

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

October 29, 2009

Chairman David Mueller called the meeting to order at 7:30 p.m., with a quorum present.

Roll Call was answered by Mueller, Jeff Bina, Dan Mount, Kent Becker, Jim Schmidt, Bob Maxwell, and Mary Avery. Marquette Eilerts was absent. Tonya Richards and David Yearout were also present.

Mueller asked for additions or corrections to the Record of Proceedings for the September 24, 2009, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Mount made a motion to approve the Record of Proceedings as written and Becker seconded the motion.

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

Mueller said since there is no one from the public present for the public hearing, he would like to move Item 5 up on the agenda, if no one objects. No one objected.

Item 5: An application requesting a variance for Arthur and Violet Wedel, for property located in Blaine Township. Mueller reminded members they are acting as the Board of Zoning Appeals for this application. Mueller noted this application was published in the September 2, 2009, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Mueller asked members if anyone had a conflict of interest for this application, or if anyone had any outside communication concerning this application. No one did. Art, Violet, and Loyal Wedel were present to speak about the application. Mueller asked Richards to explain this application. Richards said this is application #PC-09-08. She explained the request is for a side yard variance from 50 feet to 10 feet in an ag district. Richards explained a survey has been done on three acres for a future sale. Richards said Art Wedel owns about 160 acres at in the northwest quarter of Section 18, Township 17 South, Range 2. Richards explains the north side can only meet a 10 foot set back because of an existing farm drive. Richards explained the Wedel's plan to sell off the three acres and pass down the remaining property to their family members. Their son, Loyal, currently lives on the property near the main house, and his home shares the lagoon and well water with the primary residence, Richards explained. They also share the driveway, she added. Loyal showed members a photo of the property. Loyal said without the variance the feed bunks and cattle water would not be left with the main property. Schmidt asked about the sewer line to the lagoon, and Loyal said it is on farm land. North of the garage?, Schmidt asked, and Loyal said yes. Mount asked, and Loyal said the sewer was grandfathered-in. Avery asked, and

Loyal said he lives in a 1993 manufactured home. Mount asked, and Loyal said yes his intent is to continue sharing the well and lagoon once the property is split off. Wastewater and the well are not really zoning issues, Richards said. My recommendation is they can go to the board of health for these issues, she added. You can go with a condition of bond, Yearout told members. Looking to the future is what the board needs to consider, Yearout said. Are there separate utilities going in there?, Yearout asked, and Loyal said yes. Yearout asked if the sewer line misses the grain bin, and Art said yes. Yearout asked, and was shown the locations of the main home and the lagoon on the property in a photograph. Members were told that 1996 was the year the manufactured home was moved on the property. Richards explained the lagoon is located 52 feet behind the house, in the trees. Yearout asked, and Loyal said it is a 16x80 manufactured home. Maxwell asked for clarification on the set backs. Richards explained the 10 foot variance will not run the entire length of the property line because it stops at the garage. You could say 10 feet to the garage, she added. Yearout said members will need to acknowledge both variances. The house is being separated off the balance of the property, he said. Under your regs you can add a condition to allow easements to cover the well and the lagoon, Yearout told members. If this is going to be allowed, it needs to be clarified, Yearout said. Maintenance, costs, who has to report the well if it dries up or goes bad, Yearout said. There has to be written covenants with these proposals that covers all these issues, he said. Mount asked if they could even get a permit to drill another well on three acres, and Richards said yes, they could. Mount asked if they want their own lagoon, is there enough room. Richards said yes, it would meet set back requirements. Yearout said another system could be put in. It is all a matter of costs, he added. Richards said a wastewater system would have to run in the front yard, so they would probably do a septic system. Yearout said the marketability of this property will involve if all these issues have been resolved. The appraisal will be impacted, too, Avery said. Unless all steps are taken, Becker agreed. Loyal asked if he could sign something saying he is willing to share the well and lagoon. Yearout explained it needs to be in writing and be clear what the agreement is. Yearout told Loyal you may not be related to the owner in the future, and you may not get along with that person. We have to look down the road, when none of you may be involved, Avery explained. We have to look at the land use in the future, she added. Sharing the cost of the well and lagoon could be a benefit, Loyal said. The agreement goes with the property, so everyone would always know, Becker said. Mount asked how many households can be on one well. Up to nine families, before it is considered a public well, Yearout said. That well has been there a long time, Art said. Water is every where on the property, Loyal said. I can dig down with the bulldozer and get water, he added. Art asked Becker about the appraisal issue. In 30, 40, 50 years when you all are gone and someone wants to buy the three acres, or the farm, the appraiser may have trouble valuing the property because of the shared facilities, Becker explained. Mount asked who owns the surrounding ground. He was told Art, and another property owner. It would be easier if there is an easement there, Mount said. It is best to get things in line now, Yearout said. Not

