

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

September 27, 2007

Chairman David Mueller called the meeting to order at 7:31 p.m., with a quorum present.

Roll Call was answered by Mueller, Mary Avery, Bob Maxwell, Kent Becker, Ervin Ediger, Glen Unrau, Willis Ensz and Jeff Bina. Marquetta Eilerts was absent. Zoning Administrator Bobbi Strait and County Commissioner Dan Holub were also present.

Mueller asked for corrections or additions to the Record of Proceedings for the July 26, 2007, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Maxwell asked if a letter had been written to Mr. Warkentine and Strait explained the Wilson's ended up buying a double-wide, so there was no point to writing a letter. Ensz made a motion to approve the Record of Proceedings as written and Becker seconded the motion. In favor: 8; Opposed: 0; Motion carried.

Item 4: An application for Richard Bridgewater, requesting a Conditional Use Permit (CUP) for a junk yard. Mueller asked everyone from the public to please sign in. Mueller reminded members they are acting as the planning commission for this application to make a recommendation to the county commission. Mueller said this application was published in the September 5, 2007 issues of the *Marion County Record, Hillsboro Star Journal and Peabody Gazette Bulletin*. Mueller asked members if anyone had a conflict of interest or any outside communication concerning this application. Unrau said he is a close neighbor to the applicant and has known him for a long time, but he would like to participate in the discussion and he thinks he can do it discreetly and honestly, but if anyone objects he will not participate. No one objected to Unrau participating. Bridgewater was present to speak about his application. Bridgewater explained he has lived here since 1988 and 10 years before that he started buying and selling old Ford trucks and cars. He said he started with Model A's, and he bought some back east. Bridgewater said he is offended by the use of the term junk yard. He said a man from the state came and is requiring him to put up a fence to hide his stuff. He said he started moving everything back so he can put a fence up and hide it. I don't know where a salvage license came from, Bridgewater said. I'm 72 years old and I'm not starting a new business, he added. There is nothing in the front yard and I have never had anything in the ditch, he said. With the leaves on, you can't see much, he said. I sell cabs, front end parts and wheels, he said. I sell quite a few, but it is a big job getting the tires off and it is really not junk, he said. I'd like to know what grandfather clause

means, he said. You started on Thiessen's and then he turned me in and not a thing has happened over there, Bridgewater said. Strait explained that zoning regs were implemented in 1992 and in order to be grandfathered in you had to have a state license at that time. I was notified by the state and I could not find anything grandfathered in so I am allowing you to apply for a CUP which allows you to continue to use your property the way you are using it so it is no longer illegal and the state can license you and you are compliant with our regs, Strait explained to Bridgewater. It's a formality, she said. It just makes it all legal, Strait said. The status on Thiessen's is everything that is visible from the road the state determined is ag exempt, Strait said. He is a legal non-conforming use at this time, Strait said. We are allowing the state to handle it which saves our county the expense, Strait said. The state is on it, she added. The state is waiting for the judge to sign off on it so they can proceed, she explained. They are at a stand still until they get the judge's signature, she said. He was grandfathered in, also, Strait said. His problems started when I got complaints that his stuff was in the county right of way, Strait said. I had the sheriff's office and road and bridge assist me in getting it out of the county right of way, Strait said. It takes time to go through the procedures so he gets his due process, Strait said. Mueller asked and Bridgewater explained he takes the parts and reuses or recycles them. He goes to swap meets all over the country, Unrau said. It is actually very neat and organized, Strait said. Members viewed photos of the property. Mueller asked if in the photo the road is the front of the property, and Bridgewater showed him in the photo. Bridgewater also showed on the photo where he is putting a fence. Ensz asked what kind of fence and Bridgewater said he is using steel posts with steel siding. Mueller asked Bridgewater to clarify where vehicles have been moved by showing members in the photos. Ninety percent of the vehicles have been moved back or I hauled them in for junk, Bridgewater said. Maxwell asked if Strait explained things to Bridgewater since he seems surprised by the process, etc. Bridgewater said Strait told him quite a bit. It started with the state man standing flatfooted on the road and saying he shouldn't be able to see anything, Bridgewater said. I explained all that to him and I explained what KDOT was doing because at first he didn't want to go through with this, Strait said. KDOT will not extend it long enough without a license, Strait said. He explained this is their retirement and he didn't want to quit so we decided it is in his best interest to get a CUP and state license and he can continue until he no longer wants to do this, Strait said. There really is a lot of stuff out there but you can't tell that from the road and it's very organized, Strait said. It takes him a lot of time to organize it, she added. I was impressed with the way he has things laid out and it does not look like the photo looks as the photos were taken a few years ago, Strait said. Mueller asked Bridgewater if he plans to add more items. I might, Bridgewater said. Scrap iron is up now, Bridgewater said. I usually cut the frame up and haul away the rest, he said. They won't take the wheels or the back axles, he added. Mueller asked, and Bridgewater said he sprays between the vehicles to control the weeds. Mueller asked if anyone from the public wished to speak about this application. Mueller asked Strait for her staff recommendation for this application. Strait went over her staff report, which members received in their

