

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

October 30, 2008

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

Roll Call was answered by Mueller, Marquetta Eilerts, Bob Maxwell, Jeff Bina, Ervin Ediger, Mary Avery, and Kent Becker. Vida Bartel and Glen Unrau were absent. Zoning Administrator Bobbi Strait was present.

Mueller reminded members they are acting as the planning commission for all three action items on tonight's agenda. Strait asked to amend the agenda to move Item number four and five around, putting five ahead of four, due to Mr. Stroda calling about a flat tire that will delay his arrival to the meeting. Mueller asked about off agenda items. Strait passed around copies of wind conversion information to be discussed during off agenda. Maxwell also asked to discuss a cell tower during off agenda.

Mueller asked if there were any additions or corrections to the Record of Proceedings for the September 25, 2008, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Maxwell had a question about changing the wording on page five from "planning commission," to "governing body." Strait explained the change of wording. Becker made a motion to accept the Record of Proceedings as written, and Ediger seconded the motion.

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

Item 5: An application for a Conditional Use Permit (CUP) for Tyler Kershner. Mueller reminded members they are acting as the planning commission for this application. This application was published in the October 8, 2008 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. No one did. Julie and Tyler Kershner, Canton, were present to speak about their application. They have a Canton address, but they live just inside the Marion County line. They explained they want to put a singlewide manufactured home on their property for their Julie's parents to live in, because due to financial reasons they cannot retire like they would like to. Mueller asked and was told they have a total of 9.7 acres. Mueller also asked the age of the parents and was told 60 and 62 years old. Mueller asked where the manufactured home would be located on the property and Tyler Kershner showed members the location on a map. Mueller also asked about the location of the lagoon and Kershner also showed members that location on the map. Mueller asked about both families

sharing the lagoon. Strait explained she would rather them share a lagoon, rather than have two lagoons if it is a dry year and there is not enough water. She said their lagoon is holding water now, but it is currently low. If the family expands, they can dig a secondary lagoon, and do the overflow that way, because if the overflow slows down it would not hurt if it dried up, she said. I prefer this over two lagoons without enough water, Strait said. Maxwell asked about the location of the existing home. Mueller showed members on the map. Mueller asked about the distance between the existing home and the proposed location for the manufactured home, and was told it will be about 75 to 100 feet, across the driveway. Mueller asked and was told they do not have rural water, they have a well. Mueller asked about the two families sharing the well, and Strait said it was okay. Mueller explained the property runs as a long, narrow strip. Eilerts asked if there are any creeks on the property, and was told no. Avery asked if it will be a new manufactured home, and was told yes. Avery asked how long the parents will be living in the manufactured home, and was told as long as they are around. Right now it is for financial reasons, Julie Kershner said. Ediger asked about the foundation, and was told they are waiting on the manufacturer's instructions. Strait explained the state has requirements if there are no manufacturer guidelines, like for an older home, but a new manufactured home will have instructions for tie down, footing, skirting, and utility installation. They have a new tie down system now that makes them more secure in a straight line wind, Strait said. Mueller asked if there was anyone from the public who wished to speak about this application, and there was not. Mueller asked if any written comments concerning this application were received, and Strait said there were not. Mueller asked Strait for her staff recommendation. Strait reviewed her written staff report about this application. Strait said we have granted at least a couple CUP's for farmers for their children, or hired hands, in an ag zone, so this would just be a common site to have a manufactured home and a frame home on the same site. This property is located just a mile off K-15, with easy access to U.S. 56, Strait said. Strait said she recommends this CUP be reviewed and renewed each five years, or until such time as the residence remains unoccupied for a period of six months. Mueller asked if there were any other questions. Mueller explained the factors to consider for this application. Pat Gilliland, of Topeka, asked to see the location on the map, and she was shown. Mueller asked if there were any other questions, and there were none. Mueller closed the public hearing for this application.

