

**MARION COUNTY
PLANNING COMMISSION & BOARD OF ZONING APPEALS**

RECORD OF PROCEEDINGS

August 23rd, 2018

**Members
(Present)**

Jeff Bina
Kathy Inlow
Derek Belton
Jim Schmidt
Mel Flaming
Marty Dalke
William Kroupa

**Members
(Absent)**

Dwight Flaming
Brad Vannocker

**Staff
(Present)**

Emma Tajchman
Russ Ewy

**Staff
(Absent)**

Sharon Omstead

1. **CALL TO ORDER & ROLL CALL**~ Bina called the meeting to order at 7:05pm with 7 members and 2 staff present. D.Flaming, Vannocker and Omstead absent.
2. **APPROVAL OF MINUTES**~ M.Flaming made a motion to approve the August 2nd, 2018 Record of Proceedings as presented. Belton seconded, motion carried 7-0.
3. **New Business~ Discussion concerning amendments to the Marion County Subdivision Regulations Article 3 -Lot Splits and Boundary Shifts.** Notice of the public hearing was published in the official county newspaper on August 1st, 2018, and notification letters were mailed to all City and Township Officials in the County. Ewy presented proposed amendments to the board for discussion. Ewy explained examples of why we would create lots without the expense and time of platting. Four is the maximum number we would want. There would still need to be adequate setbacks, road frontage/ access, etc. Text changes reiterate from 2 to 4 lots. Access easements can be added through separate instruments and do not need to be required in the lot split. The County can provide sample documents for easements. A homestead lot split, as opposed to an agricultural lot split, allows properties that are landlocked to sell everything but the farmstead itself. The difference is that a homestead lot split allows a lot with access by easement only, and an agricultural lot split creates a lot with a 'flag-shaped' description for the access driveway. The Board of County Commissioners (BOCC) has the authority to accept lot splits that are accessed by easement, i.e. homestead lot split. If there is a dedication (floodway easement, etc.) it may need to be accepted by the BOCC, but they don't need to approve the lot split with it, as long as staff is comfortable with processing the request. A homestead lot split gives the governing body the authority, which works in communities where the governing body would like power. The Homestead Lot Split Regulations were added recently, changing the lot size to a 3-acre minimum requirement with the existing home. Only one lot can be created under a Homestead Lot Split. This will not change. M.Flaming asked if that is creating a landlocked property. Ewy explained that's why we are working to create more flexibility with an agricultural lot split, in turn should make homestead lot splits less common. Dave Yearout felt that the county commission should be able to accept easements; Ewy does not unless it's something the county is in favor of. A plat can dedicate and accept easements approved by the BOCC. Tajchman stated that homestead lot split regulations can stay as is, at this point we are primarily concerned with the ag lot split regulations. Ewy- With a homestead lot split, all surrounding ground will be sold and the access will not be owned by the homeowner, but whoever owns the property surrounding must allow the access to the homeowner. If it's depicted on a survey, the access would be described for the purpose of creating the easement. Kroupa- Do we want to create so many lots? It becomes a puzzle. Tajchman/Belton- The homestead split will still be just two lots total. Dalke asked about access for utilities. Ewy- It is fine as long as they provide a separate instrument (easement). We can word the easement included with the lot split survey to allow for utility use, but it may not always work that way. A 50-foot frontage requirement allows sharing of water or electrical service in that easement. Ewy pointed out that the Peters survey example that was shown to the board, should request a larger easement to the north. Kroupa questioned who is saving money by allowing for four lots instead of two. Tajchman- The landowner, because the survey required for a lot split is less expensive than a plat. Ewy- Most people want more local control. The best land use is managed publicly not privately. Land use and lot regulations are a political issue. Are we

