

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

September 27, 2012

Vice Chairman Mary Avery called the meeting to order at 7:30 p.m.

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

Avery asked for corrections, or additions, to the Record of Proceedings for the August 23, 2012, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Vannocker moved to approve the Record of Proceedings as written and Kraus seconded. In favor: 6; Opposed: 0; Motion carried.

Avery asked members if they would agree to move agenda Item 4 to Item 6, and all agreed. This allows for addressing the Branson application first, as several members of the public are present for this agenda item.

Next on the agenda was an application for David and Diane Branson of 2128 Strassburg at Marion Reservoir, requesting a Conditional Use Permit (CUP) to establish and use a single family residential home as a church in "ES" Eastshore District. Avery asked David Branson to come forward to discuss the application. Avery asked Richards to explain a CUP to the public. Richards explained that a CUP stays with the land, so a different property owner could move in and the CUP stays with the land. Branson said there seems to be a misunderstanding in what they have in mind. We do not intend to turn our home into a church building, Branson said. We will not have a Wednesday service, and we will not have a Sunday evening service, Branson said. We will not bring in gospel groups, he added. We want to have approximately an hour long bible study, because it has been requested, Branson explained. We are not going to redo our home, he said. We were told we need approval for a bible study, he said. We just want to do a bible study, he added. People do bible studies all the time, Kraus said. What is the difference between church and a bible study?, Kraus asked. They have the right to assembly, Bina said. Avery referred members to the application, saying Branson asked for a CUP for a church. Avery asked Branson if there is some other information. We just want a bible study, Branson said. We had a building in town and we quit meeting there, so we started a bible study in our home, Branson said. We have not had any complaints about noise, Branson added. Mount asked how many people are involved in the bible study, and Branson said three people. We have been asked by some of the people in our neighborhood if they could come to the bible study because in the past there was one in the neighborhood but it discontinued, Branson said. It would be nice to have more people attend, but I'm not sure how many, he said. Avery thanked Branson for his presentation. Avery asked for public comment. Jimmy Hultgren, of McPherson, said he

is the other member of the bible study and that the Branson's are good folks. Jeanne Woosley, who lives at Eastshore, said she does not have a problem with a bible study. She asked why they asked for permission for a church. Woosley said she is okay with a bible study; she is just against a church. Bob Maxwell, who lives at Eastshore, asked Richards why the request was not for a bible study. Richards said there is no CUP required for a bible study. Maxwell asked if there were any signage requirements for a bible study. There will be no sign, Branson said. This is our home, he added. Richards said again there is no CUP needed for a bible study, but Branson used the wording "church." Richards said Branson is associated with Community Gospel Church, which is a non-profit through the state, and by using the word church a CUP is required. Branson said they could dispose of the non-profit. Branson said they are still designated that way with the state and he only worded it that way because that is what they were. It is ridiculous with only three people. Branson said. Avery said it sounds like we have some misunderstanding, shall we table it? Yearout said the information with the application lead Richards to believe it is a church. Tonight we learn it is a bible study, and those are two different things, Yearout said. There is no CUP needed for a bible study out of a home, Yearout said. There are other contributing factors here, Yearout said. There is another situation, he said. They have money in the bank in the name of Community Gospel Church, and they are on file with the state, Yearout said. Even if the only extent of the gathering is for a bible study, it is still a church, Yearout said. If we are hearing from the applicant that he wants to abolish the church, that changes the nature of this entire thing, where there is no reason for any of us to be here in that case, Yearout said. This is where it is legally in the eyes of the law, now, Yearout said. If Branson wants to continue this, then he can make changes and Richards can consider this dismissed, Yearout said. The best way to handle this is for the applicant to request a continuance and for him to follow through with discontinuing the church, Yearout said. Do they have to disband the church if it is not listed at this address?, Kraus asked. Even if the church is listed under a post office box, they have to give the address of the person involved with the entity, Yearout said. I don't think anyone in this room has an issue with a bible study, Yearout said. Barbara Hardin, who lives at Eastshore, asked if Branson can just drop the application. In the eyes of the law he needs to discontinue the church, Yearout said. Mark Hawk, who lives at Eastshore, said if they call it a church it would always be that. Yearout said 20 years ago the county adopted zoning, so this has been a requirement for 20 years. Branson apologized to Richards for the misunderstanding. Vannocker asked if the board can just deny this application and move on. Richards said Branson still needs to abolish the church. You would still be back in the same situation, Yearout said. The only way to resolve this is to make the church go away, legally, Yearout said. Avery asked if members want to table this application and ask Branson to decide what he wants to do, and then ask him to let Richards know his wishes. Kraus asked if the application could be withdrawn before things are resolved. I would not recommend that, Yearout said. Hardin asked if it makes a difference that Branson himself is not the church. As long as he is the legal entity, that does not make a difference, Richards said. Avery asked Branson, and he said they will resolve the problem by discontinuing the church. Probably other people need to be part of the conversation to make that decision, and that is why I am encouraging you to continue this application, Yearout said. Avery explained to Branson that once they are ready they

should tell Richards. Maxwell asked if you do continue this at a later date, how the public will know about it. Yearout said at the very latest it would be on the agenda for the October 25, 2012, planning commission meeting. Richards said she could publish it again on the county web site. Mount moved to table this application and Vannocker seconded. In favor: 6; Opposed: 0; Motion carried.

