

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

September 24, 2009

Chairman David Mueller called the meeting to order at 7:30 p.m., with a quorum present. Mueller recognized Tonya Richards as acting staff, noting Bobbi Strait resigned in August. Mueller said he appreciates the work Richards has done. Mueller also recognized David Yearout as an advisor.

Roll Call was answered by Mueller, Dan Mount, Bob Maxwell, Jim Schmidt, Mary Avery, and Kent Becker. Marquette Eilerts and Jeff Bina were absent. One seat still remains open. Richards and Yearout were present, as well as County Commissioner Dan Holub.

Mueller asked if there were any additions or corrections to the Record of Proceedings for the July 23, 2009, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Maxwell had two corrections. Under Item 5, the word "an" needed to be removed and the word "his" needed to be changed to "he." Maxwell said he also had a question for later in the meeting about a comment in the minutes. Avery complimented Richards on a good job doing the minutes in Margo Yates' absence. Becker made a motion to approve the Record of Proceedings with two corrections and Maxwell seconded the motion. In favor: 6; Opposed: 0; Motion carried.

It was noted that since Eilerts is absent the Oath of Office for Eilerts and Schmidt will be postponed. Schmidt thought he may have already been sworn in with the other members.

Item 5: An application for Carl Schmidt requesting a rezone for property owned by Belinda Engler. Mueller reminded members they are acting as the planning commission for this application. Mueller noted this application was published in the July 1, 2009, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Mueller reminded members this application was originally reviewed at the July 2009 meeting, and was tabled until the August 2009 meeting, but there was no August 2009 meeting. 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. Mueller explained the process to Schmidt and Engler, who were both present to speak about this application. Mueller asked Richards to give the background on this application. Richards explained this is application #PC 09-07, requesting a half acre rezone from agriculture to commercial for an auto repair shop. Richards said Engler owns a total of approximately 80 acres. Richards said Schmidt is proposing a 27x30 machine shop without utilities, or restrooms. He will eventually have

electricity, Engler said. Schmidt showed members a triangular shaped piece of land on an aerial photograph, and he also showed them some digital photos he took of the property. Mueller asked, and Schmidt said it would be for auto repair. Avery asked Schmidt his plans for disposing of liquids, oil, etc. Schmidt said he plans to dump some of the liquids at Arlie's Paint, Body and Glass, located in Marion. He said he would also give some to Winter Construction, as they use it for roofs. You wouldn't dump it on the land, Engler said, and Schmidt said no he would not. He works a couple days a week at Arlie's, Engler explained about Schmidt's plan. Mueller asked Schmidt how many vehicles would he work on at one time, and Schmidt said two, or three. I have a door big enough for an RV, but there is only room for one vehicle, now, Schmidt said. Mueller noted the area is screened with trees. Engler added there is gravel in front of the building. He is not planning to expand, Mueller noted. Schmidt said he plans to purchase inexpensive vehicles and fix them up for resale. Engler asked about signage. The sign would sit on ag land, Richards said. Avery suggested Schmidt contact Richards tomorrow so she can show them the sign regulations. Maxwell asked about the dimensions of the building, and Richards said 27x30. Mount asked the number of hours Schmidt plans to spend working at the shop. Three days a week, five or eight hours per day, Schmidt said. Mount reminded there is no electricity or water at the location. Schmidt said he would like to get electricity to the building. Maxwell asked about parking. There is some room around the building, Richards said. Maxwell said the last time members were reviewing this application someone was going to visit the property to find out about activity going on around the building before a zoning change was approved. Maxwell said he was just curious if anyone did visit the property. Richards said she did send a letter on August 31, 2009, explaining there could not be any activity going on until the application went through the zoning process. Richards said she did not make a visit to the property. Maxwell asked if there was a reply. Schmidt called the office after Richards sent the letter. Mueller asked, and was told that some personal vehicles were being worked on. Mount asked what Schmidt's plans were for junking any vehicles he takes parts off of, if he is piecing out a vehicle. I haven't thought about it much, Schmidt said. I could have it picked up, he added. You're not going to have a lot of junk vehicles around?, Mount asked, and Schmidt said no. Mueller asked if there were other questions. Mueller asked Richards to give the staff report. Richards read the planning issues and factors to be considered in a change of zoning class. Mueller asked members and the applicants if anyone had any questions. Maxwell asked about the request for a zone change on a half acre, saying under CP-3 Commercial District the minimum is 25,000 square feet and a half acre is only 21,780 square feet. Maxwell asked about the set backs, and Richards said this application meets all set back requirements. Mueller asked if members can put a condition on their recommendation that a survey be done with a minimum of 25,000 square feet, and Yearout said yes. They will need the legal description for the resolution, Yearout said. Avery explained a zoning change stays with the land, so members are concerned with the use of the land. Maxwell expressed concern about no restroom facilities being available. He said even if it a port-a-potty could be

