

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

October 25, 2012

Chairman David Mueller called the meeting to order at 7:33 p.m., with a quorum present.

Roll Call was answered by Mueller, Marquetta Eilerts, Dan Mount, Brad Vannocker, Jim Schmidt, and Lloyd Funk. Mary Avery and Jeff Bina were absent. Nick Kraus arrived soon. Zoning Administrator Tonya Richards and Consultant David Yearout were both present.

Mueller noted the need to add an item to the agenda concerning the tabled application for the church. Mueller asked to add this item right before item six.

Mueller asked for corrections, or additions, to the Record of Proceedings for the September 27, 2012, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Mount moved to accept the record of proceedings as written and Vannocker seconded. In favor: 6; Opposed: 0; Motion carried.

Kraus arrived at this point.

Item 4: An application for Gary Dunnegan for property located at 71 Lakeshore Drive, Marion County Park and Lake, requesting a Final Plat approval to establish two lots in the "LL" Lake Lot District. Mueller noted this is application #PC-12-04. Mueller reminded members they are acting at the planning commission to make a recommendation to the county commission. Mueller noted this application was published in the September 5, 2012, issues of the *Marion County Record*, *Hillsboro Star Journal*, and *Peabody Gazette Bulletin*. The applicant was not present to speak about this application. Jerry and Marjorie Richardson of Marion were present to speak for the applicant. Yearout asked to clarify that members are to make a recommendation to the county commission and also approve the Plat. Yearout said members may approve and send this on to the county commission if it conforms with the regulations, or subject to approval with a rule exception. Yearout said the county commission action authorizes the Plat to be recorded. Mueller asked Richards if the Plat meets the regulation requirements. Richards said he bought the entire lot and wished to split it into two lots and add another residence. Richards said she has contacted the improvement district at the county lake and the plan meets all set back requirements. Yes, he has enough room, Richards added. Mueller asked about the existing home on lot two, saying it is a big lot. Richards explained that lot two currently has a residence on it, but the well is not on lot two, and there is an easement to take care of that. Yearout explained the easement for the well, saying the well is considered held by the owner of lot one. Yearout said we need to recognize the well on lot one and that any repairs and maintenance for the well will be

the responsibility of the owner of lot two. I don't know if the well will support the other lot, Yearout said. Richards said the other lot does not wish to use the well as they have requested to be hooked up to city water. Yearout said there needs to be clarity concerning the well on the Plat. If the house on lot two gets hooked up to city services, what happens to the well?, Yearout asked. Will they use it to irrigate the yard, or what?, he asked. If this information is part of the record tied to the Plat, all in the future will know the agreement, Yearout said. Normally at the county lake lots have original Plats, but this lot was never Platted, Richards said. Also, with subdivision regulations it needs to be platted, she added. Yearout said you cannot split a lot that small, it had to be platted. Mueller asked if there were other questions. Kraus asked about the shape of the Plat. I presumed it was drawn around the shed and trees, Yearout said. The original lot was not square, either, Yearout said. I suggested they go right through the middle, Richards said. They did not do anything out of the ordinary, Yearout said. There will be a separate driveway, so there will be no sharing of a driveway, or a driveway easement, Richards said. Vannocker asked about access to Lakeshore Drive. They will have a new driveway, Richards explained. The county commission has to order it, she added. You should put a condition on this that the county commission approves the driveway, Yearout said. This issue only needs to be worked out with the county commission, Yearout added. Mueller asked if there were other questions. Eilerts asked about water runoff. Mueller asked Richards if runoff is an issue. This is in a location where you come up on a low water bridge, Richards said. The house is up high, but the bulk of the lot is lower, Richards said. They are required to be out of the flood plain, she added. They would need a new culvert from road and bridge, she added. Yearout asked if there are flood issues. Not that I'm aware of, Richards said. Mueller asked Richards to double check the flood zone and make sure there are no issues for this application. Kraus asked about road access behind the property. No access behind, Richards said, it is pasture. That will be an issue if they don't grant the driveway, she added. Kraus asked if there is a lot beside this property. To the west there is a residence, Richards said. She showed members on an aerial photograph. Kraus asked if the neighbors are aware of these plans and if they are okay with it. The neighbors have a fence up that is on Dunnegan's property, Richards said. Dunnegan is giving them a permanent easement for the fence, she said. It is not our issue, but they worked it out, she added. With more driveway access, there are more drainage issues, Kraus said. We have covered set back issues, utilities, driveway, flood plain, water, sewer, what other issues are there?, Mueller asked. Mueller asked the Richardson's if they wished to comment. Jerry Richardson said there is a well hook up on lot one, but if the well goes bad, water is already there to hook up to. Mueller asked if anyone else from the public wished to speak, but no one did. Members questioned an aerial photo that was taken in 2010, saying what looks like a fence in the photo is no longer there. Mueller asked if there were other issues. There were no other issues so Mueller asked Richards to give her staff report for this application. Richards gave her staff report and said she needs to review the flood zone and any elevation issues. Yearout said the survey needs to have clarifying language for the well, and a recommendation for approval should be subject to the county commission approving a new driveway, and there needs to be clarification that there is no flood plain impact on either lot, and if so, there will need to be an easement or building line, so all know everything that is factored in to this Plat. Mueller