Next on the agenda was an application for Gary Dunnegan of 71 Lakeshore at Marion County Park and Lake, requesting a Final Plat Approval to establish two lots in the "LL" Lake Lot District. Richards explained this application needs to be continued as all the information is not yet available. Kraus moved to table this application and Schmidt seconded. In favor: 6; Opposed: 0; Motion carried.

Avery opened the public hearing regarding proposed text amendment changes. Yearout reviewed the proposed changes. Yearout explained amendments to Article 21, under 21-104. Yearout explained the HUD (Housing and Urban Development) home standard was adopted in 1976. Yearout said in 1994 the HUD code was amended, and the county also amended county zoning regulations. Yearout said a recent request to approve the use of a 1988 HUD home was an example of how amending Article 21 could help address such special exceptions. Yearout said the Board of Zoning Appeals has allowed the use of a HUD home built between 1976 and 1994, and this change provides the mechanism to move one such home from one part of the county to another part of the county, but does not allow one to be brought in from outside the county. Yearout continued, explaining proposed amendment to Article 3 in the Subdivision Regulations, adding 3-106 "Non-Compliant Agricultural Lot Splits." Yearout explained this change will help with homes located in the middle of a section. Yearout reminded members that Agricultural Lot Splits are allowed and are fine on 40 acres; otherwise the property must be rezoned and platted. Yearout said such homes must be located on a county road. Yearout said the intent is to modify the regulations to allow Agricultural Lot Splits where there are existing homesteads. He said if someone wants to make improvements to such an existing homestead on a county road this is a mechanism to allow for that. To qualify for this will take documentation, a survey, a hearing with this board, and an okay from the county commission, he said. So, this is not just handled administratively, Yearout said. I want to find another way to word it besides "non-conforming," Yearout said. I may use "Historic Ag Home Lots," he said. An existing homestead can be carved off using this, Yearout said. The county commissioners are the ones that kind of initiated this, Yearout said. If you are comfortable with what I've done, the hearing tonight allows you to pass this on to the county commissioners, Yearout told members. Avery asked, and Yearout said lot splits are allowed if you have 40 acres, and the property needs to be located by a county road. What if you have a landlocked 40 acres?, Kraus asked. We have some, Richards said. If you carve off two acres from 40 acres, the bank considers the bank and you own two acres, and you still own the 38 acres, Yearout said. Richards asked about #3 under 3-106, and Yearout explained it means it can be no less than three acres and no more than 10 acres. Yearout said a smaller acreage is not an Ag business, and the intent is to manage land in Ag areas to keep it viable. Also, you don't want to require someone to purchase more acreage than they want and can reasonably take care of, he added. Richards asked

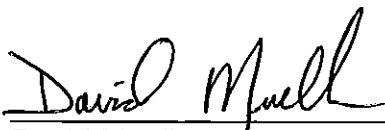
what if someone wants more than 10 acres in this situation, and Yearout said they would have to plat and deal with asking the governing body to waive the requirements. Kraus asked what determines an existing homestead, and Yearout said there may not be a house there. If they farm around it, they consider it an old homestead, Bina said. There could be nothing left but trees, Yearout said. Kraus asked what if there is no evidence of an old homestead, and Richards said there has to be something remaining. Kraus said some people have an old t-post in a field they farm around because that is where an old well was. A t-post isn't going to do it, Yearout said. I understand what you are saying, but the challenge would be for Richards, or whoever, to make that decision, Yearout said. I have made decisions on just administrative lot splits, Richards said. In my area there are maps back in the 1870's showing where homes were, Bina said. Avery asked Yearout if he is still going to tweak this. He said he just needs to finalize the wording for Ag Lot Splits on existing homesteads. Richards said McPherson County calls it "Historic Home Sites." Avery asked if members may approve the changes as presented. I recommend unless you want to chew on it, that you send it on to the governing body, Yearout said. Avery asked the wishes of the board. Send it on, Mount said. Yearout said we could word it, "Ag Lot Splits and/or Historic Homesteads." Bina moved to recommend approval of the text amendments and to send it on to the governing body as presented and Mount seconded.

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

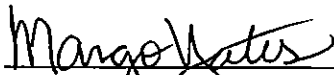
Richards reminded members they are supposed to review the Comprehensive Plan every year. Unless there is something screaming at you that is off base, you may simply make a motion to okay it, Yearout told members. If someone wants to challenge something, the Comprehensive Plan can be important, Yearout said. It is not mandatory to have a Comprehensive Plan, he said. You could just say it will be on the October agenda to say it is okay, he told members. You could update the Census information, but you would not have to, he added. Avery asked if members have copies of the Comprehensive Plan. Avery asked members to bring questions to the October meeting and we will address them. Avery asked if there were other off agenda items, but there were none. Mount moved to adjourn and Vannocker seconded.

In favor: 6; Opposed: 0; Motion carried and the meeting adjourned at 8:30 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yates,
Secretary