

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

April 26, 2001

Chairman Eileen Sieger called the meeting to order at 7:40 p.m., and said there is now a quorum.

Roll Call was answered by Sieger, Herb Bartel, Marquette Eilerts, Dean Fincham and Elora Robinson. Bob Unruh, Glen Unrau, Terry Eberhard and Eldon Pankratz were absent. Zoning Administrator David Brazil was present.

Sieger asked for corrections to the Record of Proceedings of the March 22, 2001, meeting of the Marion County Planning Commission/Board of Zoning Appeals. There were no corrections. Eilerts made a motion to approve the Record of Proceedings as written, and Bartel seconded the motion. In favor: 5; Opposed: 0; Motion carried.

Sieger asked if there were any questions about the agenda, or additions to off agenda items. Brazil said he needs to talk about scheduling a second work session, and Sieger said she had something to discuss, as well.

Item 4: A continuation of an application for Marlene Finney, requesting a variance from required side setback of 10 feet to 3.5 feet. This property is located in Centre South Township. This application was published previously, and was re-published, also. Sieger reviewed this application with members, saying part of the prior approval involved some contingencies that Finney was unable to carry out. Finney was present and said she re-figured her building plans. Finney and Sieger explained that Finney's neighbors were not opposed to the construction, they were just opposed to attaching an agreement to their deed. Sieger reminded members they are acting as the Board of Zoning Appeals for this application. Sieger also reminded members this application involves an addition on Finney's home. Brazil said Finney did get a second construction application. Sieger asked if anyone from the public wished to speak, but no one did. Sieger asked if there was anything further, and there was not. Sieger closed the public hearing for this application and opened the floor for discussion and determination.

Sieger asked Fincham, as a resident of the county lake, if this setback would be acceptable, and Fincham said yes. Fincham made a motion to allow a variance from the side setback of 10 feet to 3.5 feet. Bartel seconded the motion.

In favor: 5; Opposed: 0; Motion carried.

Brazil said he would issue a permit tomorrow for Finney.

Item 5: Members will act as the planning commission for this application for Ranson Wiebe and Jason Wiebe, requesting a Conditional Use Permit (CUP) for production and retail sales of cheese. This application was published in the April 4, 2001, issue of the *Marion County Record*. This property is located in Durham Park Township. Jason Wiebe

was present to speak about this application. He explained they have a 900-cow dairy farm and have considered the value of farm products vs. retail value. Brazil said going to the retail side of a CUP has fallen under home businesses. Wiebe plans to put up a 16 foot square building. Sieger asked and Wiebe said the property involves 46.6 acres. He said the deed is being held in escrow at this time. Sieger asked what all is involved in cheese production. Wiebe said whey is the main by-product and they use it as an animal feed. Wiebe said KDHE sees no problem with his plans. Sieger asked and Wiebe said yes, any waste would go into an existing lagoon. Wiebe explained he is not approved by the USDA. He has contacted the USDA, and he can sell it on the farm and is within the law. He said he would like to be USDA approved, but it's very expensive. The only way I can sell is the end user has to come to the farm, Wiebe explained. Robinson asked what kind of cheese Wiebe plans to make. It's comparable to Colby, Wiebe said. Sieger asked about a designated parking area. With cheese sales at this point it's so small, if we have one customer per day that's pretty good, Wiebe said. We have parking for workers, he added. Sieger asked about signage. I can have a sign at the end of the lane is all I'm allowed at this time, Wiebe said. Brazil recommended 4x8 for a sign. If we were to look at issuing a CUP at one area of your property, would that be acceptable?, Sieger asked and Wiebe said yes. How far is the lagoon from the proposed building?, Sieger asked and Wiebe said 150 feet. Could you figure out a 10 acre space for this?, Sieger asked. Sieger asked if anyone from the public wished to speak, or if there is anything further. Sieger explained on CUPs this commission makes a recommendation and then it goes to the county commission for final approval. Brazil already explained this to Wiebe. I would like us to consider any food products from milk, so if they want to make ice cream, etc., Bartel said. There are only three cheese plants in the state, Wiebe said. Sieger closed the public hearing for this application and opened the floor for discussion.

