

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

October 27, 2011

Members met at the Marion County Lake Hall for a work session, prior to the regular meeting. The work session began at 6:17 p.m.

Consultant David Yearout brought one copy of the amendments to the regulations. This revised copy also reflected the changes to the numbering of the articles. Yearout said he removed the language for mobile home parks. He explained it will still take a CUP (Conditional Use Permit) for property to be zoned to accommodate mobile home parks, but he has been doing this with a lot of counties lately and it works a lot better. Yearout said he also has the changes for the flood zone rules, but he needs to add the dates, which Tonya has. Yearout said he drafted the document such that it is not going to change Article 31, which are the wind farm regulations. He said it will still be a standalone article. Mueller suggested addressing this article first, since Rex Savage is present at the meeting. Yearout said he will make hard copies and get them out for everyone to look at. Maxwell said he thinks this has been drug out so long he would like to see a hard copy. Mueller asked Yearout to get copies for all so members have a full month to review it. Mueller noted that changes can still be made at the public hearing. Yearout agreed, saying yes, the document is still live until the county commission approves it. Richards questioned the language for the number of homes allowed on 40 acres, and Yearout explained. Mueller asked to jump to Article 31. Under 31-101, Yearout explained he is making environmental, social, and economical affects a supplemental document. Richards said it was nice to add that, so we can say we did. The public is going to question those issues, Mueller agreed. Savage also agreed, saying he thinks it needs to be addressed in some fashion. Yearout said he thinks it needs to be supplemental information. Mueller asked members if this is agreeable, and members approved. There was no change in 31-102. Yearout explained that under 31-103, it will refer back to access uses. Richards agreed it should be in a separate section. Richards noted members changed the height to 199 feet. Setbacks have got to meet the height of the structure, Yearout said. Yearout said under 31-104 he removed item four, completely. There was no change for 31-105. Yearout explained under 31-106 he refers to the PPA (Power Purchase Agreement) so it was removed. Yearout said 31-107 becomes 31-106. Within the box some of the language was removed. Members were referred to the July, 2011, meeting minutes. Yearout told members Junction City requires all taxes to be paid in order to apply for zoning changes or any permits. Mueller said he likes the idea of having a checklist for the public hearing of issues you know the public is going to ask. Wind farms are unique, Mueller said. I don't want to go back to a one page article for wind farms, Mueller said. Kraus asked if there is anything in there on leasing, and Yearout said yes, it is covered. So one guy can't produce and tie up land for another guy, but that is not for us to look at, I guess, Kraus said. You have to own property or have a contract tied up in order to make application, Yearout said. After

the public hearing we did have several positive comments saying they appreciated us going through it one by one, Eilerts said. It is good to have a checklist, Mueller agreed. Members decided to keep the text box without bird migration/strikes and wildlife habitat, and the company's experience, reputation and financial ability. Under 31-108 Yearout said he removed #5, rewrote #6, as there is some duplication. Savage said the main thing is to require the company to enter into a road agreement prior to anything going on. You should identify what needs to be submitted, first, Yearout said. Richards said she likes for the conditions for approval to be separate. Savage said the main requirements are road agreement before getting a building permit, and address right of ways, decommission, and payment in lieu of taxes. We could add language for light requirements per the FAA (Federal Aviation Administration), Yearout said. Under 31-109 there are no changes until it refers to public roads, and you need documentation prior to getting a building permit. No changes under 31-110. Yearout said he has deleted 31-111 and will show it elsewhere. Yearout said he will work up the final changes. Mueller asked Yearout how soon he will have a final copy, and Yearout said tomorrow. Mueller asked Yearout to get a copy of Section 31 to everyone, including Savage, as soon as possible. Yearout said he can send it altogether. Mueller said let's do it separately, as soon as possible, to have a chance to review. The work session ended at this point and the regular meeting began.

