

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

April 22, 2004

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

Roll Call was answered by Sieger, Glen Unrau, Mary Avery, Ervin Ediger, Willis Ensz, David Mueller and Bob Unruh. Zoning Administrator David Brazil was present.

Sieger asked if there were any off agenda items, or questions about the agenda. Sieger said members could talk about scheduling another work session. Unruh said he plans to resign, and will talk about it during off agenda items. Sieger reminded Unruh to handle this with his county commissioner.

Sieger asked for corrections, or additions, to the Record of Proceedings of the March 25, 2004, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Avery made a motion to accept the Record of Proceedings as written, and Ediger seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 4: A continued application for Lloyd Schroeder, requesting a rezone from agricultural to rural residential and a Conditional Use Permit (CUP) for a tree farm operated at retail, for property located in West Branch Township. Sieger reminded members there are two parts to this application, one the rezone request and the other the CUP request. Sieger said for both parts members are acting as the planning commission. Sieger reminded everyone that this application was originally on the agenda for the February meeting, but it was noticed there were some omissions with the public notification, and we want to do it accurately and properly, so we republished and re-notified everyone. Sieger explained the notification area is now one mile. This application was published correctly in the March 3, 2004, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. So, Sieger said, this application was continued at the February meeting, to the March meeting. I think the perception was the public hearing had been closed for this application, but referring to the Record of Proceedings on page three half way down the page, Unruh said he was ready to close the public hearing for this application unless members have other questions, and there were other questions, Sieger explained. And, she added, the public hearing was not officially closed, and the motion was made to continue this application to tonight's meeting. Since the last meeting we have received 11 additional letters regarding this application, Sieger said. Members have received copies of all but two of the letters, she added. Sieger will read the two new letters into the record. She said there has also been information from the Kansas Department of Health and Environment (KDHE), and Sieger read this information into the record. Bob Brookens, attorney representing the Schroeder's, said they are withdrawing their change of zoning request, but want to continue with the CUP request. Sieger said members would now need to move forward with the CUP request. I think this changes the nature and scope of this application, entirely, Unruh said. Sieger read a letter dated April 22, 2004, from the Kansas Farm Bureau. Sieger read the second new letter, from Leslie D. Wedel, one of Schroeder's neighbors who wrote in support of their application. Because the public hearing is still open, all the letters received will be put into the record, Sieger said. We will open the floor up for comments, but it must be new information, Sieger explained. If you were not present before, you can make a comment, as you will not know what was said, before, Sieger added. Brookens said the tract in question is located at the southwest part of where Schroeder's own 40 to 45 acres. He said their house is located at the

northwest corner of the property. He pointed out the area, and said they currently have trees on it, and they would sell the bulk of what now has trees on it. For zoning purposes, he has a grand fathered CUP for a tree operation and when you are talking about transitioning this over to the 40-acre plot, basically you are talking about a CUP on grand fathered acreage, Brazil said. I want to change my staff recommendation from three years to seven, or eight years, to allow time for trees to mature, Brazil said. Unruh asked for clarification about the grand fathered use. Anytime you change the grandfather, you nullify the grandfather, Brazil said. Then we need a CUP for both properties, Unruh said. The purpose of it being a big plot is to transition trees, Brazil said. You have a grandfather on the entire property, Brazil said. They could continue with the grand fathered use if they don't sell, Brookens said. Their intentions are to sell the property, Brookens said. The Schroeders have a facility built and the new owner would want to use those buildings, which complicates things, Brookens said. You could put the CUP on the whole 68 acres and put a time requirement on part of it, Brazil said. I just want to be sure if 40 acres is sold, they can continue to operate on the 28 acres, Brazil said. You could also make it where the buildings could continue to be used for the facility with the requirement that no more buildings could be built, Brookens said. I think that muddies the water for the CUP, and I'd rather there be a time frame, and that complicates it, Brazil said. Does the CUP go with the sale of the property?, Unruh asked. Whether it is a grand fathered CUP or a new CUP, the result is the same, Mueller said. The cleanest way to do this is two CUPs, Unruh said. Then it's a clean transaction in the case the property is sold, Unruh said. You could grow trees on the 28 acres as wholesale and sell them on the 40 acres as retail, Brazil said. They don't want to change the appearance of what you see, they just don't want to move out of the house if the trees sell, Brookens said. Are the future trees planted on the 40 acres going to be the same as they are today?, Unruh asked. That's up to the new owner, Brookens said. We could designate a certain acreage that it is allowed on, Sieger said. Avery asked and was shown an aerial photo of the property. Sieger opened the floor for comments. Does anyone wish to speak?, Sieger asked, but no one did. Are there any further comments from the applicant?, Sieger asked. Sieger closed the public hearing for this application and opened the floor for discussion and determination dealing with the CUP.

