

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

August 23, 2001

Chairman Eileen Sieger called the meeting to order at 7:33 p.m.

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

Sieger asked for additions or corrections to the Record of Proceedings for the July 26, 2001, meeting of the Marion County Planning Commission/Board of Zoning Appeals. There were no additions or corrections. Robinson made a motion to accept the Record of Proceedings as written and Eberhard seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 4: An application for Earl Hancock, requesting a variance from required front setback from 30 feet to 20 feet, and required rear setback from 20 feet to 10 feet. Members are acting as the Board of Zoning Appeals. This application was published in the August, 2, 2001, issue of the *Marion County Record*. This property is located in Centre South Township, at Marion County Park and Lake. Hancock was present to speak about the application. He is asking for a variance to set his house catty wampus. The house sits on a hill. It will have a walkout basement, and gives a view of the lake, Hancock said. Unless I put the driveway off the main road, which is paved, but the previous driveway was off the back road, he said. The corners will need about 10 feet on opposite corners, he told members. This will be a built home, built by a shop class in Halstead, and will be moved in on a full basement, Hancock explained. Members were shown a diagram of the property and how Hancock wishes the home to sit. I need 10 feet on the angle on opposite corners, he said. This property is actually two lots, 150 x 100. Eilerts asked if drainage is a problem from behind? There's a major drain under the road so it's not a problem, Hancock said. This will sit basically like the doublewide trailer that was there, he said. Is everything gone, now?, Brazil asked and Hancock said yes. The garage has to be attached after the basement is done and the house is moved in, Hancock said. But, it will be an attached garage?, Sieger asked and Hancock said yes. Does anyone from the public wish to speak?, Sieger asked. Next-door neighbor, Charlie Cowan, said it's no problem at all. Any other information?, Sieger asked. Sieger closed the public hearing for this application and opened the floor for discussion and determination.

With it being a corner it seems a bit easier than some situations, Sieger said. Drainage going through the property does limit the size of home you can put on there, Brazil said. Brazil showed members the drainage area on the diagram. Bartel made a motion to approve a front yard variance of not more than 10 feet and a back yard variance of not more than 10 feet, as this application meets the required setbacks and the staff has recommended approval. Eberhard seconded the motion.

In favor: 7; Opposed: 0; Motion carried.

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

Item 5: An application for Gerald Kessler, requesting a rezone from agricultural to rural residential, and requesting a variance from required acreage of 10 acres to five acres, for property located in Lehigh Township. This application was published in the August 1, 2001, issue of the *Marion County Record*. Members are acting as the planning commission for the rezone request and acting as the Board of Zoning Appeals for the variance request. Gerald and Lynn Kessler are present to speak about the application. Lynn has a house being built in Inman, and lives in the existing house, now. He said the new house wouldn't be in the exact same spot as the old house, but next to it. Sieger asked if he will remove the old home?, and he said yes. The old home were built in 1893, he said. Gerald said it has been in the family for 100 years. They said it is hard to get 10 acres, as there are quite a few terraces in there. Sieger asked and Gerald said he owns 160 acres, surrounding the property. Actually, the house fits real good on 3.5 acres, Lynn said. Have you talked about if it were parceled off in more than five acres, the farm boundaries don't have to change, especially when it's in the same family?, Sieger asked. Does 10 acres have to be straight boundaries?, Gerald asked. There is a pasture off to the east, but to have straight boundaries it's hard to do with the waterway, etc., he said. What other buildings are on the property?, Sieger asked. One shed is the only building left, Gerald said. It's a machine shed that Gerald still uses. What's your best thought on 10 acres?, Eilerts asked. Gerald showed her on the map. Sieger asked if there are any larger diagrams or maps to show how they envision five acres? Members looked at the map. Did you talk about other configurations?, Sieger asked Brazil. We didn't get too far into that, Brazil said. What would be possible if you didn't go back as far, but went longer?, Sieger asked. Is there a tillable pasture?, Unrau asked. Yes, there's a little tillable pasture, Gerald said. If boundaries change, the terraces don't have to change, Sieger said. Are we setting a dangerous precedent with five acres?, Ediger asked. Probably, Robinson replied. Then, why do you have a variance?, Gerald asked. Variances are all the same criteria, Sieger said. Sieger showed them the things that have to be met, and she read it. We try to make determinations that will be acceptable in the future, Sieger said. You don't plan to sell, but you could someday and our decision stays with the land, she explained. Lynn asked why 10 acres? It provides a buffer for noise, dust, over-spray, and such problems, Brazil explained. In your case, you're family, but with other folks they could butt heads with someone working in fields late, etc., he said. It gives folks some extra control with what goes on next to their house, Sieger said. We're supposed to look at this as a business decision, not a family decision, Eberhard said. Could it be rezoned down the line, if he sells down the line?, Gerald asked. It would be better to handle this now, but that doesn't mean you have to stop working the land now, but if down the line you sell it would already be in place, Brazil said. Do terraces drain away from the building site?, Eberhard asked and Gerald said yes. Then it shouldn't be a problem, Eberhard said. Anyone from the public wish to speak?, Sieger asked. We received no written comments, either, Sieger and Brazil said. Anything else?, Sieger asked. Sieger closed the public hearing for this application and opened the floor for discussion and determination.