asked members if anyone had a question concerning the staff recommendation. Mueller asked Jerry Richardson if he thinks Dunnegan would be good to go with these conditions and if he is okay with all the issues. Richardson said it should be fine. He wants to get going, Richardson said about Dunnegan wanting to start building. Yearout explained that such issues are brought up to protect Dunnegan's property. Mueller closed the public hearing for this application and asked members to begin deliberations.

Mueller said members have looked at the Plat, and have heard the staff recommendation, and the applicant's representatives said the applicant should be agreeable with the conditions. It is a pretty unpopulated part of the lake, anyway, Kraus said. It is not house upon house, he added. Kraus moved to recommend approving the Plat as presented for the creation of a new lot for residential purposes in the "LL" Lake Lot district, located at 71 Lakeshore Drive, Marion, Kansas, for application #PC-12-04, with the following conditions: 1) the survey language be clarified concerning the use of the well; 2) approval is subject to the county commission approving a new driveway; 3) must clarify there is no flood zone impact on either lot, and if so include an easement or building line so all are aware; and 4) recommend the new lot be hooked to public water and sewer. Yearout said if it is determined they need to address the flood zone they do not have to be reapproved, Mueller may just sign off on the Plat. The driveway is the same way, he added. The new language is the surveyor's responsibility, but it is good to put that information on the face of the Plat so all know the agreement, Yearout said. In favor: 7; Opposed: 0; Motion carried.

Richards noted this application will go to the county commission on October 31, 2012.

Item 5: An application for Wynn M. Goering and Ardith Schroeder Goering, for property located at 994 Meridian, Newton, Kansas, requesting a Conditional Use Permit (CUP) to allow the re-establishment of a retail Christmas Tree Farm currently operating as Pine Creek Farm in an "AG" Agriculture District. Mueller noted this is application #PC-12-05. Mueller reminded members they are acting as the planning commission to make a recommendation to the county commission. This application was published in the October 3, 2012, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Mueller asked if any members had a conflict of interest with this application or if anyone had any outside communication concerning this application. Schmidt said he lives within one mile of this property. You are outside the 1,000 feet, right?, Richards asked, and Schmidt said yes. Wynn Goering was present to speak about the application and began by thanking Richards for explaining everything very well. Goering explained his in laws, the Schroeder's, first started planting pine trees as part of a project of the Kansas State Extension Service that was to help farmers use land that is not otherwise productive. We are now second generation members and there are about 30 farms around the state, Goering explained. Goering said Schroeder's got a CUP in 2004 for 40 acres in the southwest corner of the property. Goering and his wife purchased 67.3 acres from her parents in 2007 and have operated the business since that time, and they wish to continue to do so. We do our best to keep the business going as my day job is in Albuquerque, N.M., Goering told members. He explained they need the CUP for the 67.3 acres they own, which includes the homestead, where they do the actual retail business. Mueller thanked Goering and asked Richards to give

