

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

April 24, 2008

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*approved as*

Chairman David Mueller called the meeting to order at 7:30 p.m.

Roll Call was answered by Mueller, Bob Maxwell, Mary Avery, Ervin Ediger, Kent Becker, Marquette Eilerts and Glen Unrau. Vida Bartel and Jeff Bina were absent. Zoning Administrator Bobbi Strait was also present. Mueller noted a quorum was present for the meeting.

Mueller asked if there were any additions or corrections to the February 28<sup>th</sup> minutes. Eilerts noted there was a misspelling at the bottom of page 2, Gayle township should be spelled Gale, and on Line 4 of page 2, replace "if" with "it". There were no other additions or corrections. Unrau moved the record be approved. Eilerts seconded the motion. Motion carried 7-0.

Item 3: Record of Proceedings for March 27, 2008. There were no additions or corrections. Ediger moved to approve the record. Avery seconded the motion. Motion carried 7-0.

Item 4: Variance Application for Charles and JoAnn Kjellin for a variance from the required setbacks of 50 feet from the side and rear property lines in an agricultural district on property located at 2323 Hwy 56/77 in Marion. Mueller noted that they would be acting as the Board of Zoning Appeals taking final action. He also noted that the BZA is a board of 3-7 members so the 7 most senior members would participate. With seven members present, all members present would serve. He noted that the application was duly published April 2nd in the Marion Record, Hillsboro Star Journal and the Peabody Gazette. Mueller asked members if any of them needed to report a conflict of interest or any outside contact. There were none. Mueller invited the applicant up to present his case. Doug Kjellin made his presentation as the agent. Kjellin states the intent is for he and his family to return to the original homestead farm. In that effort, they want to be able to have fee title ownership of the residence and several outbuildings. He said it will remain a working farm that will be leased out or sharecropped and there would still be equipment that needs to be stored in some of the other buildings, He states they want to leave half of the north portion of the original ten acres, (which is the house and buildings,) to remain with Kjellin Family Farms, which is now in a trust. Kjellin states he is trustee and executor of the will to both of his parents estates. He states he is making application so he can have single fee ownership of the title so if they need to get financing for any improvements or modifications, it will make it easier to get financing and secure-

the mortgage. Mueller asked if the setbacks were needed because the buildings were on a hedgerow. Kjellin explained that they want to set the property line between two building that sit approximately 50-60 feet apart. He said in order to do that, he needs a variance from the 50 foot setback because there isn't 100 feet between the buildings and he doesn't want to tear any buildings down,. Mueller clarified that the variance would be for 30 feet. Kjellin said yes, approximately. Strait asked if there was a home there now. Kjellin said there was. Mueller asked if there were any other questions. Mueller asked if the lot split would meet the minimum lot size. Strait said it would be in excess of 3 acres. Kjellin stated it would be approximately 4.8 acres. Strait reminded the board that minimum acreage for existing homesteads is 3 acres. Strait apologized for the lack of an aerial. She said her new computer is not set up right yet so she can't access those files, but she didn't know that until right before the meeting. Strait stated that on the west side the buildings were too close to the hedgerow to use it as the lot line without a variance. Kjellin noted they could meet the setbacks, however that would require taking additional land out of production. The setbacks on the north property line need a variance because the buildings are too close together. Kjellin thought he might have an aerial in his car. He left to go check. Mueller asked for clarification on the setbacks. Strait clarified that the buildings would be divided. Some would be kept by the trust while some would be transferred with the deed for the residence. Ervin Ediger asked if there would be two separate owners. Strait said yes. Becker asked why not keep all the buildings together with the residence and rent space to the farm? Strait said a variance would still be required for the west lot line at the hedgerow. Kjellin returned at this time. He didn't have an aerial, so he proceeded to draw a picture, and described the structures and the hedgerow in relation to the proposed lot line. Avery asked why Kjellin angled the line rather than drawing it straight. She said she's been on the board long enough to know everybody likes straight lines. Kjellin said there was a small shed that would be dissected if they went straight across. He also explained that there was already a road that they were using the centerline of as the lot line. He said it makes sense and has a nice line of sight. He stated there would be a metes and bounds description for the lot. All agreed it was reasonable to use the natural boundaries. Mueller ask if there were any other questions. Ediger asked if the building on the north end was a big red horse barn. Kjellin said it was. Ediger asked him to save that barn. Kjellin said they don't want to tear any buildings down. Identifying the barn helped members locate the property on Hwy 77 in their minds. Ediger noted the main problem was the hedgerow on the west. Kjellin said he felt the main problem was the two buildings that were too close together to meet the 100 foot separation distance. Ediger said as long as you could get emergency vehicles between them. Kjellin said they have a driveway between them now. Ediger then asked if they could get between the hedgerow and the shed. Kjellin said no. He said there is no way to get any vehicle between the building and the hedgerow. Bobbi noted that even if they don't split it this way, there is still no way. The building is still there and the hedgerow is still there, Ediger said, so there is no merit in going fifty feet west. Strait said no. Strait noted that there is