Sieger reminded members there actually are two parts to this application. Members will look at the rezone part, first, requesting a change from agricultural to rural residential. Members viewed the property on the zoning map and noted the area with rural residential property around Lehigh. Is it agreeable to go from five to 10?, Eilerts asked. If we have to, Gerald said. Ediger asked about taxes on the property, saying Lynn will receive a tax bill, but Gerald will be farming the land. But the change will come primarily from the house, Bartel said. I guess I'm not seeing much of a problem here, Ediger said. Bartel made a motion to recommend changing zoning from agricultural to rural residential as the change is consistent with policy for rezoning farmsteads and the staff recommends the change, so it is appropriate. Eberhard seconded the motion. Bartel added it must comply with all sanitary code requirements and conditions, and Eberhard agreed to the amendment.

In favor: 7; Opposed: 0; Motion carried.

Members now addressed the variance request from required 10 acres to five acres. This is not an adjacent property owner, Bartel said. A couple near this property wanted to rezone five acres, then the property sold, and the new owners did not make the proper application but wanted the same consideration, Bartel said. It was generally for the same reasons, he said. Each application has unique reasons for wanting less than 10 acres, he said. In almost every case it is able to do 10 acres, it may be by hardship, but it is able to do 10 acres, Bartel said. It is not always the choice, but it is possible, Sieger said. It's not really any more feasible to do five acres, than 10 acres, Eberhard said. You can have more than 10 acres, too, Eberhard added. I only want five, Lynn said. He has ground he can put the house on, but this has water and everything, Gerald said. The lagoon needs fencing, Sieger said. It is otherwise compliant?, she asked and Brazil said yes. Is it situated so that the new house location will work okay with it?, Sieger asked. If it would go from 10 to five, would that require some sanitary code action?, Sieger asked Brazil. We'd handle it administratively, Brazil said. That's another issue, too, the lagoon, Sieger said. No reason to go from 10 to five, so I make a motion we do not approve a variance from 10 to five acres, Eberhard said. Eilerts seconded the motion.

In favor: 7; Opposed: 0; Motion carried to deny the request.

Sieger explained this is a final action. The rezone recommendation will go to the county commission for final approval. Brazil said he needs a description of the 10 acres, with each side a minimum of 330 feet. So, it has to be straight boundaries?, Gerald asked. Unless we do something different tonight, Brazil said. You have to meet minimum lot width requirements and minimum lot length requirements, Bartel said. So, it could have a jog, Sieger said.