available, that would help. Mueller asked Schmidt, and he said right now he just uses the restroom in the house. Schmidt said most of the time no one will be waiting on service, unless it is an unusual incident. He said he does not intend on people just coming by the business. He said it will be more of an appointment type operation. Avery questioned possible future usage, saying this should work for now but what if the business or property changes ownership and the land will still be zoned commercial. Richards said he could get busy and do this full time. Mueller asked Yearout for his comments. If the property is rezoned commercial, regardless of who owns the property, the nature of the type of business they are talking about does not generate the kind of demand that would require restrooms, Yearout said. You cannot mix commercial waste and residential waste, Yearout added. The question is, can we live with whatever happens at this location no matter who, or what, goes on?, Yearout asked members. It can change hands and open up to another commercial business, Yearout said. A lot of counties have dropped commercial and industrial zones and have gone to CUP's (Conditional Use Permit) because you can control what goes on with a CUP, Yearout said. Your only option right now is to go this route because of the way your regs are written, Yearout told members. Under the current regs, this is what needs to be done for him to be able to get the proper permit and license to operate his business, Yearout said. Maxwell asked what if OSHA (Occupational Safety and Health Administration) or KDHE (Kansas Department of Health and Environment) came by the business. They will deal with the operational side of the business, Yearout said. No electricity reduces the fire hazard, he said. KDHE would probably only be concerned with the proper disposal of liquids, Yearout said. Is this going to be a paint and body work place, too?, Yearout asked, and Schmidt said no. If you do paint and body work there are lots more issues, Yearout said. This way you cover both the repair business and license with the state so you can do sales, even one vehicle, Yearout said. Is it a spot zone?, no, Yearout said. A spot zone is rezoning a part of a property to the detriment of everything around it, Yearout said. You can make the argument that all ag operations are commercial, because it is, Yearout said. I don't think it is spot zoning, and I don't think it's necessarily out of character, he said. You can't put a lot of restrictions on a straight zone, he said. If you limit utilities, it also limits other uses, Yearout said. And, the cost would be pretty high, Mueller said about adding services and waste disposal. Avery asked about restricting the use. You cannot tie a rezone to an individual, Yearout said. With it involving just a half acre, there is a good chance there will be no other use, he said. You could require the zone to cover a big enough area to handle a sewage system, he said. Probably the greatest restriction you have is that it is only a half acre, he said. You can include that any waste system must be within the property, Yearout said. That is about as far as you can go on a straight rezone, he said. If he never worked on anyone else's vehicles, and only worked on his own vehicles, he would never have to rezone it, Yearout said. Maxwell asked about requests in the past for this property. Members were reminded by Richards that the previous application was for a recreational riding facility for horses. Maxwell asked if a building on the property was involved in that request, and he was told no. Mount questioned the

water and facilities issue, saying if he had to put in a wastewater system there does not appear to be enough room. Avery said there seems to be a consensus that a survey needs to be done. What other issues are there?, Avery asked members. If a wastewater system is added it must be located within the commercial zone, Richards said. Mueller closed the public hearing for this application and asked members to begin deliberating.