already an existing access road on the west side of the hedgerow and if Kjellin is not granted the variance, the farm and the oil companies will lose that access road and build another road out in the field, and she felt it didn't make sense. Strait also noted that part of the issue with doing lot splits in an Ag zone is screening the residence from the farm operations and a hedgerow does just that. Strait said the existing hedgerow could easily be used instead of trying to re-establish a new one further out. Maxwell felt that it wouldn't be a problem until the trust would sell or maybe Kjellins would sell the residence. Maxwell felt that it shouldn't be a problem even then because they would know what they were buying. Strait agreed. Mueller asked what the setback requirements were. Strait said they were 50 feet on the side and the rear. Mueller asked for the feet of variance requested. Strait said 30 feet on the side and, after some additional discussion, she stated 49 feet on the rear. Kjellin said if this is approved, they will get an official survey. Unrau asked if the trees would be part of the residential lot. Kjellin said they would be. Strait asked if the fence was on the west side of the trees. Kjellin said there isn't a fence at this time. Becker said if the building is right on the property line, and another owner decided to take out the hedgerow, it might be a good idea to have a foot or two between the building and the property line. Strait asked for clarification of the distance between the foundation and the tree trunks. Kjellin said there were no trees next to the building. He said the chinese elms actually start on the south end of the building. There was additional discussion about the line of the trees in relation to the line of the building. Strait drew on the sketch and clarified the distance with Kjellin. He said in the future he planned on cutting the chinese elms down. Kjellin said the existing road circumvents the south and west lines of the property he would like to split out. Kjellin said if the variance is not granted on the west side and he splits out the entire setback, he will need to file an easement because the rest of the property will be land-locked with no access. Granting the variance will alleviate the need to draw up an easement. Maxwell asked if there was an overhang on the building or anything like that that needed to be discussed before the board discussed the variance from 50 feet to 1 foot. Kjellin said there wasn't. Mueller asked if anybody had any problems with what was presented. Maxwell stated that Kjellins were the ones who have to live with it. Kjellin said he hoped he didn't have very difficult neighbors. Mueller said the board tries to look at everything for long term because you never know. Mueller asked if there were any other questions. Strait said they have pretty much worked through the staff report, too. Mueller said if there were no other comments, Strait would give the staff report and Kjellin could respond to that. Strait said the board has already been through the application and project description. Strait noted there would be a new basement and the home would be upgraded. Strait said no written or verbal comments have been received as of today. Strait reminded board members that variances are provided for in the regulations to relieve hardships. She said this wasn't a typical hardship but was actually relieving the hardship on the agricultural parcel. Strait said a variance must arise from a condition that is unique to the property and is not ordinarily found in the same zone or district and is not created by action of the property owner or the applicant. Strait said that, at

the time these conditions were created, the owners probably didn't think 40-50 years into the future about splitting it out. Strait said the conditions were not created by Mr. Kjellin or his wife. Strait said the hedgerow is a good screen from agricultural operations. Strait said the second criteria is that the board must find that approval does not adversely affect adjacent property owners. Strait said there were no other residential structures on this property and it is approximately ½ mile to nearest residence. Strait said this variance will instead benefit the farming operations and the Kjellin family by not having to build new access roads or draw up an easement, rather than adversely affect the property owners involved. Strait said strict application of the regulations will constitute an unnecessary hardship on the property owners. Strait recommended the board take this literally and consider all of the legal paperwork that would be required for access and the new access road that would need to be constructed by denial of this request. Strait also noted that additional land would be removed from agricultural production. Strait said public health, general welfare, safety, morals, order, convenience and prosperity would not be affected by granting a variance because the affected property line is on the back side of the property and the only people who will see it are the Kjellin family and the trust. Strait said farmers tend to farm right up to hedgerows so it would not adversely affect them. Strait said granting this variance will not be opposed to the spirit and intent of the regulations. Strait noted that the primary purpose in the agricultural regulations is to preserve agriculture. She said the State of Kansas is very Pro-Ag and she feels that granting this variance in this case is very pro-ag and is keeping with the intent of the regulations. Strait said her staff recommendation is that there is no compelling reason to deny the application.