Sieger asked for questions, or concerns. Do we need to define the location a little better?, Eilerts asked. That could be incorporated in the recommendation for the commissioners, Bartel said. Do you all think that 10 acres is the way to go?, Sieger asked. They will have to have all the permits, Sieger said. They will have to have all the food permits, too, Bartel added. Do we want to include a recommendation about a sign?, Sieger asked. I certainly can see no problem with this, but I don't make a habit of making motions, Sieger said. I move we recommend a CUP for processing food products from the milk produced on this farm, and that buildings for this business be located on the 10 acres farmstead, and that the sign for the business have a size limit on it of 4x8, Bartel said. Fincham seconded the motion. Brazil suggested adding the business has to be in compliance with all food agencies, and Bartel and Fincham agreed to amend the motion. In favor: 5; Opposed: 0; Motion carried. Sieger and Brazil explained the timetable to Wiebe.

Item 6: Members are acting as the Board of Zoning Appeals for an application for Robert and Judith Priest requesting a variance from required side setback of 10 feet to 4.2 feet for property located in Centre South Township. This application was published in the April 4, 2001, issue of the *Marion County Record*. Bob Priest was present to speak about this application. He thanked Brazil for helping him with this matter. He said he has talked with his closest neighbor that would be affected. He said Bob and Shirley Mann live next

door and are very much in favor and there is no problem with them. He has also talked with Gerald Kelsey. Priest said he would speak first of all to the front of the house. There is an existing patio concrete porch and an existing wall that is falling down and he wants to tear out everything and replace the front porch patio and build with different proportions and put four foot steps to replace the narrow existing steps and tear out the wall and move it back a little bit and build a three-tier terrace and face everything with stone, including the house, that will resemble the original lake project. He showed members photos and drawings of his plans. He also wants to pave his driveway, which he has talked with Kelsey about. It is 4.2 feet from the foundation to the center of the hedge, that is the neighbor's, Priest said. So, this addition will be in line with that and none will be less than 4.2 feet?, Sieger asked and Priest said yes. Sieger pointed out the unique situation at the county lake with setbacks. Priest showed members the backend of the house and what he wants to add. Eilerts asked and Priest said yes, the fence is his. The center of the hedge is the property line, he said. He gave members pencil drawings of his plans. It will be in line with the house, coming out with a single port garage and a sunroom out of the rear kitchen door. It has a snow collection corner that doesn't get winter sun, so Priest wants to go to the top of the present structure and come out to where will be the edge of the sun porch and garage and will come back to that. He showed members a drawing of these plans. So, all will be in line with the current structure, Sieger said. Sieger asked if there was anything further and if anyone from the public wished to speak. Sieger said she has a copy of one letter from a property owner in opposition. The letter said members should consider the 10 foot setback is good and as a matter of principle, but no reasons are listed or given. The letter is from Don and Mary Alice Jolley. How far from the rear yard?, Bartel asked. I think we're 23 feet, Priest said. Anything else?, Sieger asked. Sieger closed the public hearing for this application and opened the floor for discussion.

I don't have any problem, Fincham said. Fincham made a motion to approve the application for Priest's for a variance from required side setback of 10 feet to 4.2 feet, in line with the current foundation. Robinson seconded the motion.

In favor: 5; Opposed: 0; Motion carried.

Sieger explained this is a final action. Brazil said he would send the permit out tomorrow.