packet of information prior to the meeting. It is ag land primarily for crop production all around there, Strait said. It is currently being used the same as what is requested, so lifting restrictions will not detrimentally affect nearby properties, Strait said. We want to alleviate the non-conforming use status, she said. There is not a house for at least a mile, so allowing this use is not an issue for any neighbors, Strait said. He is in the habit of keeping a clean and orderly property, Strait said. I am still unable to locate anything about junk yards and salvage operations in the comprehensive plan, Strait said. My staff recommendation is to approve a CUP with restrictions to the current size and use, Strait said. Maxwell asked, and Strait said the state will license the operation after the county signs off on it. Becker asked Strait how many junk yards there are in the county. This all started because after I got here I received complaints about Thiessen having items in the right of way, Strait explained. KDOT began checking out sites first and there are 13 sites that Thiessen turned in, Strait said. The inspector for this area inspects 33 counties, so unless there are complaints they don't have time to inspect, Strait said. Becker asked Strait if members are going to have several more of these applications. There are two in the north half of the county and five down here, because it is close to Newton and Wichita, Strait said. The photo looks the same as the one last month, Becker said. Junk is junk, Becker said. Some applications come in with an immaculate salvage yard and others are a nuisance and a health hazard, Mueller said. Each one is different, Mueller said. This photo was taken two years ago and he has made progress, where others have not made progress, Mueller said. I think it raises a question of consistency, Avery said. I have spent time thinking about this because both are in our district, Avery said. Mr. Bridgewater did not know of the need for a license, where the one last month has known of the need for a license, Avery said. This is orderly and we have had no complaints from neighbors, Avery said. Mueller asked if there were other questions, or comments. Mueller closed the public hearing for this application.

Avery talked about how the applications are different. It better be squeaky clean or this guy is not voting for it, Becker said. I wasn't here last month but I read the minutes and wasn't he just collecting items?, Bina asked. If any sell or quit dealing then at that point in time does the license expire?, Maxwell asked. It stays with the property if they sell it and it remains active, Strait said. They have to maintain the state license each year, she explained. A CUP expires in six months unless you grant them a special recommendation and the county commission also agrees, Strait said. If they are out of compliance with the state and their state license is suspended or revoked, from that day they have six months to get their state license reinstated or they are out of compliance, Strait said. Avery made a motion to recommend to the county commission to issue a CUP for application #ZP07-043 for Richard Bridgewater with the restriction that it stays at five acres and continues as it is currently being used. Bina seconded the motion. Becker asked about the term salvage. With salvage they bring in junk vehicles and salvage out parts, but he has specific vehicles and he specializes

and caters to a specific need and it is not just all junk, Strait said. To a lay person it is a salvage yard and junk yard, Maxwell said. Members voted on the motion. In favor: 8; Opposed: 0; Motion carried. Strait explained the timeline to Bridgewater.