Bina asked if this CUP could be reviewed six months after the manufactured home becomes vacant. You will never know when it becomes vacant, Maxwell said. Strait said she can check it after the expiration. That way it flags it for revocation, Mueller said. Then, if her parents are not living there any more, they can have the choice of reversing it, or they can ask for a lot split, Strait said. Becker made a motion to recommend approving a CUP for Tyler Kershner, application number PC08-045, for a temporary manufactured home, with the condition it will be reviewed in five years, or until such time as the residence remains unoccupied for a period of six months. Eilerts seconded the motion.

Avery explained to Bina the concern about being consistent with the review period. Strait explained that in five years they will not need to come in, they just need to tell Strait they need to renew, and Strait will inform the planning commission members. The key is to examine it so we know it is not just sitting there vacant, Mueller said. Ediger asked about the age of the manufactured home, and was told it will be brand new. My concern is it is tied down tighter than tight, Ediger said. Strait explained it will have manufacturer's installation instructions. Members completed their discussion at this point and voted on the motion on the table. In favor: 7; Opposed: 0; Motion carried. Mueller asked Strait to explain the timetable for the CUP permit.

Item 4: An application for a Conditional Use Permit (CUP) for Margaret Stroda. Mueller reminded members they are once again acting as the planning commission for this application. This application was published in the October 8, 2008 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. No one did. Arthur Stroda and Margaret Stroda were present to speak about this application. They explained they have a lot of vehicles on their property. Arthur said his nephew uses a lot of the vehicles for an auto class he teaches at a technical school in Salina. He is teaching tonight, or he would have been here, too, Arthur said. I also have some antique vehicles that I plan to work on when I retire, Arthur said. I would like to hang onto them, but I have been cleaning things up, and I have been taking things to the junk yard, Arthur said. You can hardly see them from the road, but if the state says we need a fence there, we will do it, he said. I have worked on appliances for people for years, and I have hauled several trailer loads off, he said. We have cleaned up a lot, and burned off a lot of brush, he said. It is good to burn off the brush, but you can see it better, now, Strait said. You don't see it when you drive by, Arthur said, and Strait agreed. Mueller asked about fencing. The state won't come out until he has gone through this process, Strait said. The state's deadline was September 26, but the deadline has been extended to after this meeting, Strait said. So, it is still on the table to get a state license, she said. I did talk to the state, and they might need a fence on one side, but they didn't think much of a fence would be needed because of all the vegetation, she said. Maxwell asked how long this will go on. Avery asked who investigated this first, and Strait said KDOT (Kansas Department of Transportation) did. I'm not sure if the salvage guy turned it in, or not, Arthur said. Strait explained another salvage yard man was unhappy about being required to come into compliance, so he turned other salvage operations in to the state. Arthur said someone snooped around our property, and told us they wanted to clean it up for us. (They were not sure that is really what the person had in mind.) Margaret Stroda said August 12, 2008, is when they were first notified. I think Bob was concerned that maybe this had been going on for years, Mueller said. Yes, and so did you try to get in compliance?, Maxwell asked. Yes, we called the next day, Arthur said. They came right in and filled out an application while they were in my office, Strait said. So this is a short term deal,