Item 7: An application for Bob and Trudy Partridge requesting a variance from required agricultural acreage lot requirement of 40 acres to 33.91 acres for property located in Liberty Township. Members are acting as the Board of Zoning Appeals. This application was published in the April 4, 2001, issue of the *Marion County Record*. Scott and Christina Owen were present and said they were acting on behalf of the applicants, as they wish to purchase the property and move their house there. They passed around a diagram and photos of the property and of the house they wish to move there. Sieger explained about the 40 acre minimum requirement. Brazil said he would like to comment on the house, which is on the new highway on Canada Road, going west. It's being replaced by a new home, he said. It's two miles west of Canada Corner on 56, Brazil said. The property is five miles south of Hillsboro, Scott Owen said. Is there nothing on this property?, Sieger asked and Scott Owen said no. It's an awkward piece to farm, Christina Owen said. Is it possible to get 40 acres?, Eilerts asked. We tried, Scott Owen

said. We would be taking six acres out of production to make 40 because we're not farmers, Scott Owen said. What do you plan to do with the property?, Sieger asked. Just enjoy it, Scott Owen said. Have a large yard, he added. Have you lived in the country before?, Sieger asked and was told yes. Three adjacent landowners said they would not sell and the fourth was high-priced, Brazil said. Sieger asked if rural water is available and Scott Owen said yes. There's a pipe sticking out of the ground with a cap on it, he said. Have you checked with the rural water district?, Sieger asked and was told no. The farm directory says Partridge owns 76 acres and I can't fit that on the map, Bartel said. Brazil looked at the map. Scott Owen said it was wrong in the book. That does happen, Brazil said. Does it front to what road?, Sieger asked and Scott Owen said 140th. Is that gravel there?, Sieger asked and was told yes. Has the 80 been split into three pieces?, Bartel asked. At least three, Scott Owen said. The family split up the land between them and then sold off some, Christina Owen said. We're setting ourselves up for more splits, Bartel said. What would we do with this piece on the corner?, Bartel asked. The Owens still live in Michigan, and their house there is up for sale. You're asking about when the others were split off?, Brazil asked and Bartel said yes. If they were split after zoning, then those people who bought those are really going to be uptight because if they want to build on it they can't get a permit, Bartel said. We've only had one other case similar to this, Sieger said. The ones that are this close to 40 are ag and not residential, Brazil said. And I don't have a problem with this unless it's been split three times, Bartel said. The deed is January 4, 1994, which is after zoning, Bartel said. This is not pertinent to your application, but you say you have family in the area?, Sieger asked. A sister in Hillsboro and parents in Abilene, Scott Owen said. Scott Owen questioned why 40 acres, and Sieger explained. Could we get it re-zoned rural residential?, Scott Owen asked. You can apply for anything, but I will tell you usually applications are denied that take ag land out of use, Sieger said. Doesn't that limit the number of people moving to your county?, Scott Owen asked. There are lots of concerns with residential next to farm operations, which cause conflicts of activities, Sieger explained. This isn't a small acreage, Scott Owen said. I don't know what Partridge did, but I think Partridge is splitting less than 80 twice, Bartel said. The father split the land among three sisters, Christina Owen said. I don't know if they sold the farmstead, Scott Owen said. I have been out there and looked at it from the road, Brazil said. There is a house a quarter mile to the west, he added. And this is on the south side of the road?, Bartel asked and Brazil said yes. If it wasn't dark we'd be glad to take you out there, Scott Owen said. That doesn't solve our problem, Bartel said. Friesen sold to Partridge and this party on the corner, Bartel said. The Partridge's have not split that, Christina Owen said. I think we need to talk to Mr. Friesen, Bartel said. The Partridge's are not part of the family deal at all, Sieger said. Sieger asked and Scott Owen said he is self-employed in the drywall business. Members viewed the zoning map. Sieger asked if anyone from the public wished to speak. Do you feel we need more information?, Sieger asked. I don't know how many times Calvin Friesen has split the property, Bartel said. Are you looking at the last date of a split?, Christina Owen asked. We're looking after 1992, Sieger said. It leaves the piece hanging out there on the corner, Bartel said. How does the water flow and what location on the property are you proposing to put your home?, Sieger asked. Well, what do you want to do?, Bartel asked. If you're prepared to make the corner rural residential and the piece west of this rural residential..., Bartel said. Nobody complies as far as ag, Bartel said.