Mueller asked if Kjellin had any questions for Strait. Kjellin said no, it was very well explained. Mueller asked if any of the members had other questions for Strait or Kjellin. Mueller said if there were no more questions, the public hearing will be closed and the board will open up for deliberations. Mueller asked for comments. Ediger saw no problems. Mueller said in light of the issues they are dealing with, it seems to make sense. Eilerts said thanks to the trust and to the family for continuing the farming and for continuing the residence and living there, and making improvements. She said they are a good set of folks. Mueller asked for other comments. There were none. Mueller asked if this variance would be issued to Doug or to Charles and Jo Ann. Strait said it would be issued to Charles Kjellin Trust and Jo Ann Kjellin Trust and when the survey is completed, the variance will be attached to the residential lot. Strait said Kjellins didn't want to do the lot split before the variance was approved in case they had to move the property line. Strait said the variance would stay with the land no matter who owns it. Mueller said if there were no other questions or comments, he would entertain a motion to approve a variance for Charles Kjellin Trust and Jo Ann Kjellin trust on the SE/4 of 10-19-4 for a side variance on the north side from 50 feet to 25 feet, which is a variance of 25 feet, due to existing buildings and a rear variance from 50 feet to 1 foot, which is a variance of 49 feet, on the west side due to road access easement and existing hedgerow. Becker made

the motion. Ediger seconded the motion. There was no other discussion. Motion carried 7-0. Mueller told Kjellin this was a final action. Strait noted there was a 14 day appeal process and after that, he could proceed with the survey.

Mueller asked for off-agenda items. Becker said he had received a request from the Cottonwood Crossing Chapter of the Santa Fe Trail in a letter dated April 20th to the planning commission asking to be notified of any applications submitted on land where the Santa Fe Trail existed. He said Steve Schmidt was the President and Schmidt would like to be consulted on these cases to advise if any Santa Fe Trail related cultural resources are present and if they would be impacted. Schmidt's letter said the purpose was not to block any project or to infringe on anyone's right to use their land but to advise owners or developers of any resources that may be valuable. Becker said he had a map showing the location of crossings. Becker said he is the treasurer of that organization and they are working on a lot of things, one being the Kiosk to be developed west of Lost Springs. He said Marion County is trying to promote the Santa Fe Trail as a Tourist Attraction. Becker said there are visible ruts in this county but there are issues concerning roads. Becker said the trail has not been tapped like it could for tourism and this chapter is trying to achieve better promotion. He states that Marion County has some of the best ruts on the entire trail. Becker said the proposed pipeline coming through may dissect the trail and that instigated the chapter's interest in Planning Commission applications. Strait said if there were no objections, she would set it up so the chapter is notified of any applications that may affect the Santa Fe Trail. There were no objections. Mueller felt the more people who were notified the more informed the decisions could be.

Strait said there were some issues that have come up regarding clustered homes on a quarter section of ground that now need to be separated. Ediger was also approached about another property that owners want to cluster houses. Strait said the parcel she is talking about is now in a trust with 4 owners of 160 acres. The houses are too close together to split out with one house per 40 acre parcel. Currently there are 3 permanent homes and a weekend cabin all on one driveway with one 911 address. Strait said she told the owner the land would have to be platted and subdivided and signed by all 4 owners. She said that would also require rezoning. Strait said Ediger called her about another property that the owners would like to cluster two houses for family. Strait said she was in favor of cluster development because it is cheaper for utility installation and for road maintenance. Strait said she felt the board needed to consider allowing cluster housing in order to accommodate situations like these. Strait suggested the board needs to discuss this issue in depth with Dave Yearout and see if this is something they might want to write into the regulations. There was some discussion on specifics of Ediger's case. Ediger said his parcel owners were considering purchasing another parcel with an existing house rather than building a new house on the property they already own. Becker asked about the criteria that we use to determine what is a second house. Strait explained that the

regulations had definitions for servants quarters and guest quarters. Strait said servants and guest quarters could not have kitchen or laundry facilities. Strait said servants quarters must be inside an existing building. Strait said in order for a permit to be issued for a second living quarters type of occupancy, the occupancy must meet the definition of servants or guest quarters. Strait said the board should, in the near future, consider adding verbage to encourage cluster development.

Maxwell asked if Commissioner Dallke is pursuing his project. Strait said he is not pursuing it at this time. With no other off-agenda items to discuss, the board adjourned into the work session. Following the work session, Strait said there were no applications for the May meeting. Mueller said the meeting would be a work session to review Zoning text amendments, building codes and contractor licenses. It will be on May 22<sup>nd</sup> at 7:30 pm.

Becker made a motion to adjourn. Ediger seconded the motion. Motion carried 7-0.

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David Mueller,  
Chairman



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Margo Yates,  
Secretary