good job, Maxwell said. We are trying to cooperate, Arthur said. I don't like to break rules, he added. Karen Karber, of Gypsum, wanted to give public comment concerning this application. Karber owns property at 1867 350th, Ramona, on the NE1/4 13-17-3, which is located a half mile from the Stroda property. Why do you want the land put into a salvage yard?, Karber asked. We need to preserve this land, she said. Why have a salvage yard on the edge of Ramona?, she asked. This would decrease the value of our property, Karber said. Even if it had a high wood fence, I do not want a salvage yard, she said. She asked members to take into consideration how we feel. My husband would be here, but he is out of state, she said. Mueller asked Karber if she lives there, and she said no, she lives in Gypsum, but she was born and raised there. Maxwell asked Karber how long the property has been in this condition. It is sad, she said. The house had burned, and it has been in this condition at least five to seven years, she said. It could be 10 years, she added. Mueller asked when the fire happened. Margaret said four years ago. Mueller asked Karber if she has noticed any improvement in cleaning up the property, and she said there has been some. Maxwell said he thought members were informed that there are no home sites near this site, or buildings on the property. They are all out buildings, Strait said. But no other home sites, Mueller said. I lived there for 55 years, until the home burned, Margaret said. Avery asked how many vehicles they want to keep on the property, and Arthur said 30 vehicles. Eilerts asked, and Strait explained they either will have a license, or they will not have a license. Unless we go count cars and continue to count cars, there is no way of knowing how many cars they have, Strait said. You can set a range, Strait told members. We have done this before, and you can restrict the area used, too, as we have done in the past, she told members. Maxwell asked how many acres are involved. They live on five acres, Avery said. Since the house burned down, they do not have the property separated out in the appraiser's office, Strait said. The cars are set in the back of the property, Strait added. Becker asked about the road location. Avery asked if the intent for the future is to stay with the number of vehicles currently on the property, and Arthur said he wants to keep the antique vehicles. This has never been run as a business?, Becker asked, and Arthur said no. My brothers have always been into cars, Arthur said. We could get rid of all the vehicles except the antiques, Arthur said. Arthur was asked how many antique vehicles are currently on the property, and he said most of the 30 vehicles presently on the property are antiques. The junkyard said to wait to bring any more because the price went down to next to nothing, and you cannot even pay for the gas to haul them off, Arthur said. If we put a 30 vehicle cap on it, would that be acceptable?, Mueller asked, and Arthur said yes. 30 vehicles in five acres?, Avery asked. It would be in less than that, Arthur said. The vehicles are actually in an ideal location, now, Mueller said. You can't see them, Margaret said. I think there is some misconception of the use of a salvage yard, Mueller said. We are not going to have people hauling things in and out of there, Margaret said. Avery asked Strait about the process of cleaning up the property, and if they will take care of the antiques and not let rodents take over. Becker asked if all the vehicles are located where the remainder of the property can be maintained, and Arthur said yes. Mueller asked if there were any

other questions. Mueller asked Karber if she had any other comments, and she said no. Becker asked if they can secure the property enough not to have the vehicles deteriorate, or get parts stolen off them. That is not our concern, that is his concern, Bina said. Yes, but it is a concern of the people living around the area, Becker said. Strait reviewed her staff report for this application. She said they own a quarter section, and utilities are still available at the site but are not currently in use. It is suitable to be a home site, but it is not real good farm ground, Strait said. This will bring the property into compliance, Strait said. Grandfather rights are not an issue, as they are not trying to claim grandfather rights, Strait said. Mueller asked if there were any other questions. Becker asked how often the vehicles are used for educational purposes. He takes parts off and takes them for class, Arthur said. Karber asked what this was about and it was explained that the vehicles are used for education at a technical school. Strait explained that most of the 30 vehicles are antiques. They take the parts to Salina?, Karber asked, and Strait said yes. His class was written up in the Salina newspaper, Arthur said. Becker asked Strait how many similar operations are located throughout the county. For personal use, and not actually selling salvage?, Strait asked. There are about 15 legal salvage yards in the county with state licenses, not counting Daniel King, where we need to fix the drainage area, Strait said. There were a few around Hillsboro a few years ago, Eilerts said. One in the county was grandfathered in, even by the state, east of Marion on Yarrow, Strait said. they are kind of unregulated, except we don't let them get in the right of way, Strait said. There are probably 15, or 20, Strait said. But then I did not know this one was there, so by just driving by, I don't know, she said. Becker asked, and Strait explained that they must be issued a CUP to get a state license. In some counties, if they are out of an industrial zone, you just can't have them, and some counties do not have as much rural land, Strait said. And, they are more heavily populated, Mueller said. Mueller asked if there were any other questions. Mueller closed the public hearing for this application.