Item 6: An application for Cindy and Michael Ragland, requesting a Conditional Use Permit (CUP) for a dog kennel and training facility in Centre South Township. Cindy Ragland and Tom Masella, dog trainer, were present to speak about this application. This application was published in the August 1, 2001, issue of the *Marion County Record*. Ragland showed members a diagram on poster paper. She said they want to train and board dogs, and have one to two breeding litters per year. There is an existing stone foundation that the roof blew off earlier this year and they would like to re-enclose it and put an office there, she said. Do you train for hunting?, Sieger asked. And for competition, Ragland said. What breeds?, Sieger asked. Labs, Ragland said. Who lives on

the property, now?, Bartel asked. We do, Ragland said. What property is it?, Eilerts asked. Willard and Earlene Hague's old home. We haven't heard from anyone, have we?, Sieger asked. JoAnn Good was present and said we live about a mile from there, as the crow flies. I'm concerned about the number of dogs and about vicious dogs, Good said. I just came to ask questions, she said. We will not knowingly take any aggressive dogs, Ragland said. We make people sign an agreement and we'll send the dog home if they are aggressive, she said. They did bark when the neighbor's cattle got out, so they could bark occasionally, but we do go outside and see what's going on and calm them down and I do work at home, so there is someone there pretty much 24 hours a day, she said. 14 to 16 dogs are what we are thinking, she said. Ragland showed members a poster diagram of the proposed training facility. "Flint Hills Retrievers" is the business name on the poster diagram, Eilerts pointed out. Masella has been training dogs for 20 years, five years professionally. Eberhard asked how young the dogs are and Masella said under a year. Sieger asked Good if she had anything else to ask or say? There used to be almost a puppy mill on the opposite corner and when you'd go out for a walk it would set them all off, Good said. Ragland showed Good on the poster diagram the dog's view will be blocked to a certain extent. Dogs do bark when someone drives up the driveway, Ragland said. Are your dogs every loose?, Sieger asked. When training they're not on a leash, but we are with them, Ragland said. Do you have a kennel in Newton?, Eberhard asked Masella. That's where I came from, Masella said. How long were you over there?, Eberhard asked. About a year, Masella said. Sieger explained a CUP goes to the county commission for final approval. Is there anything else?, Sieger asked. Three of the neighbors said they don't a problem with this, Ragland said. What is the approximate estimate what you are going to put into this and do we want to review it, in say three years?, Bartel asked. I'd like to know what you are going to invest in this?, Bartel asked. Ragland explained they want to fix up the building that lost the roof, but they haven't priced it as they didn't think they could get it done this year. It's a 15 x 60 building. A CUP has to be in continuous use as it lapses if not in use for six months, or more, Sieger explained. You mean if we can't get the roof on the building?, Ragland asked. No, if your operation were not in business for six months, then the CUP would lapse, Sieger said. Are there any other comments?, Sieger asked. Are we sufficiently clear on the number of dogs?, Sieger asked. If we were full, that could possibly put us over the 14 - 16 dog limit, Ragland said. What if you have several litters and don't sell them all, do you hold off, or what?, Sieger asked. Would they be sold as trained dogs, then? Sieger asked. Most trainers usually give dogs away as a pet if only one is left from a litter and didn't sell, Ragland said. We have black, yellow and chocolate labs, Ragland said. Word of mouth spreads and just knowing he's going to be training dogs, we've gotten several calls, she said. We belong to the Jayhawk Retriever club out of Wichita, she said. There are magazines and Internet sites where you can advertise dogs, she said. I have a Lab that's a pet that keeps up with the best hunting dogs, she said. Does the state come out and do spot inspections?, Sieger asked. It happened to me, Masella said. Are you licensed, now?, Eilerts asked. This is our first step, Ragland said. Sieger closed the public hearing for this application and opened the floor for discussion and determination.