Mueller reviewed conditions for recommending this zoning change. There must be a survey, Mueller said. It must be a minimum of 25,000 square feet, Mueller said. Any future wastewater system must be on the commercial property, Mueller said. Mount asked, and was told they will need to move the boundaries to get to the minimum required square footage. It does not have to be fenced in, Mueller said. It can include the driveway, Becker said. Avery questioned including the driveway. They can only do it by platting, Yearout said. If in the future it changes ownership, they cannot isolate the road because it is commercial, Maxwell said. Maxwell questioned using "future" loosely. Richards read the regs to members. Yearout said Richards read a long list of possible uses, but when you consider the size of the property, it is very limited. The only way around it is to just put in a holding tank with no discharge, Yearout said. Mueller asked if anyone felt uncomfortable with the conditions, and no one did. Mueller asked if there were any other issues. Mount made a motion to recommend approving application #PC09-07, requesting a rezone from agriculture to CP-3 Commercial for Belinda Engler and Carl Schmidt, with two conditions, first that the property be surveyed between 25,000 and 30,000 square feet and it be filed with the Register of Deeds, and second that any future wastewater system must be located within the commercial property. Becker seconded the motion.

In favor: 6; Opposed: 0; Motion carried.

Mueller asked Richards to explain the timeline to Engler and Schmidt. Yearout explained there is a protest period beginning tomorrow for 14 days, and then the recommendation will be scheduled with the county commission for final approval. Avery asked, and was told the survey needs to be done before the county commission can act, as the legal description is needed for the resolution.

Item 6: An application for Arthur and Violet Wedel, requesting a variance from required set back of 50 feet to 10 feet for property located at 1482 Falcon, in Blaine Township. Mueller reminded members they are acting as the Board of Zoning Appeals for this application, to make a final decision. 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. The applicants were not present. Maxwell said back in 1999 or 2000 he had an application for Eastshore, and he was given a packet of information and it said the applicant must be present at the public hearing. Richards said she believes applicants are given a notice when they apply that says they should be present. Richards said she probably should call applicants and remind them to come to the meeting. No, you

don't want to do that because if you don't call the applicants every time, then someone will say they were treated differently if they did not receive a reminder call, Yearout said. Richards said she will make sure a note is attached advising applicants to be present at the public hearing for their application, even if they are downloading the information on-line off the web site. Mueller asked Richards to give members some background on this application. Richards said Wedel's own 160 acres and they are requesting a side yard variance. Richards explained there is a primary residence on the property and they want to be able to sell this home with three acres. Richards said a son lives on the property in a singlewide manufactured home, and he has no intention of moving into the family home. Richards said they are trying to separate out all the ag related land and improvements on the property. She said she is not sure who would own the driveway because they plan to split it down the middle and it would be a shared driveway. Richards said they also want to share the lagoon and the water well. You don't have to honor all the shared property they are proposing, Yearout said. Richards said the survey was not correct, so they had to have it re-measured. Mount asked if they have been sharing the lagoon, well, and driveway since they put the trailer on the property. It is okay with the mortgage company, Richards said. It is okay if it is sized right, Mount said about the lagoon. The water well is okay as it can be shared with up to nine homes, Yearout said. There is a lot more involved with sharing, such as whose property it is on, who maintains it, etc., Yearout said. The lagoon is located directly behind the house, Richards said. It is 52 feet behind the house, she added. It is not included in the three acre survey, she said. They are trying to be sure the son gets the cattle trough and the cattle water, Richards said. Maxwell asked about the survey. Avery made a motion to table this application until the next meeting, and Becker seconded the motion. In favor: 6; Opposed: 0; Motion carried.

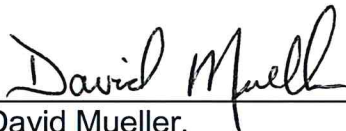
Item 7: David Yearout: Feedlot information. Mueller told members he would like to just concentrate on the feedlot information, for now. Mueller asked members how they would like to proceed. Maxwell asked, and Mueller reminded members they had one application withdrawn and one application that did not have an environmental impact statement with it. Avery said she read where a court ruling said you cannot be more constrictive pollution-wise, but you can restrict land use. We need to be clear for what we want in Marion County, Avery said. An environmental impact statement has nothing to do with land use and you have no ability to enforce it, Yearout told members. We need to clarify all of this and clarify who needs to apply, Avery said. The environmental impact statement should be removed, Yearout said. There are environmental laws that take care of all that, and you have state and federal regulators, Yearout said. There is nothing wrong with taking action tonight to set a public hearing to propose removing environmental impact statement from the regs, Yearout said. There are more bridges to cross at a later date about other issues, he added. Mueller said he likes the idea of cleaning up the feedlot issue and dealing with others down the road. Larger feedlots are harder on the roads, Yearout said. A CUP allows you to mandate that road reconstruction costs are on the feedlot owner, Yearout said.