It looks pretty clean cut to me, Maxwell said. They have strived to clean it up in a short amount of time, and I can't see any detriment to the surrounding area, Maxwell said. It gives me comfort that after issuing a CUP they have to have a license, and it will be regulated, and it certainly improves the condition, Mueller said. Avery asked if members wish to limit it to a certain number of vehicles to a certain area. There is the homestead lot that is bordered with the hedgerows, but there is no residence here to limit it, Strait said. Mueller suggested the west half of the five acres. Or, 250 feet from Quail Creek, Avery said. It can be even further west of the existing buildings, Strait said. If it is within 1,500 feet of the road it has to be non-visible, Strait said. Bina asked if 250 feet would be okay, and Arthur said it should be. It will leave an appearance of just an old homestead out there, Strait said. We could limit it to 30 vehicles maximum, only, no appliances, Maxwell said. Let's make it 40, Bina said. I would like to hang onto the old Ramblers and old Chevy pickups, Arthur said. Stay with 30, Becker said. That is fine, if something comes in, we will just get rid of another one, Arthur said. Bina made a motion to recommend approving a CUP for Margaret Stroda as a

salvage yard at 3485 Quail Creek, Ramona, Kansas, with a 200 foot set back from Quail Creek, included within the existing homestead site, not to exceed 30 vehicles, and excluding all other salvage. Avery seconded the motion. I didn't think we were going to include the entire five acres, Avery said. Mueller asked about the 200 foot set back from the road, and Avery said the set back does address the concerns of the public and allows for private use of the land. Mueller asked if there were other issues. Members now voted on the motion on the table. In favor: 7; Opposed: 0; Motion carried.

Mueller asked Strait to explain the timeline and state license procedure to Strodas.

Ediger leaves at this point in the meeting, at 9:00 p.m. It is also noted that County Commissioner Dan Holub arrived at the meeting at 8:30 p.m.

Item 6: Public Hearing for zoning text amendments. I don't see a need to go through this item by item, Mueller said. Are there any questions?, Mueller asked. Avery asked about Article 21, #29, about temporary housing. Members agreed to add "after consulting with the planning commission." The sentence will now read: "A manufactured home may be authorized for a period not to exceed six months for temporary housing during construction of a site built home if the Zoning Administrator, **after consulting with the planning commission**, determines that there is a substantial need for the owner/occupant to reside in close proximity of the construction project." Strait said she had 20 copies available in her office for the public, but no one every asked what are you changing. Members discussed the difference between zoning regulations and the comprehensive plan. Maxwell asked about Article 32, Wireless Communication Regulation, 32-102 E. Members discussed whether or not decorative slats in chain link fences were in the regulations. Maxwell asked where it talks about failure, or falling of a tower, or the distance needed for set back. They will all tell you they are designed to collapse upon themselves, but I have never seen one do that, Strait said. It wouldn't be bad to put in at least the distance of the height of the tower, Strait said. Avery asked if members want to put the requirements in the regulations tonight. No, Maxwell said. Mueller read Article 32, under 102, Item 7 – F, that the set back should be at least half the height of the tower. That is currently in the regulations, he said. Maxwell said the tower he has been questioning is 410 feet in height. From the center of the tower to the edge of the road is 300 feet, he said. Maxwell said he read that debris falls within 50 percent of the height of a tower. Mueller asked members to come back to discussing the zoning text. Strait said she would rather do it all at one time, and have it all be in place January 1, 2009. I would rather do it all in a public hearing next month, she said. I agree, because we don't have the correct copy to approve tonight, Avery said. Strait asked about cell tower changes. Currently it is 50 percent of the height, Mueller said. Do you want to go with 100 percent of the height from a major roadway?, Strait asked members, and they agreed. Strait said she will add that. Members discussed Subdivision Regulations. Maxwell asked about the use of the term "County Engineer." It needs to be approved by KDHE, anyway, Strait

