting. Strait reminded members there will be two other officials attending the county commission meeting with her, to discuss building codes. Mueller reminded members there is no December meeting, and the next meeting is January 24,

2008. Ensz, Avery and Mueller's terms are up. Strait asked Avery her plans and she said she may be gone a month, or two, as she has retirement issues that her commissioner should be aware of. Strait asked Ensz, and he said he will retire from the board. Avery said she appreciates meeting and working with members from around the county, as they have all been of integrity and a pleasure to serve with. Maxwell said if we can get contractor's licensed, and building codes, and everything, that will help areas like the county lake, but there will still be some self-builders out there. Guys out there who want to do it themselves, Maxwell said. It would put some responsibility on contractors, and I hope that helps, Avery said. You have to bring in the plans, Strait said. I think we have tried to take some steps, and I think we are starting to put some things in place, Avery said. You will know they have insurance, and are properly licensed, Strait said. We have some of the problems at Eastshore, but we have more room to work with, Maxwell said. There's no structure, no where to go, Holub said. Ensz made a motion to adjourn and Maxwell seconded the motion. In favor: 9; Opposed: 0; Motion carried and the meeting adjourned at 9:02 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yates,
Secretary