One issue is about the traffic, Sieger said. I don't believe that is an issue, except for rezoning, Unruh said. A CUP does involve traffic with customers coming to the property, Sieger said. I only see it as seasonal traffic, but it was brought up, she added. Brazil referred to the KDHE letter, and said the existing permit would not be in jeopardy through application of a CUP, but would limit future expansions, Brazil said. I view this as a reduction of a grand fathered CUP, 108 acres to 40 acres, over time, which would free it up for other ag use, he said. I disagree that the issue of the CUP would not jeopardize future expansion, but a new home would, Mueller said. I want to make sure adding eight years transition period allows for continuing harvesting trees off the homestead and allows the use of the buildings, Mueller said. And, once the eight years is up, no other commercial operation on the 28 acres can occur, Mueller said. Unruh questioned if the way it's presented on the map will stay the same, but they will have the property surveyed before the application goes to the county commission. Sieger explained a CUP recommendation goes to the county commission for final approval. Mueller asked for clarification, asking if the recommendation would be for a CUP on 68 acres, to be reduced to 40 acres, after eight years. Mueller made a motion to approve a recommendation for the application by Schroeders for a Conditional Use Permit (CUP) for retail tree sales on 68 acres as presented in the development plan, and include in the recommendation that, one, all State of Kansas operational permits be obtained and maintained, two, that one four feet by eight feet non-illuminated sign be allowed on site, three, that all parking be provided for off street, and four, to reduce the CUP to 40 acres, after eight years, as presented in the development plan. Unruh seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Sieger explained the time frame for going to the county commission. Sieger thanked everyone for his or her input.

Off agenda: Sieger asked about the last work session. Brazil said copies of the draft probably will be available week after next, and if members are willing to stop by and pick up copies that would be helpful as the draft is 168 pages. Sieger asked members about having a work session the same night as their next regular meeting, which is on May 27, 2004. Sieger questioned how many applications would be on the agenda for this meeting, and Brazil said probably two. Sieger asked if there is still a little time for applications to come in, and Brazil said until next Monday. I think we talked about 6:30 p.m., and then have our regular meeting at 7:30 p.m., Brazil said. If you're comfortable with it as this point, we can look to go to a July publication hearing, Brazil said. It depends if we have enough time to look at it, Sieger said. Even with our month break, we could have it in place late July, Brazil said. We talked about having a transition period between the old and the new, Sieger said. Does this work for most of you?, Sieger asked about the work session time. I will also mention, although I don't know if it's official, but Marquetta Eilerts has resigned her position, Sieger said. I will give you all a heads up that I talked with Bob Hein this afternoon and I have to find a way to downsize some activities and I will craft a letter in the next couple of days to resign, Unruh said. But, if this leaves the board in a lurch I could delay it, he added. Could you see us through the regs and the comprehensive plan, as I as thinking it might be nice to present it to the public with a complete board, Avery said. I'm thinking August or September for having the regs in place, Brazil said. Did your term just start again this year?, Sieger asked and Unruh said yes. I would say my plans are to go ahead and submit my resignation, Unruh said. Is there anything else?, Sieger asked members. I would like to suggest you reconsider what was asked early about keeping consistent, Unrau told Unruh. That doesn't change my mind, Unruh said You'll do fine, he added. I think there has been more of an attempt to move forward, which I think is beneficial for the county, Unruh said. The governor is considering a moratorium on WECS, (Wind Energy Conversion Systems), Mueller said. Is Marion County included in this?, he asked. I don't think so, but I'll check on it, tomorrow, Brazil said. The wind energy task force is due out with their report the end of May, Sieger said. A moratorium wouldn't be desirable from our standpoint, would it?, Mueller asked. I think we're probably way ahead of the curve, Brazil said. Sieger referred to a copy of an article about the task force. Is there anything else?, Sieger asked. Ensz made a motion to adjourn and Mueller seconded the motion.

In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 8:45 p.m.

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Eileen Sieger,  
Chairman