members some background. Richards said there were two letters received from the public. One letter was from Dale and Rose Horst, and another letter was from Howard and Anna Beth Birkey, both in favor of the application. Richards said this is a permanent use so she does not think they need a CUP for growing trees on the property, but they do if they conduct other business. They sell some ornaments, decor and some seasonal food items, and I think this is where they need the CUP and there are no problems as far as I know, Richards said. Mueller asked if there were any other questions, and there were none. Kraus asked what the CUP covers, and Yearout said the other activities and retail operation beyond the trees. He gave the example of people going to pumpkin patches and having more activities than just picking a pumpkin. It is not uncommon for this type of business to grow into other activities, Yearout said. So, the CUP covers the balance of the operation, he said. If you just cut down your live tree, they would not need it, he added. Goering said they ship and grow some varieties of trees not available in Kansas. Mueller asked if there were other questions. Funk asked if anyone lives on the farmstead. We are there about half the time, Goering said. From April through October about half the time, and then all the time in November and December, Goering explained. Mueller asked if there were more questions. Vannocker asked if the parking situation is alright. He said he was thinking about Walter's Pumpkin Patch because last weekend they were so busy people parked on both sides of the highway by that business. This will be a very different operation, Goering said. Mueller asked Richards if she is okay with the parking situation, and Richards said yes. Eilerts asked if there are other tree farms in the area. The closest ones have Wichita addresses, Goering said. We get customers from Emporia, Goering said. There used to be some by Hutchinson, but family members don't keep them going, so there is less competition every year, Goering said. He said there are a half dozen around Wichita. Richards asked Goering if they have ever had people park on the county road by their business. Maybe one time in the five or six years I've been doing this, Goering said. And, I remember thinking, why are they parking there?, he added. They saw other people parking there, he added. The driveway is about 100 yards long and people just park along it, he explained. Most times people drive to the lot and load their tree, and are not there too long, Schmidt said. Mueller asked if there were other issues or questions. We've heard the staff report, Mueller said. Mueller closed the public hearing and asked members to begin deliberations.

It seems pretty cut and dried, Mueller said. This is a benefit to the community and neighborhood, Mueller said. Is there other discussion?, he asked. Vannocker moved to recommend approving a Conditional Use Permit (CUP) for establishment of Pine Creek Farm to operate as a retail business as requested, subject to the requirement that all State of Kansas operational permits be obtained and maintained, that signage be limited to one four-foot by eight-foot non-illuminated sign, and that parking be provided on-site in accordance with the requirements of the Marion County Zoning Regulations. Funk seconded. In favor: 7; Opposed: 0; Motion carried.

Richards noted this application will go to the county commission on November 19, 2012.

Item 6: An update on the Branson application from last month's meeting requesting a Conditional Use Permit for a church in their home. Richards gave members a copy of

the letter she received from Branson's withdrawing their application "due to strong opposition" from their neighbors. Richards said they are working with their accountant to remove the church's non-profit status with the state. When they finish they will provide documentation to Richards. If not, they will be in violation, she said. Mueller asked how members should proceed on a withdrawn application, noting a letter has been received. No motion is needed, Yearout said. How long do we wait?, Richards asked. If they decide not to withdraw they would start with a new application, Yearout said. His address is the church's address, so he is out of compliance, Schmidt said. We can give them adequate time, like a couple months, Richards said. Bob Maxwell will be on top of it, Richards said. Yearout said Richards can send a letter to the Branson's saying the planning commission accepted their withdrawal, and explain they must provide documentation. So, they are non-compliant at this time until they get it resolved, Kraus said. What if someone complains?, Kraus asked. Tonya can say we have a written document of withdrawal and they are in the process of getting it resolved, Yearout said. I think the key is, it is tax exempt, Richards said.

Schmidt asked about a shed that is out of compliance. Yearout said they did not get a permit and they are in the flood zone. It is a shed, Richards said. I think he doesn't think it is a big deal, she added. He plans to build a house, too, Schmidt said. Yes, he stated that, Richards said. It is on a dirt road, Schmidt said. He doesn't have a wastewater system, Richards said.