said. But if it is private, it goes through me, Strait said. So, "County Official" will be fine, she said, because I won't approve anything they don't approve, anyway. Maxwell asked why not use "Sanitarian," and Strait said okay. Mueller said that concludes the zoning text amendments, so now members can go on to discuss Wind Energy Conversion Systems (WECS). Strait explained she has been working with a person who has said they cannot get a power purchase agreement until they get a CUP, so they are not wasting time negotiating something that is not going to happen. It takes two years to get the towers on site, so two years is not feasible as it could take until the entire project is complete until all the negotiations are complete, as they may negotiate the project in parts, Strait explained. As long as the property is leased for the purpose of WECS, if they break the lease the CUP lapses in six months, Strait said. Maxwell asked what the two year timeframe is for. The power purchase agreement, Strait said. It could tie up the property for 10, 15, or 20 years, Maxwell said. That is why we put the two year timeframe in, Eilerts said. Some of it is the landowner's responsibility, too, to know what he is getting into, Bina said. The landowner has to come in for a CUP so the landowner and the project manager will all be in here, Strait said. And, whether it happens, or not, the landowner is still going to get paid, Strait said. Strait gave an example of \$200,000 per year income for one landowner. Renewable energy is going to be avidly pursued in Kansas because they don't tax the turbines, or the sales tax, or anything, Strait said. Landowners will more than likely spend the income from the lease in the county, she said. That is another benefit to the county as a trade off for no tax, Avery said. And, an increase in tax value on a certain part of the property, Strait said. And, it will create jobs, too, she added. Maxwell asked if they will get a CUP prior to any planning, and Strait said no. So, they will have transmission lines?, Maxwell asked, and Strait said yes. They are coming up with ways to store it underground in the water table, Strait said. On page four "narrow trench ditching" will be added because the Flint Hills rock bed will require sand bed trenching, so as not to have any damage by shifting rocks. Also on page four, the beginning of #5 will be deleted. Again on page four, under #11, four feet below the ground surface will be replaced with 18 inches of topsoil due to the expense of going that deep. Shouldn't that be determined by the landowner?, Maxwell asked. Yes, and it says that, Strait said. Okay, Maxwell said. On page five, under #18, the part about the said transfer must first be approved by the Board of County Commissioners, will be removed. It will be changed to; provide the Zoning Administrator with documentation showing they are compliant with and are meeting the surety bond requirements and all other requirements of the CUP prior to closing of the transfer. On page six, under 31-109, #C will be removed, as the intent is covered under #D. Maxwell asked if anyone has looked at the Governor's report on WECS in the Flint Hills, and Strait said no. The recommendation is not to do it, Maxwell said. I don't know how binding it is, but we might need to look into it, he said. I think that is east of 77, Strait said. I have not heard of it being west of 77, she added. Our overlay district is not in the Flint Hills, Mueller said. The trails aren't, either, Becker said. Avery asked about the 18 inches of topsoil change. Mueller asked what if it is cultivated ground. It has to


be approved by the landowner at the time, and 18 inches is the minimum, Strait said. I'm just wondering if that is adequate, Avery said. Also, if they are just the landowner, or if they are in touch with the ground, too, Maxwell said. The next guy will know the towers were there because they will do a deed search, Strait said. So, they will know if they do their homework before buying the land, she said. Mueller asked if there were any other concerns. Maxwell asked about government subsidization. I can find out from the new zoning administrator in Butler County, Strait said. We are all paying for them with subsidization, Maxwell said. They are just like ethanol plants, and ethanol plants are not working out, Maxwell said. Eilerts questioned the location distance to a residence, on page four, #2. Residents are feeling ill according to a newspaper article, she said. Members asked Strait to find out some information on this from Butler County. Avery made a motion to hold a Public Hearing on November 20, 2008, at the regular scheduled meeting, to review the zoning text amendments, with cell tower set back from an impervious road 100 percent of the height, and proposals on WECS. Bina seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Mueller reminded members the next meeting is schedule for November 20, 2008, at 7:30 p.m., and it will be the last meeting of 2008. Bina made a motion to adjourn and Becker seconded the motion. In favor: 6; Opposed: 0; Motion carried and the meeting adjourned at 10:13 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yates,
Secretary