Sieger reminded members they are acting as the Board of Zoning Appeals, so this is not a recommendation. But, we're being asked to do this on a split that was illegal, Bartel said. You didn't have any part of that, Sieger said. It doesn't excuse us from making sure we have compliance, Bartel said. Sieger asked Brazil if he had any comments. You've pretty well covered it, he said. They could buy it back from Partridge and start over, Bartel said. So, these people are pretty well stuck, Scott Owen said. Partridge is stuck, Bartel replied. Can this be investigated further without making any decisions?, Christina Owen asked. What I'd like David to do is meet with Friesen and see what has gone on, Bartel said. Regardless of what information comes out of this, does that change what goes on, now?, Brazil asked. It does if he has an illegal split, Bartel said. Maybe he wants to covenant this corner as ag and maybe Marsh can do that, Bartel said. Christina Owen asked how long will this take? Sieger said the next meeting is May 24. But what I understood is you do make the final decision, Christina Owen said. Yes, the way it is now presented, we make the final decision, Sieger said. I would bet you have zoning regulations in Michigan, Sieger said. Yes, but it's smaller, Scott Owen said. Bartel suggested finishing the rest of the agenda and coming back to this, and members agreed.

Item 8: An application for Edith Brundage requesting a rezone from agricultural to rural residential, with a second part requesting a variance from 10 acres to 9.9 acres. This application was published in the April 4 issue of the *Marion County Record*. Audie Strotkamp was present to speak about the application. He explained there was a house on this property, which was destroyed by fire. The previous owner split off 9.9 acres with the house on it. They did own 80 acres, but sold off 38.5 acres. How long ago was the residence destroyed?, Sieger asked. Strotkamp said it was in 1996. Someone wants to build a house on the old foundation, so we need this for it to go through, Strotkamp said. There was a house there prior to the fire, he added. There are three homes in the entire township (Fairplay). Members viewed the zoning map. So, it's north of the road going to Peabody?, Bartel asked and was told yes. Sieger asked about the existing waste water system. Brundage said it has a septic system and private well. Sieger asked about existing buildings. Brundage said there are a hanger and a barn and a shed and an arena with lights around it. Brazil pointed out there are four homes in that township, not three. So, it looks like the sell-off happened in '95, too, Sieger said. So, the access is on what road?, Sieger asked. It's on Sunflower, Brundage said. Is that a gravel road?, Sieger asked and Brundage said yes. So, is this Heidi West buying it from you on contract and she wants to sell it to someone else?, Robinson asked and Brundage said yes. My understanding is the prospective buyer wants to build a house and the specs would be almost identical to what was there before, Strotkamp said. There are two separate parts to this, Sieger reminded members. So, I guess we first need to address the request for a rezone and then look at the variance request, Sieger said. Is there anything you want to add before I close the public hearing?, Sieger asked. To explain as to why part of the property was split off, they had sufficient medical bills to pay and then house burned, Strotkamp said. Anything further?, Sieger asked. Anyone from the public wish to speak?, Sieger asked. Anything else before we close the public hearing?, Sieger asked. I'm sure Savage would have bought another 1/10 of an acre, Bartel said. Sieger closed the public hearing and opened the floor for discussion and determination.

We don't really have anything similar in the area, Sieger said. We have a house that burned, Bartel said. We're not obligated to do anything about it, but as a rural home site I'm prepared to make a motion to change it, Bartel said. I'm looking at the fact that there were probably a lot of domestic things that went on, but that is not our obligation, Bartel said. The original home site is on the property the application involves?, Eilerts asked and was told yes. I make a motion that acting as the planning commission we recommend a zoning change from agricultural to rural residential and acting as the Board of Zoning Appeals we grant a variance from a 10 acre site to a 9.9 acre site, Bartel said. Fincham seconded the motion.

In favor: 5; Opposed: 0; Motion carried.

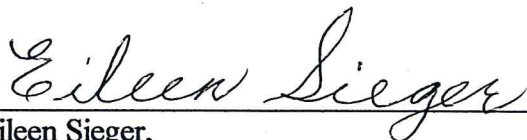
You understand one part has to go to the county commission for final approval, Sieger explained. The variance is linked to the zoning, if there's no zoning, there's no variance, Bartel explained to Strotkamp.