being on public water is beginning to be an issue, and sharing a well may make the property not as marketable in the future, Yearout said. Would it be wise to give you some time to research your options to determine if you want to move forward?, Avery asked the Wedels. It may help to do more research, she added. We have identified there are some issues that need to be resolved, Yearout said. You need some legal council, he said. That is what would be my recommendation, anyway, he added. I think we have pretty well identified the issues, Mueller said. Access and shared water and sewer, Yearout said. Once we approve this, it stays with the land, Avery said. Loyal asked, and Mueller explained that the variance request and the issues are tied together. What we don't know is if the board of health will allow shared use of the well and lagoon, Yearout said. Mueller asked if the board of health can make a decision before we grant a variance, and Yearout said yes. What is the proper procedure?, Mueller asked. I would resolve the issue of the lagoon with the county commission first, Yearout said. I don't see the variance issue being that big of a deal, Yearout added. It probably would be a big deal if they were talking about building, he added. The variance issue just draws the line between the two buildings, he said. Loyal asked about the well issue, and Yearout said it will have to be resolved. As long as you continue to share the well, you need documentation for the issues, Yearout told Loyal. I am not sure it is necessary under the health code, because every state law recognizes shared use of a well, Yearout said. Bina asked how they would handle a broken water line if the one that goes to one house breaks, but it is on the other person's property. Attorneys will ask you all how you want that set up, Yearout told the Wedels. Don't look at it like it is now, he told them. Think about if it is someone you don't know, he explained. The worse case scenario, Mount said. Art was asked about rural water. He said that was not a problem, as there is a line down the road from the property. Maxwell said based on what we are looking at, we need some wording for how to identify each house and garage with a 10 foot variance. Maxwell asked if it is Loyal's garage. Loyal said yes, it is a two car detached garage. It is attached to the wash house, Art said. Art's address is 3482 Falcon. Loyal's address is 3484 Falcon, and he has the detached garage. Mount asked about the driveway issue. In the worse case scenario, could there be another driveway?, Mount asked. Yes, Art said. There is potential for Loyal's property to expand, as it is a looped driveway, Richards said. Art asked for clarification, and Loyal explained members wanted to know if the north driveway could be used if necessary. Mueller asked if there were any other questions. Mount asked if the electricity is above ground, or below ground. Above, Loyal said. Mueller asked Richards for her staff recommendation. Mueller closed the public hearing for this application and asked members to begin deliberations.

Becker made a motion to approve application #PC-09-08, for property located at 3482 Falcon and 3484 Falcon, for a 10 foot variance as created by the division of the property, a 10 foot variance off the house at 3484 Falcon to the new lot line, and a 10 foot variance off the detached garage at 3484 Falcon to the new lot line, with the conditions that a separate well and wastewater system be provided,

unless the Marion County Board of Health authorizes the joint use of these facilities, and if approved as by the Board of Health, the joint use and future maintenance and sharing of costs of the wastewater system and the well shall be addressed in a written agreement between the two property owners, with a copy of that agreement recorded with the Register of Deeds as a permanent covenant against both properties, and a copy of the agreement shall also be provided to the Planning and Zoning office, and an agreement shall be prepared and filed with the Register of Deeds as a covenant against both properties concerning the common use and future maintenance of the shared driveway, with a copy of this agreement also provided to the Planning and Zoning office, and the last condition is to record an easement for potential rural water use. Mount seconded the motion. In favor: 5; Opposed: 2; Motion carried.

Mueller explained a variance is a final action by the Board of Zoning Appeals, but the Wedels will need to follow the recommendations in the motion to approve. Richards will let the Wedels know the timeline for proceeding.

Item 4: Amendments to Marion County Zoning Regulations. Mueller opened the public hearing for the zoning regulation amendments. Mueller noted this public hearing was published in the October 7, 2009, issue of the *Marion County Record*. Mueller asked members if anyone had a conflict of interest or any outside communication concerning the proposed amendments. No one did. Mueller asked if everyone received a copy of the proposed amendments and if everyone understood the proposed amendments. Everyone received a copy and everyone understood the proposed amendments. Mueller asked if anyone from the public wished to speak, but no one from the public was present to speak, so Mueller closed the public hearing for the proposed amendments. Mueller asked if members wished to make a motion, or not take any action. The proposed amendments include four areas, Yearout noted. First, in Article I, adding language to the definition under #10. Second, also in Article I, adding "confined animal feeding operation" to the definition under #63. Third, amending Article 14 by eliminating section #4 concerning environmental impact statements. And finally, changing Article 21 by modifying it to include the language "confined animal feeding operations." Mueller said these changes will address all livestock, and the current regulations are out dated and are not consistent with state law. This will bring us into compliance with state law, he added. It is set at 1,000 animal units, and this makes us consistent with the surrounding counties, Mueller noted. By removing the environmental impact statement, that will put environmental issues under KDHE (Kansas Department of Health and Environment), Mueller said. I feel strongly that the planning commission has done a good job, Mueller said. This still allows the public a chance to voice their opinion, he said. It is a good proposal, he added. If an operation is under 1,000 animal units they won't have to come in front of us, right?, Bina asked, and Mueller said yes. Mount made a motion to recommend to the county commission the proposed amendments to the zoning regulations be approved, and Bina seconded the motion.