Item 5: An application by Paul Morse for a variance of set backs from 10 feet to five feet for a garage. Mueller said this application was published in the September 5, 2007 issues of the *Marion County Record, Hillsboro Star Journal and Peabody Gazette Bulletin*. Mueller reminded members they are acting as the Board of Zoning Appeals for this application. Avery made a motion to include all eight members in the Board of Zoning Appeals for this application. Ediger seconded the motion. In favor: 8; Opposed; 0; Motion carried.

You might note that according to the by laws it is the members with the most tenure, Strait said. Mueller asked members if anyone had a conflict of interest or any outside communication concerning this application. Avery said she has a cabin in the notification area, but she feels she can be impartial unless someone objects to her participating. No one objected. This property is located at Marion County Park and Lake. Morse was present to speak about his application. He explained he has asked for a variance to build a double car garage. He said he has tried to buy the property next door, but the owner did not want to sell to him but they did put the property up for sale on the market. He said the property next door did not sell, so they asked him if he still wanted to buy it. Morse showed members on a diagram he made what his plans are. He said he wants to make the garage deep enough to be able to put a decent sized vehicle in there. I'd kind of like to live out there, Morse said. He showed members photos of the property and showed photos of the house he tore down. Morse showed members photos of the house and the garage and explained he wants to move the back of the garage back further. Ediger asked, and Morse showed him on a map where this property is located at the lake. I really would like to have the house to the west of me, Morse said. I don't want to be a pig, but it's a shack and he doesn't mow his yard, Morse said. The garage will look nice and I might build a little picnic shelter, but right now I just want to do the garage and then I can plan from there, Morse said. I guess I need more room if I want to live here full time, he said. Becker asked if this is his second home. Yes, I live in Salina but I grew up in Marion, Morse said. I want to put a fence in there and landscape it, Morse said. Becker talked about a home for sale that he looked at, where the back of the home could not have been more than six feet from the neighbor's property because there was a bull that was within three feet of the back door. You think we've done a lot of junk yards, well we've done a lot of those, Mueller said referring to close property lines at the county lake. Mueller asked if there were any other questions. Mueller asked Strait for a staff report. Strait said her staff report is different because this is for the Board of Zoning Appeals. Strait said there have still not been any comments received concerning this application. In Village One District at the county lake most lots are 50x100, which is not really ample building space, Strait said. To the rear of this property is an open pasture, Strait told members. They have a garage that is not really usable right now, Strait said. Strait said her

recommendation is to approve a rear yard variance of no more than five feet. Becker asked if the utility easement presents a problem. Strait said the utilities run adjacent to the easement, in front. I have to pay double for water and sewer for that lot, Morse said. Mueller asked if anyone from the public wished to speak. Mueller asked if there were any other comments. I think it will look nice, Morse said. You did a good job on the other, Mueller told Morse. Mueller closed the public hearing for this application.

Bina made a motion to approve a rear yard variance of no more than five feet for Paul Morse, application #ZP07-043. Maxwell questioned if it is a variance of five feet if we are going to a five foot set back. Strait said the set back is 10 feet. So, five feet does work, Maxwell said, and Strait said yes. Unrau seconded the motion. In favor: 8; Opposed; 0; Motion carried.

Mueller explained this is a final action. Strait told Morse he can come get his building permit tomorrow. Morse asked if there is a certain time to do it by. I want to get the cement in by winter, Morse said. The permit is good for six months and as long as you have progress every six months the permit will not expire, Strait explained. Strait told Morse she recommends he apply for neighborhood revitalization. It doesn't work, Morse said. I sold some property to Al Church and Al Church doesn't pay his taxes, so they told me I owe taxes, Morse said.