Mueller called the regular meeting to order at 7:30 p.m., with a quorum present. Roll Call was answered by Mueller, Dan Mount, Marquetta Eilerts, Jim Schmidt, Bob Maxwell, Glen Unrau, Nick Kraus, and Brad Vannocker. Mary Avery was absent. Zoning Administrator Tonya Richards and Consultant David Yearout were both present.

Mueller asked for corrections, or additions, to the Record of Proceedings for the September 22, 2011, meeting of the Marion County Planning Commission/ Board of Zoning Appeals. Eilerts had a change on page six where Randy Robinson was talking about Prairie Chickens. The sentence read, "There are very few Prairie Chickens in Marion County until you get to the west side." Eilerts asked that "of Chase County" be added after "west side" for clarification. Mount moved to approve the Record of Proceedings with one addition, and Kraus seconded. In favor: 8; Opposed: 0; Motion carried.

Since the first applicant on the agenda was not present at the meeting yet, members decided to move on to the second application.

Item 3: An application for Ronald Waggy, requesting a Special Exception to replace a non conforming singlewide mobile home with a new singlewide manufactured home on the same lot in a different location at 6 Valley Road, Marion County Park and Lake, in the LL (Lake Lot) district. Mueller reminded members they are acting as the Board of Zoning Appeals for this application. This is application #BZA 11-02. This application was published in the October 5, 2011, issues of the *Marion County Record*, *Hillsboro Star Journal*, and *Peabody Gazette Bulletin*. Mueller asked members if anyone had a conflict of interest with this application, or if anyone had any outside communication concerning this application, and no one did. Ronald Waggy was present to speak about his

application. Waggy referred to a large aerial photo of his property that Richards put up on the wall for members to view. Waggy said he would like permission to remove an old mobile home and replace it with a newer mobile home. He said the new home will have a wrap around deck, and will help upgrade the community. Waggy said this will increase the value of his land, and the tax valuation. He said he would like to find a local contractor to demo the old home, and haul it off. Waggy showed members some photos of what the new home would look like, and that it really does not look like a mobile home. Waggy said the new home will have concrete siding, which has more curb appeal. Mueller asked Richards about the issues concerning this application. Richards said the current home is a singlewide, which is nonconforming. Richards said there is no need for a doublewide, as this is a vacation home, only. Richards said she recommends amending the zoning regulations to allow this to happen. She said the new location is better. Richards recommended amending Article 25-104. She noted that she realizes this will open up the door for any other applications anywhere in the county. Yearout said it can be noted that this application is specifically identified as a special exception. Yearout questioned if the new home is really a manufactured home, from what he saw in the photos. This does not look like a manufactured home, Yearout said. The quality is the same as a site built structure, which he has permission to do, Yearout said. Waggy said it is built by a company called, "Skyline." So, it is a manufactured home, Yearout said. Mount asked about issues with changing the location from where the home is currently situated. What is grandfathered is the old structure, Yearout said. You can take one out and build another on the same site, Yearout said. If you want to upgrade, or make things better, everyone is better off and it increases the value in the process, Yearout said. The exception is made to allow folks to upgrade, Yearout said. So, moving of the location is irrelevant, Mount said. Yes, Yearout replied. Vannocker asked about the size of the home. The living area will be 16x48, Waggy said. Kraus asked about the timeline for removing the old home. Waggy said there is a 10 to 12 week delivery time to build the home. They install the home around the weather, Waggy said. Waggy said he figures the new home could be installed in the spring and the old home could be removed in the summer. This would allow him to move items from the old home over to the new home, he explained. Yearout suggested ticking the clock on when members want the other home removed. Yearout said the permit is good for one year. Eilerts asked if six months would work. Mueller said he thought that amount of time is a little long. He could get an extension if he needed to, Mueller said. I don't foresee needing any extension, but I also know how contractors can be, Waggy said. I don't want to mess around, Waggy said. I would think they could do it in 90 days, but I just don't know about the weather, he said. If you need an extension, you can get one, Mueller told Waggy. Waggy asked if there is a demolition fee, and Richards said there is an asbestos inspection. Mueller asked if there were other questions. Maxwell asked about road access, and Waggy said Valley Road. Waggy showed Maxwell where the road is located on the photo of the property. Mueller asked if there were any other questions. Mueller asked if anyone from the public wished to comment about this application. Amber Hancock, 24 Rock Road, said we have access from our driveway. Ruth Herbel, Marion, asked about the timeline. Waggy explained he will work with local electricians and plumbers, but the set date and the occupy date, are two different dates. Mueller asked Waggy how long he predicts things will take, and Waggy said six months