In favor: 6; Opposed: 1; Motion carried.

Mueller explained the proposed amendments will go to the county commission for final approval.

Yearout asked about the commercial zone case with the car repair business. Richards said she is waiting on a legal description of the property in order to proceed. There is a better way to handle these applications instead of opening it up to other commercial businesses on the property which could be a time bomb waiting to go off and no way to stop it, Yearout said. You could also create additional zoning regulations for the small lots at the lake, so they have less hoops to go through, Yearout said. We need to amend Article 20, on page 96, concerning Village Districts, Richards said. Richards also pointed out we need to clean up the regulations on set backs which currently are at five and three feet for access buildings, but otherwise are at 10 and eight feet. When you adopted the regulations in the beginning, you created all the zoning districts and each piece of property went into a district by the size of the property at the time, Yearout said. You created a map which zoned everything ag, but you failed to put language in for non-conforming lots of record, he said. There is language for non-conforming lots in residential districts, but not in ag, he said. The spirit and intent of the law is to allow someone to build on there, he said. There was a case where someone wanted to remove a manufactured home and replace it with a site built home, he said. It has been pounded in our heads that if you change the footprint, it changes everything, Mueller said. Rights go with the landowner, Yearout said. You risk a claim of taking, he said. Why would we throw hurdles in the way of someone wanting to replace a manufactured home with a site built home?, Yearout asked. If you had a case where someone wants to replace a mobile home with a newer manufactured home, it could be handled administratively if it is an improvement to the community, Yearout said. What if it is not an improvement to the community?, Avery asked. It is always a judgment call, Yearout said. What if there was an old farm house and they want to bring in a trailer house?, Mount asked. I would say no, because the regs don't allow it, Yearout said. At the end of the day, he may move into the parent's house, Yearout said. He has already said the manufactured home won't be there forever, Richards said. Mount asked about the rezone for the car repair business. How much red tape is this going to take?, Mount asked. We need to clarify and move them into a new zone, a commercial industrial zone, Yearout said. The change over is going to be the big thing, Mueller said. Can we put in (the wording) that after the use is gone no other use can come in?, Avery asked, and Yearout said no. If someone is currently running a restaurant, they must go through a zoning change for a tavern, Yearout said. Mueller asked if such a change cause lots of applications. It really does not, Yearout said. Shops and offices are not that big of a deal, but a tavern, or a restaurant, requires more sewer, Yearout said. Grandfather provisions are very strict and ridged, Yearout said. It deals with a land use law, and we're dealing with what actually is, he said. Avery asked about King's salvage yard. KDHE is still dealing with that and it is out of our hands at this point, Richards said. Yearout talked about a gradual elimination of a non-conforming use. He said Osage County did this, and another

county is going to address this, soon. It is over salvage yards, he said. What motivated Osage County were lots of commercial towers and light issues, Yearout said. White strobe lights are the cheapest, but they annoy people at night, he said. So, they notified all the tower companies at the same time and told them they had two or three years, or whenever the timeline was, to comply, Yearout said. Avery asked about the cost of the other lights. The light unit, itself, is about \$4,000, Yearout said. I can bring language for you to review, Yearout said. It gives the county the ability to identify properties, as long as there is adequate time to depreciate the investment, Yearout said. You need procedural language to provide for gradual elimination, Yearout said. You may provide provisions in the regs to provide for gradual elimination of a non-conforming use, he said. What if the property changes hands?, Mount asked. Ownership does not matter, Yearout said. Mueller identified the big issues. One, the set back issue at the lake. Second, change commercial zones to CUP's (Conditional Use Permit). Third, gradual elimination of non-conforming uses. Fourth, signage. You could create 50 commercial districts, Yearout said. CUP's give the ability to accommodate commercial use without signing a blank check, Yearout said. Avery asked about signage. There seem to be more and more signs with LED lights. Richards asked about towers. It could be simplified immensely, Yearout said. Mueller asked members if they want to pursue looking at wind energy units and cell towers. New members have not discussed this, and may not know fully what the issues are, Avery said. We don't want to change something if someone is in the middle of doing something, Mueller said. You would not be making things more strict, Yearout said. Mueller asked members about wind energy systems. I think we should look at it, Mount said. Once they start manufacturing them in Hutchinson, it will make them more feasible, so I think it is something we should look at, Mount said. Are we prioritizing?, Schmidt asked. Which ones feel the most pressing?, Yearout asked. You can cover them all at one hearing, but you can get too much on your plate, Yearout told members. I think we need to have the CUP as number one, Mount said. Can any mesh together, and should be presented together?, Mueller asked. You should do the CUP and the new district for the lake at the same time, Yearout said. Avery asked how long it will take to deal with those two issues. Yearout said he can bring language to the next meeting. You can have a hard discussion, and then follow the meeting with a public hearing, Yearout said. I think we should try and have it all done in one year, Avery said. Can we have some informal discussion on the other issues while we address the priorities?, Avery asked. I think we should set up a timeline, Avery said. Mueller suggested starting with the top three, and signs can come later, and all members agreed.