Maxwell said he would be glad to see the environmental impact statement removed. This is the board that weighs the community's rights and the individual's rights, Avery said. Feedlots are an emotional issue, but if they at least have an option to voice their opinion, I think that is important to allow people to bring us their concerns, Avery said. Yearout discussed animal units, explaining the state requires registering animal units. The secretary of health has the right to determine if there is a health threat any time someone complains, even for one animal, Yearout told members. Yearout explained there are air, odor, dust, etc., issues involved. Avery said one issue is when does someone need to make application. Mueller said one issue is under Article One and a second issue is under Article 14. You need to try to change the definition and add the definition of confined animal feeding operation, Yearout told members. If you publish a public hearing notice that you are going with 300 animal units, you can still recommend to go to 1,000 animal units, or you can go with 300, Yearout told members. Under Article 14 you just need to eliminate all the information under Section Four, A through E, Yearout said. And in Article 21, under 21-103, remove under #10 commercial stockyards and/or feedlots. Mueller asked members if anyone had any opposition to the Article 21 change. Anything below the number you decide on is an ag operation, Yearout told members. Under Article One, Yearout recommended dropping the number to 300 animal units. If they have 300, they are currently required to register with KDHE, including existing operations, Yearout said. But, existing operations would not have to go through the process, they would automatically be given a CUP to proceed, Yearout explained. Mount said he thinks members should go with 1,000 animal units because in this day no one can feed 300 animal units and make a living. I'm not sure I want the attention with 300, but it makes sense with the regs, Schmidt said. Maxwell agreed that he is not sure anyone can make it with just 300 animal units. Mueller questioned going with 1,000 animal units. If you have 1,000 animal units you have to go through KDHE, but under 1,000 and you just have to register, Mueller said. Operations are looked at, and the state has the right to impose requirements, if there are problems, Yearout said. So much of the ag industry is opposed to zoning, but they should be demanding zoning because it gives them the ability to be notified before a neighbor sells off some land and someone moves something in, Yearout said. Zoning actually can be the friend of the farmer, Yearout said. State requirements are already in place for dairies, etc., Mount said. You accomplish two things, Yearout said. Give surrounding landowner rights and give a clean/clear ability at the county level, which can help how a county pays for additional services such as roads, and there is no legal way to do that now, Yearout explained. Maxwell questioned the difference between 300 and 1,000 animal units. I can't see where the costs would be that much different, Maxwell said. It is hard to defend, Mueller said. You can always increase 300, Avery said. Mueller polled members. Avery, Schmidt, and Maxwell favor 300. Mount and Mueller favor 1,000, and Becker was undecided, but was leaning toward 1,000. You can't lower it, Avery reminded members. Under Article 14 all members agreed to delete all of Section Four. Under Article 21 members considered the issue that if there is a new confined animal feeding operation, the county could

go after road funding. Members decided to schedule a public hearing on October 29, 2009, along with their regular meeting. Members were reminded this meeting is scheduled a week later than usual. Mount made a motion to accept the proposed changes as presented for Article One, to delete Section Four of Article 14, and to change feedlot conditional use language to confined animal feeding operation, and schedule a public hearing for these changes on October 29, 2009, at 7:30 p.m. Maxwell seconded the motion.
In favor: 5; Opposed: 1; Motion carried.

Maxwell commented on a shared lagoon in a past application on the Barkman property. Avery said they changed the zoning to commercial property. Mueller explained the difference. Mueller reminded members the next meeting is on October 29, 2009, there is no November meeting, and the December meeting is scheduled earlier than usual. Mueller thanked Holub and Richards. Mount made a motion to adjourn and Avery seconded the motion.
In favor: 6; Opposed: 0; Motion carried and the meeting adjourned at 10:14 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yates,
Secretary