There are 11 factors on CUP's that Brazil included in his staff report, Sieger said as she referred members to the staff recommendation. Actually, I think if we want to approve

this, we need to include that the existing stone foundation be the location and the plans be incorporated into the approval, Bartel said. On dog waste, what's so special about that?, Eberhard asked. The trash man doesn't like to deal with it and the transfer station operator doesn't like to have it mixed in, Bartel said. I believe there's a trash hauler in McPherson that would pick it up, Ragland said. We started a pattern with other applications, separating it out, Brazil said. I don't know if it stays separate, or not, I don't know, he said. You want to go to Dickinson County if you think it's not a problem, where they run Greyhounds, and you'll see it's a problem, Bartel said. If you're having pickup, how different would it be to have a separate container?, Sieger asked. I would think that would be better for the homeowner, anyway, she said. Of the other similar applications, this is going to be the smaller operation, Brazil said. And they have 80 acres to spread it on, Eberhard said. Some people may just put it in a heap, Sieger said. What's the difference than cattle waste?, Eberhard asked. The CUP goes with the land, it's not something we approve because we like the people, or like the sound of what they're planning, it can change hands and become a completely different operation, Bartel said. If I sold it, they would have six months to keep it going, or it would lapse?, Ragland asked. I don't know the answer to that, for sure, Brazil said. I want to address that the existing foundation be used as the structure and their plans as presented this evening, Bartel said. I think the condition you put on the hunting and fishing lodge to have final plans put in the file is a good way to go, Brazil said. Actually the 50 feet and the 30 feet is part of our zoning regs, so we wouldn't have to include that, Brazil said. I would not put the CUP over the entire property, he said. What if builders can't put a roof on the old stone building?, Ragland asked. Then you get to come back, Bartel said. Let's say that won't work, Sieger said. Would you still want to put a building in that location, or close proximity?, she asked. They've got 10 acres to work with, Eberhard said. If we want to build another building for maintenance, would we need to come back?, Ragland asked. You'd need a building permit, Brazil said. As long as it has nothing to do with the operation, he added. Does everyone agree to confine it to 10 acres?, Sieger asked. And not more than 20 adult dogs?, she added. Are we counting pets, too?, Eberhard asked. No, only in the training facility, Sieger said. What about dog waste being handled separately?, Sieger asked. Yes, Eilerts agreed. Let's not get specific on that, they have 80 acres, Eberhard said. State license needs to be maintained, Sieger said. Setbacks for pens or kennels from front and back property lines?, Sieger asked. How far back from the county road?, Sieger asked. About 45 yards on the diagram, which is far enough back from the front, Sieger said. Obviously, it wouldn't be close to the side, she added. Eilerts made a motion to accept the staff recommendation as stated, along with items mentioned (confine to 10 acres, not more than 20 adult dogs, use of existing stone foundation, final plans be put in file, dog waste be handled separately, state license maintained, and proper setbacks). Do we need to give guidelines if they can't use the stone foundation?, Sieger asked. We want them to come back, Bartel said. It may be a year down the line, Masella said. The six months doesn't mean you have to have that completed, Sieger explained. Eberhard seconded the motion.

In favor: 7; Opposed: 0; Motion carried.

Sieger explained the process.

Off agenda items: Members will meet Thursday, September 20, for comprehensive plan. The consultant will conduct the meeting. The public could view the final draft and ask

questions. Basically, members just need to be there to hear comments from the public, but not necessarily respond to them at that point. Then, they need to decide whether or not to approve the final draft. They could approve it that night, or wait until the next regular planning commission meeting, which would give the public a few more days to comment, Sieger said. We are required to publish it 20 days prior, which Brazil will take care of. Unrau asked if we need a motion, or if Sieger is satisfied with a consensus. I think a consensus is okay, Sieger said, saying that's a good question. I hear no objections, so we will do it that way, she said. When we make a recommendation on it, it needs to be in the form of a resolution, Bartel said. One other question, when you publish it, will we say anything about a public hearing date with a time for public comments, so many days after?, Sieger asked. Yes, Bartel said. Meeting time?, Brazil asked. 7:30 p.m., it was decided. Eberhard made a motion to adjourn and Unrau seconded the motion. In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 9:26 p.m.

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Eileen Sieger,  
Chairman