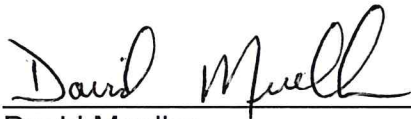
Off Agenda. Richards explained about her communication with Keystone Pipeline, and their question about needing a CUP. Richards explained the company had contacted Bobbi Strait previously, and Strait had told them they did not need a CUP. Richards read a copy of Strait's correspondence with the company. Yearout explained a pipe storage yard is a temporary structure, but this language is not in our regs. He explained they are now applying for a CUP,

and with the understanding they can start dirt work with a temporary permit, but they understand if the CUP is denied they will lose their dirt work investment. Maxwell asked how the lawsuit plays in. Keystone wants the county to sign an agreement, but the county wants the road concerns addressed, Richards said. Underground is considered exempt, Yearout said. Above ground structures require a CUP, Yearout said. Richards said they will have a temporary trailer on site. Yearout mentioned that he has seen where pump stations can be an issue, due to the noise bothering neighbors. Maxwell asked about a map of the proposed pipeline route. Richards showed Maxwell the proposed route on a map. Richards showed members a photo of the pipe storage. If they are dropping pipe in along a ditch, that is construction, Yearout said.

Richards told about a lady who called asking about a 911 address for her property. Richards asked her if she had a permit for her trailer. The lady said she did not need a permit because her trailer was brought in five months ago. Richards said it is a 1965 trailer, located at 559 210<sup>th</sup>. Richards said this lady lives in the trailer with her daughter on her grandparent's property. She said the grandparents live in a three story house. Richards said there were three old trailers on the property, and five months ago they tore down all three. I think they tore down all three and made them into one, Richards said. It does not meet set backs, she said. The lady said the trailer is right where the other trailer was located, Richards said. We think they brought in one and used parts off the others, Yearout said. There are some other things to find out about, Yearout said. In the appraiser's records there is nothing, Richards said. All mobile homes are of no value, she said. They (appraiser employees) went up in the attic and pulled the file and it said the three mobile homes were of no value, Richards said. We are taking them at their word as to when they brought it in, Yearout said. But, it was not grandfathered when they brought it in, he added. They went from three to one, so they improved it, Bina said. The trailer has a separate septic system, Richards said. Yearout asked if there was a record on the septic system. No, nothing, Richards said. We can check aerals to see if anything shows up, Yearout said. You could check with the farm service agents, Mueller suggested. Mount asked how Richards found out about it. She called for a 911 address, Richards said. Avery asked if the county is liable if a tragedy occurs in the trailer, and Yearout said no. We need to make the county commission and the county attorney aware of it, Yearout said. We can send them (the property owners) a letter explaining it violates state and county law and that we expect them to remove the unit, Yearout said. It is the only action under the law that can occur, he added. What happens if they vacate it?, Mount asked. There may be a grandfather right for three trailers to be there, but what is grandfathered is the land use, not the unit, Yearout said. I think if an inspector went in there, it would be condemned, Richards said. If it is that old, they are violating state law as well as all other regs, Yearout said. Avery asked about the timeline on replacing Strait. They are reviewing applications and resumes on Monday and will address it again tomorrow, Richards said. They may start interviews next week, she said. I would think when the position is offered, it will take place January 1, 2010,

Richards said. Avery thanks Richards for the information she sends out and the job she has done. Mueller asked if there was anything else. Mueller reminded members the next meeting is scheduled for December 3, 2009. Richards gave members mileage vouchers and asked them to turn them in at the next meeting. Richards asked members if they want the same basic schedule for next year, and they said yes. Becker made a motion to adjourn and Avery seconded the motion. In favor: 7; Opposed: 0; Motion carried and meeting adjourned at 9:44 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



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David Mueller,  
Chairman



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Margo Yates,  
Secretary