Members returned to the discussion concerning Item 7. Christina Owen asked if other things were worked out, is the amount of acres we had in mind a problem? I don't have a problem with that if there are two home sites on the 80, but if they've made three inappropriate splits since zoning, I have a problem, Bartel said. Partridge splits that piece on the corner, whether we like it, or not, Bartel said. What I'm talking about is a deed restriction on one of those parcels that says it's ag, Bartel said. The 33 acres is not eligible for a permit, so they have a parcel that's ineligible, Bartel said. The way it stands now is all three parcels are dead-locked, Bartel said. When they sold to Partridge it was no longer a family deal, Bartel said. If he sold off less than 10 acres on that farm site, that's a whole other issue, Bartel said. Why would someone want 13 acres?, Robinson asked. Because that's the best farmland, Bartel said. But they won't keep it forever, Robinson said. When the parents die, the kids will want to sell it off, she said. I think David, we've got to find out what happened on the original farmstead, Bartel said. We have an obligation, Bartel said. If they could grant the deed restriction we could go ahead, but they can't grant the deed restriction, Bartel said. We're not obligated to do anything for the Partridge's or you, because it was done illegal, Bartel explained. Are you still interested in the property if you have to wait?, Robinson asked. If Marsh puts a covenant saying it will remain ag?, Scott Owen asked. Conservation easement limits that 13 acre parcel on the corner to ag, Bartel said. If they do that I'm willing to grant the 33 as long as they become compliant on the homestead, Bartel said. A conservation easement on the 13 acres with a variance on the 33 acres as a home site, and if he split off less than 10 he has to come in on a separate item and address that, Bartel said. So we have to get those two things resolved before we can proceed, Christina Owen said. The application deadline has already passed for the next meeting and the planning commission does not meet in June, Brazil explained. Is there anyway to take action with a contingency?, Sieger asked. What we're looking at is that there would be no more than two home sites on the entire property, Sieger said. Can we plan on continuing this next month?, Christina Owen asked. We'd have more information and we might have the ag contingency but the other we can't have until July, Brazil said. So if we could get the other issue solved we could put a contingency on it, Sieger said. From what I understand Marsh is a Friesen daughter, Scott Owen said. She may want to build on it, Bartel said. She sure wants a pretty price for it, Eilerts said. She doesn't make that much off wheat, Sieger said. I don't know how

to resolve it, Sieger said. Can it be contingent on finding out the information?, Christina Owen asked. Do you want to have David pursue a conservation easement on the corner?, Bartel asked. We can't take any action tonight, Bartel said. I don't mind giving intention, he added. If they can add only two home sites on the parcel then we can grant a variance on the 33 acres, he said. You also may have a whole different board, as they're a lot of members who aren't here tonight, Bartel said. So, it will be May 24 and we'd like you to be here, but if that's a hardship for you we understand, Sieger told the Owens. We'd like to try to be here, Scott Owen said. It would be good so the other members could hear you, Eilerts told the Owens. Okay, so I guess we'll leave it as a continuance, Sieger said.

Sieger had a couple of off agenda items to discuss. She shared a correspondence from Eldon, thanking members for the flowers for his wife's service. David handled sending the flowers. Members may donate toward this as there is no fund for such purposes. Members set a work session for May 24 to review the comprehensive plan. Brazil said as of now we have three continuances for that meeting. I hate to have a long evening, but it's hard to get people here, Sieger said. Is that agreeable?, Sieger asked members. Between now and then members need to go over the second draft, Brazil said. He explained members need to have a second work session before May 24. Okay, so we need another meeting before then, Sieger said. What about May 10? Member agreed to meet May 10 at 7:30 p.m. Sieger asked if there was anything else? Brazil said members are asked when referring to the southwest corner of the county to not refer to it as the Goessel area to avoid some miscommunication. Well taken, David, Bartel said. Fincham made a motion to adjourn and Robinson seconded the motion. In favor: 5; Opposed: 0; Motion carried and the meeting was adjourned at 10:08 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



Eileen Sieger,
Chairman