after delivery. Herbel said Waggy could still get an extension after 90 days. You have to look at the whole county, Herbel told members. Maxwell said 90 days sounds reasonable from delivery. Vannocker said he thinks 90 days is okay. The water and sewer could go in prior to delivery, but I don't know how you are going to handle things, Vannocker told Waggy. Kraus asked about 90 days to occupy, with a maximum of six months. You could start a six month clock from the time it is delivered, Yearout said. Because at that point you have two houses on the lot, Mueller said. Kraus asked who would police it. It is easiest if they get the permit when it comes in, Yearout said. I'll know at least within a week, or two, Richards said. I'm at the county lake a lot, she added. Mueller asked members to get back to the question about the process and the special exception. The regs do not allow any singlewides in the county, Vannocker said. Vannocker asked if you just add special language that allows older ones to be replaced with newer ones. They still have to come in for approval, Vannocker said. There are others in the county, Kraus said. Richards said we have approved other special cases with a timeline to remove the old structure. Yearout talked about the difference between grandfathering and property zoning with conditions. This is a grandfathered existing site and how do you allow for an upgrade, Yearout said. You are not removing the grandfathered site, the only difference is this is a newer model, Yearout said. All mobile homes in the county are valued at a cost value from depreciation, according to age of the unit, Hancock said. This will help the county, Hancock added. Hancock works in the county appraiser's office. Hancock showed Waggy on his paperwork how much the county is currently taxing his property. Mueller asked Richards for her staff recommendation. Mueller asked if there were other questions from the public, but there were none. Mueller closed the public hearing for this application, and asked members to begin deliberating.

Vannocker said he thinks this is a good idea and he is glad Waggy wants to improve the property, but he is concerned about how to do it and if this will open a can of worms countywide. The way the regs are today, we should not do it, Vannocker said. Richards agreed that she should recommend denial unless members are going to amend the regs. By doing this the only thing we are allowing people to do is upgrade, Mount said. This would not apply to the mobile home park, Yearout said. They don't own the land, the county owns it, Yearout said. This is on private land, he added. There are still a lot out there, Mueller said. I'm very comfortable using this language, Yearout said. Creating new home sites is another issue, he added. I think this is a good compromise, where at least they can upgrade, Kraus said. We have had some where people just do it, Yearout said. This gives you the ability so that standards are met, Yearout said. The intent is to give you a tool to manage change, he said. I think it makes sense with the reality of the world we live in today, he added. If we can get someone to upgrade, it benefits the county more, Richards said. We need to give people options, she added. The big fear back in 1992 was that Butler County had a lot of singlewides out in the county, Kraus said. This unit will probably fit on the lots, which is an issue, as the newer units won't fit on the lots, Yearout said. This will show there are options, and will send a good message that the county is working toward improving things, Yearout said. Mueller asked if there were any other questions. Mueller asked if there were no other questions, does anyone want to entertain a motion. Mount moved to approve application BZA 11-

02 for property located at 6 Valley Road, for a Special Exception to allow the replacement of an existing singlewide mobile home with a new, singlewide manufactured home, subject to the following conditions: 1) the singlewide manufactured home must conform to the requirements of Marion County regarding age and placement; 2) the wastewater system must be confirmed as being in conformance with the existing Sanitation Code, unless the property is served by the public sewer system; 3) the removal of the existing singlewide mobile home is to be six months from delivery, or 90 days after occupying the new home, whichever comes first. Kraus seconded. In favor: 7; Opposed: 1; Motion carried. Mueller reminded Waggy that this is a final action.