wanting to control and manage growth? The Comprehensive Plan shows that we (Marion County) are a slowly eroding population base. We want to be sure we are not creating unnecessary road blocks in growing the population and allowing new construction/new residents. Susan Robson, Attorney of Brookens Law Office, presented a situation for the board to consider. Her client is in the process of divorcing. They currently own a tract with 3 residential structures. They need to keep the two smaller tracts and sell the remaining residence. Under the current regulations, they cannot do that without having to plat. Platting is a large expense for most people. All three residences have existing separate access to a county road. Kroupa asked who has the control with platting. Ewy- the Planning Commission and the BOCC. We are not going to regulate under the proposed regulations without the BOCC adopting a resolution for us to enforce. What harm are most of these proposed lot splits to the county? We gain another property on the tax rolls, but at what cost? If we didn't have regulations and sanitation code in place it would be more of an issue. These proposed lots meet all other requirements. They have access, they address floodplain issues, etc. Why wouldn't we or why should we? One approach is permissive and one is reactionary. The Comprehensive Plan says we are for growth, so do our regulations conform to that? If we start seeing residential booms at rural intersections, then we may need to reevaluate. At this point, we are trying to facilitate orderly growth. Ewy argues that lot splits allow managed growth. Lot split regulations can be modified with the feelings of a future administrator, if needed. M.Flaming asked what the minimum acreage is that can be sold without a lot split. Ewy answered, 40 acres, which is stated in the beginning of Marion County Subdivision Regulations. What do we get from the plat process? Are we creating a greater density? May need to plat and engineer infrastructure differently in a rural subdivision. For example, just outside of Hillsboro, it may not make sense not to plat. Tajchman- We can't always accommodate every scenario. Several lot split scenarios come in as violations. We want to be sensitive to allow flexibility for the purpose of estate planning and banking requirements, but still make violations undesirable to encourage compliance. Bina feels we should work with the public and help make the process easier. Tajchman- People have built or split without going through the proper process (presented the Diepenbrock example). Robson- Most people want to do things the right way. Ewy- The items noted in Article 3-103 should be required. Improvement locations need to be included. Tajchman- These items are not typically included on the surveys we receive. Ewy- They should be required. At the end of the day, we have to legally require the items be included in a tract of land. M.Flaming asked if building permits are the next request when doing a lot split. Ewy- Yes, most people want to build or do something after its sold. The lot split must be done to facilitate improvements. Existing easements, etc., need to be shown on the survey. Utility easements are important too. M.Flaming- Should item 7 identify rural water separately? Ewy- We can add that verbiage. An application should be considered incomplete until all required items are provided. The 15-day approval period doesn't start until the application is complete. Robson- Can use "as requested" behind items not always seen. Ewy- Issue letters to surveyors to explain and encourage compliance going forward. Let them know this is what we do. Belton-If you allow loopholes, everyone will look for one. Inlow- Even "as requested" is still a loophole. It doesn't matter where in the county you are, word will get out across the county if you allow a loophole. Ewy reassured the Board that these are not excessive requirements, they are basic. We can split the list into requested and required. He asked about removing the locational requirements of improvements (referring to 3-103.1). Inlow doesn't like making that a requirement. Kroupa- GPS (Global Positioning System) locations, can easily be surveyed and should not add significant work or cost by a surveyor. Belton-. With GPS, you can set a point anywhere. If they have the data, why not require it be included? Ewy- You are saving residents the cost of a plat. Belton- Leave the requirement, because that gives the administrator grounds to stand on to meet application requirements. We are not helping ourselves by removing requirements. Four lots is more complex than two, but not complex enough to require a plat. A lot of the same information is required but it's not enough to make them go through the expense of the plat process. Ewy stated he has not experienced any problems going from two to four lots, in Sedgwick County. Belton- Properties split years ago, or in the divorce case example, they will not be able to split again. Ewy- This allows us to promote growth. The intent is not to create regulations to create a regulation. These lot split regulations are often borrowed from neighboring counties. We are also partly responsible for protecting people from themselves. Ewy suggested in Article 3-104.1, to not strike the end of sentence 1. We need to make sure surveyors are on our side. Should we allow them input prior to approval? For compliance in the future maybe we need a letter from the commissioners. Kroupa- Isn't there the idea of keeping the customer happy? Shouldn't surveyors try to meet the requirements to ensure customers are satisfied with their work? Robson- Emma has worked around things so people are still happy. The customer didn't know everything wasn't provided. Ewy- As long as everyone is aware, they will be less upset. That's why it is important to notify all the surveyors that do work in Marion County. M.Flaming suggested sending each surveyor a copy of the resolution with all the language and a cover letter. If the BOCC would send

a letter that would be helpful. Inlow made a motion to recommend the amendments, with the changes discussed, for approval. The motion was seconded by M.Flaming, and passed 7-0.

8. Old Business~ (None)

9. Off Agenda Items~

M.Flaming asked if about any repercussions from the last meeting (a denied variance request at 53 Lakeshore, Marion). Ewy stated that most of the time, courts wouldn't overturn rulings, but that is not always the case. They have 30 days to file an appeal with the district court. They have to have reasons to deny the case. The court system in Kansas says you can make a bad decision, but we will give local authority leeway as long as the process was legal. As long as all boxes were checked. They usually won't superimpose thinking on local jurisdiction. Belton- What are their grounds for appeal? Ewy- That information is unknown to us. A Special Exception would be the only other approach. The Board of Zoning Appeals (BZA) can look at a handful of unique situations, but special exceptions are a very specifically articulated exception to the rule. The burden of proof is much lower for a special exception. An exception is only good when there is no harm in allowing it. If our ruling is overturned, it would have to be filed as if approved by the BZA, but you can include conditions. Kroupa- What if they don't correct the situation? Ewy- The County would have to charge the property owner violation fees. Tajchman stated we would need county counselor support. Belton- As long as the neighboring property owner isn't happy, we need to protect the neighbor. Ewy- Do we want to explore the option of a special exception? General consensus of the board is, no.

10. Adjournment~ Motion to adjourn made by Belton, seconded by Dalke. Motion carried unanimously (7-0). Bina adjourned the meeting at 9:10pm.

PASSED and APPROVED (Date)_____

Jeff Bina, Chair

ATTEST:

Emma Tajchman, Secretary