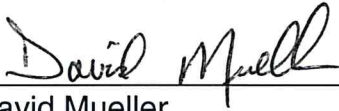
Off agenda: Mueller asked Avery to introduce her guest from London, England. Mueller said Strait passed around mileage vouchers. Strait said there may be a raise in the mileage cap this year. Mueller explained to new members how to log mileage. Strait asked members to turn in their mileage at the November meeting for the year. Strait passed around a copy of the minutes from a county commission meeting in March, saying the commissioners had some criteria for one of the junk yard applicants to meet. Strait showed members photos taken last night. She said there were three criteria, including: having a survey within 90 days, which the applicant did; having 75 to 80 percent of the fence up by October 1, and there is no fence; and having a plan for collection of fluids. Strait said KDHE is supposed to send something in writing about the collection of fluids. Avery asked about planting trees. The applicant has not done that, either. Part of the screening he uses is eight foot tall weeds, Strait said. To address the collection of fluids and storm water, we could go through the Department of Agriculture, Strait said. If KDHE does not regulate it, I'm not sure how far the county commission wants to go, Strait said. A lot of rain in the spring was used as an excuse for missing the deadline, Strait said. I'm on the schedule at the county commission meeting tomorrow to update them, Strait told members. 75 to 80 percent of the fencing has not even been attempted and his excuse was the weather, Strait said. He used the weather as an excuse all the time at the meeting, Maxwell said. KDOT is revoking his permit if the county commission does not okay it tomorrow, Strait said. The county commission did not sign a resolution and have it published, so KDOT has had this on hold and they don't usually do that, so they have been waiting for us to say yea or nay and tomorrow is yea or nay, Strait said. Avery asked Strait to e-mail members the results from

tomorrow's meeting. Strait agreed. Marion County Economic Development Director Teresa Huffman addressed members to ask their opinion of the rails to trails project. She said she was approached by the CKC, Inc., (Central Kansas Conservancy) about the rail bank in Marion and McPherson Counties. She said she did not realize how polarized the rail trial issue is. The only reason I am moving forward with this is to learn about this and what it could mean for our county, Huffman said. Tourism dollars is huge and we fall very short, she said. I spend a lot more time on tourism than most ED people because of our lakes, she said. Huffman referred to an article about other trails and she showed photos of Garnett's trail. Huffman asked what the planning commission's position is on trails. She said the federal laws rule. In other communities where they've had to stand up and take a stand on this, some people say it's my land I pay taxes on it, and they do, but regardless it is still a rail bank and the railroad can turn it over to a group, which they did, Huffman said. Some people have destroyed it, which is against federal law, Huffman said. Mueller asked if there is anything in the regs on this, and Strait said no. An easement is an easement, Strait said. Huffman said they want to develop the trail. Bina asked and Huffman said it was the Santa Fe Railroad that turned the rail bank over to the CKC. There are a lot of myths out there about the rail trails and how they bring your property values down, and it actually raises property values by about seven percent, Huffman said. Huffman told about a Missouri town that revitalized the town with a rail trail. She also told of a couple who moved to our area and ride bikes on old highway 56. Really, it is controversial, Huffman said. Ensz asked what percentage are for, and against this, in the Marion and Hillsboro area. I'm not sure, I only had one person in my face, Huffman said. The people opposed to it who are adjacent landowners are going to be very vocal, Huffman said. Marion is getting ready to develop the trail within their city, she said. Lindsborg has just completed a two and half mile trail, she said. There is lots of funding available, she added. Wildlife and Parks are very supportive, and KDOT is supportive, she said. Lindsborg built their trail according to KDOT specs with 10-foot wide concrete, with a bridge and rest areas, she said. Special needs young people use the trail for wheelchairs, Huffman said. The day I was there, there was always someone on the trail, she said. Once we decide to move forward, some people will oppose it, she said. They don't trash it, she said. These are the kind of great people that believe in the land and want to take care of it, she said. They also pay taxes on the land, with utility easements through it, too, she said. Kansas State Statute says you have to put up fencing, but that is not the federal law, Huffman said. We can never rid ourselves of vandalism, and those things, but this has been a positive thing all over the U.S., Huffman said. I have a lot of questions, Maxwell said. The only way I will move forward with this is we have to be civil and there has to be education, Huffman said. I used to work in HUD Housing, and you want to talk about an unpopular job, but through education people began to realize it's not such a bad deal, Huffman said. I'm not prepared to give my position tonight, Avery said. I'm not sure how we would be connected to it, Maxwell said. Bina asked how long the trail is, and Huffman said from Marion through McPherson County to Lindsborg. Mueller asked how the trail can get around the post office in