Item 2: An application for Virginia Skinner, requesting a Conditional Use Permit (CUP) for a veterinary clinic located at 1625 80th, Peabody, in the "A" Agriculture zone district, in Catlin Township of Marion County, Kansas. This is application #PC 11-08. Mueller reminded members they are acting as the planning commission to make a recommendation to the county commission for this application. This application was published in the October 5, 2011, issues of the *Marion County Record*, *Hillsboro Star Journal*, and *Peabody Gazette Bulletin*. Mueller asked members if anyone had a conflict of interest with this application, or if anyone had any outside communication concerning this application, and no one did. Virginia Skinner was present to speak about her application. She told members the information in the packets they received concerning this application has changed a little due to miscalculations. She said the lagoon is what changed the amount of acreage involved. She said the 330x165 figure is correct in the drawing. Skinner gave members new copies and said the top sheet is close to where they have it now. She said she assumed she will need handicap parking, but she was told no, that is not required. She explained she is planning a circle driveway so she will need a second culvert installed for an exit. This is pretty much how the building will be set, she told members. She said it will be a Morton Building. Skinner said when she asked Richards about the location for the lagoon, Richards said the spot Skinner had planned was too shady and that is not good for a lagoon. Skinner said the survey company is working on the changes. Skinner explained to members that the other two diagrams show what changes were made and how the lagoon changed the acreage involved. Skinner showed where the entrance to the clinic is located on the drawing. She said she is trying to have a lot of windows on the south to get heat from the sun. She said the building will be about 40x36. She showed members a copy of a rough sketch. She said she plans to rough-in a kitchen, but not use it now. It just may be for future use if I decide to live out there, she said. Skinner pointed out the safe room in the middle of the sketch. Mount questioned that a kitchen and living quarters is not part of what members are asked to approve for this application. Even if we just rough-in the plumbing?, Skinner asked. Yearout said our county does not have building codes so members have no authority to address different uses. It would be different if she build a house and then put a clinic in, Kraus said. By having it included in the building, there is no harm, Yearout said. I'm just going by what the regs state, Mount said. You need to talk about things that need to be addressed within the structure itself, Yearout said. It doesn't harm the CUP, Yearout said. The zoning doesn't change, Yearout added. Mount asked about dog runs in the drawing, saying clinics and kennels are two different

things. Yearout said he considers this normal for a vet clinic. You just don't want to see 150 dogs in a kennel, so does there need to be a limit?, Richards asked. The CUP is not open-ended, Yearout said. She is required to have a site plan approved as identified and described, Yearout said. If she adds something, she is required to request an amendment to the CUP, Yearout said. Mount asked if this property has rural water, and Skinner said yes. Mount asked about rural water backflow issues. They have visited the site and they did not mention it, Skinner said. Mount asked about traps to keep drugs out of the lagoon. There are basic concerns about flushing pharmaceuticals, Richards said. Everyone has backflow protection, Kraus said. Yearout asked if everything is okay for rural water. Yes, they are ready to install it, Skinner said. Mount asked if in the surgical and treatment area if there is a way to address fluids going to the lagoon, because lagoons can run over. The sanitation code only addresses residences, Yearout said, so you would need to get KDHE (Kansas Department of Health and Environment) involved. They will just put it on me, Richards said. It can happen, but I would think it would be minimal, Kraus said. It is a small animal operation so not many drugs would go out the door, Kraus said. Yearout asked Richards to ask KDHE for guidelines. Mueller asked if there were other questions. Mount asked how many dogs and cats would be there at one time. I only keep them overnight if I declaw the cats, Skinner said. Mostly it would be on some holidays where I might board six dogs and three or four cats, Skinner said. Vannocker asked if Skinner would ever board an exotic animal overnight, and she said sometimes she boards birds, and she owns a small snake. Funk asked where this property is located from Peabody. Skinner said it is the mile corner north of the cemetery and a quarter mile east. Mueller asked if there were other questions. Kraus asked if members need to know the number of dog runs. Yearout said the plans indicate runs on the east side of the property and it will be limited to the space there. Yearout said it is less of a condition as it is a need to show it on the site plan and acknowledge it in the motion. If you are comfortable saying no more than six, which would give you the latitude to expand, Yearout said. Richards asked about fencing the area, but Skinner does not let the animals out of the runs so there is no issue. Mueller asked if anyone from the public wished to speak about this application, but no one did. Mueller asked Richards to give her staff report. Mueller closed the public hearing for this application.