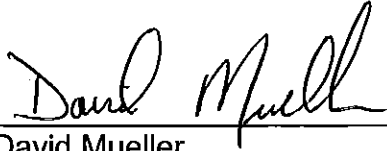
Item 7: Amendment to the Regulations: Returned from County Commissioners. The county commission sent it back primarily because they think people should be able to create new situations with a 50-foot easement to a road, Yearout said. The county commission sent it back to you to consider and I recommend sending it back and saying no, Yearout said. It is okay to accommodate an existing homestead, he added. That doesn't take away from someone who owns a whole 80, Vannocker said. We are interested in trying to accommodate situations with existing homesteads, Yearout said. Unless you pay cash for a house, if you get a mortgage, I don't know of a lender that wants 40 acres with a house, Yearout said. Easements can be challenging in court, Richards said. Even if, say you own 40 and you just want three carved off for your house, it is the same thing, Yearout said. If you own 40 the bank only mortgages the land the house is on, Kraus said. My recommendation is to say no, Yearout said. This fly's in the face of everything zoning regulations try to create, Yearout said. Mueller asked if there was a motion. Mount moved to stand by the original proposal and Schmidt seconded. Kraus asked, and Mueller said it could still be done, just a little pricier. It could be done, just not as a lot split, Yearout said. In favor: 7; Opposed: 0; Motion carried.

Item 8: Comprehensive Plan Review. Richards asked to table this item. The next meeting is scheduled for December 6, 2012.

Off Agenda Items: Richards reported at the December 6 meeting there will be an application from the City of Marion requesting a CUP for a welcome sign just off U.S. 56 at Eisenhower Drive. Yearout said it is a 180 square foot sign. Mueller asked if there

were other off agenda items. Richards reported on member terms. Eilerts term is up and she said she will probably not ask to renew. Kraus' term is up and he said he will probably ask to renew. Funk's term is up and he said no, he will not ask to renew. Mount moved to adjourn and Schmidt seconded. In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 9 p.m.

MARION COUNTY PLANNING COMMISSON/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yates,
Secretary

MARCH
2013 PC
Binder

A RESOLUTION APPROVING AN AMENDED CONDITIONAL USE FOR EXPANSION OF THE QUARRY FOR HARSHMAN CONSTRUCTION LLC, ON PROPERTY LOCATED ON N/2 N/2 OF SW/4 SECTION 28, TOWNSHIP 19S, RANGE 4E OWNED BY K&S LAND LLC.

WHEREAS, a public notice of above said proposed conditional use was properly given including publication in the official County newspaper of a public hearing on February 6, 2013; and

WHEREAS, on the 28th day of March, 2013, the Marion County Planning Commission held a public hearing to consider the above said proposed amended conditional use; and

WHEREAS, the Marion County Planning Commission has recommended approval of the amended conditional use permit; and

WHEREAS, the Marion County Planning Commission has determined that the conditions include:
1. Quarry operator continues to comply with all Federal, State, and local regulations; 2. The existing blasting program days and times still apply; 3. Dust is to be controlled by the operator in compliance with KDHE and EPA Standards; 4. The quarry operator shall provide a Certificate of Comprehensive Liability Insurance in the amount of \$2,000,000 to Marion County; 5. Restoration is to be performed in accordance with applicable Federal and State regulations, and; 6. If quarry intends to mine on the West 165' of the SW/4 the City of Marion will need address it.

NOW THEREFORE BE IT RESOLVED that an amended conditional use is hereby approved for expansion of the rock quarry located:

N/2 N/2 OF SW/4 S28 , T19 , R04 EXC THE W 165' LESS ROW

BE IT FURTHER RESOLVED, that it is hereby directed that the Marion County Zoning District Maps be amended to reflect above said conditional use.

This Resolution is made by the Board of County Commissioners of Marion County, Kansas on this 8th day of April, 2013.


Randy Dillke, Chairman, District 3

Attest:


Roger K. Fleming, Commissioner, District 1


Tina Spencer, County Clerk


Dan Holub, Commissioner, District 2