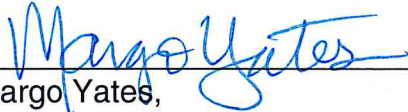
Hillsboro. Huffman explained they have to work around those things. There are ways around it, she said. Mueller thanked Huffman. Holub said he has asked Strait to start looking into building codes. We have some real issues with building codes in the county, Holub said. There was one house where they spent a lot of money fixing it up and it probably should have been torn down. Also, we need to protect residents from unscrupulous contractors, Holub said. Such as people doing work on gas lines that have no training, Holub said. It will also help with insurance, Holub added. We need to do something here, he said. We were looking at adopting the state's building codes, he said. If we do adopt building codes it will only be for new construction, or renovations, everything else would be grandfathered in, Holub said. Frankly, I think the feds are going to shove it down our throats anyway after Katrina, Holub said. Strait explained some handouts she gave members. FEMA may require building codes in flood zones, Strait said. One community asked how to pay for this and they were told to figure it into the permits, Strait said. This way you are not putting the burden on every tax payer, you are putting it on those who do construction, Strait said. Strait gave the example of having a \$10 permit plus \$10 per inspection and there are nine inspections per home. Wichita bases permits on value, Maxwell said. Strait reviewed a print out example of a permit system. Strait handed out a resolution example from Seward County. Strait explained the International Residential Code revisions and showed members a 2003 book of codes for design criteria. Strait said the state enforces 2003 codes on public owned buildings. Before the state adopted the 2003 codes they were operating off the 1988 codes, Strait said. They may keep more up to date since FEMA has become more concerned, Strait said. Unrau asked to whom do these apply and to who are they enforced? It applies to every new construction project, Strait said. Holub talked about visiting with architects and designers on the local school project. They should have an inspector on the job site, Maxwell said. You don't have that on houses, Maxwell added. Strait explained contractors from Wichita are used to going by codes and they continue to do so even in our county. We will have to have a lot of inspections, Ensz said. The cost of construction will go up, Maxwell said. It helps the insurance costs, Holub said. If you have unlicensed contractors and someone gets hurt it goes back on the homeowner, Holub said. I required that on my house and it wasn't very popular, Maxwell said. I'd just like to have you guys on board, Strait said. I'm going to suggest it to the county commission, she added. I'd like to take our time and make sure you all understand and everybody knows what we are getting into, what the costs are, what the benefits are, Strait said. Avery asked, and Strait said it does not officially need to come through this group, but you are my sounding board. Bina asked if it would apply to someone replacing a roof and Strait said no it would apply to those renovating 50 percent of their home, or doing a project that equals fifty percent of the value of their home. You do not have to tear out the wall if you are doing something in the other room, Strait said. When you put in new, it is going to have to meet code, Strait said. Strait explained a handout of examples from Seward County on procedure for obtaining permits. Strait explained the final handout on contract licenses which addressed how much insurance they need and how much

continuing education they need. Bina asked, and Strait said homeowners doing the work themselves still have to meet code. Strait told of a horror story from Seward County about a gas line that was not pressure tested and the line had a leak and the house exploded and killed a 16 year old girl. She said the court case is pending and there were two contractors who were not licensed and they will be liable. Maxwell said it is the first time he was ever seen an International Code Book. Most operate off the Uniform Code Book, Maxwell said. There were four or five Uniform Codes, so they consolidated all of them and that's how they came up with the International Codes, Strait said. Maxwell asked if the codes would work on a new jail or a hospital project and Strait said yes. Becker made a motion to adjourn and Unrau seconded the motion. In favor: 8; Opposed; 0; Motion carried and the meeting adjourned at 10:00 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



David Mueller,
Chairman



Margo Yates,
Secretary