Eilerts made a motion to recommend approving application #PC 11-08 for a Conditional Use Permit (CUP) for a veterinary clinic in the Agriculture District for Dr. Virginia Skinner, as presented in the development plan, subject to the following conditions: 1) the CUP is only applicable to the final survey and said survey must be filed with the county as provided by law; 2) a separate wastewater permit shall be obtained for the operation, with said permit to be approved by KDHE and the system shall be sized and designed to accommodate the proposed uses. No building permit shall be issued until the wastewater permit has been approved; 3) the site plan must be clarified regarding the placement of all signage, and specific identification of the off-street parking noted thereon, including designation of dog runs and any additional space needed for future uses; and 4) all usage shall be consistent with the site plan approved with this CUP. Vannocker seconded. In favor: 8; Opposed: 0; Motion carried. Richards explained the timeline for this application.

Mueller asked members to return to the Articles to be updated. Mueller asked Yearout to get all the regs to members as soon as possible with all changes involved. Mueller reminded members the next meeting is scheduled for December 1, 2011. Richards asked if members wish to schedule the public hearing for the next meeting, reminding them they may make changes at the public hearing and then send them on to the county commission, or wait. Kraus asked about waiting until January. Even if I get the document to you and you want more changes, you can still make changes or you can table it, Yearout said. Mueller and Richards want to get it done this year. We do need to review the comprehensive plan next year, Richards said. Kraus suggested, and Mueller agreed, that a one page summary of the changes would be helpful. Richards said there are three board members with terms up. They are Bob Maxwell, Dan Mount, and Jim Schmidt. Eilerts asked about addressing proof that taxes are paid in order for someone to apply for a zoning change or a permit. They would have to bring in a signed paper showing proof that taxes are paid, Yearout said. Mueller said Richards could make it a condition on the application. It needs to be formally acted upon by the governmental body, Yearout said. Do we put it in the regs or make a separate resolution?, Yearout asked. Can we make a recommendation to the county commission?, Kraus asked, and Yearout said yes. Eilerts moved to recommend to the county commission a requirement for taxes to be paid before someone can apply for a zoning change or a permit. Mount seconded. Eilerts asked if people will be required to pay all their taxes since the county allows half of the taxes to be paid. Yearout said he thinks if the taxes are current it would be okay. Richards asked what if they were delinquent and taken to court, and the time has already passed. The past is immaterial, they must be current now, Yearout said. In favor: 8; Opposed: 0; Motion carried.

Mount asked if there is an issue with the county commission concerning how the board handled zoning at the lake, and Richards said no, she thinks it is getting better. Richards updated members on the issue with the county lake resident in violation of zoning. The variance was denied and the window to appeal is gone, she said. The county commission chose to give him time to fix it, she added. He cannot do any more construction or he will be fined, she said. Mueller asked what members decided about the public hearing. Richards said there are no applications for next month, so it is an open evening. Kraus moved to schedule the public hearing for December 1, 2011, at 7:30 p.m. at the courthouse. Maxwell seconded. In favor: 8; Opposed: 0; Motion carried. Mount moved to adjourn and Maxwell seconded. In favor: 8; Opposed: 0; Motion carried and the meeting adjourned at 9:15 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

David Mueller,
Chairman

Margo Yates,
Secretary