

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

August 24, 2000

Vice-Chairman Terry Eberhard called the meeting to order at 7:32 p.m.

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

Eberhard explained that members will proceed with a discussion of the Comprehensive Plan, since there is not a quorum, yet. Scott Michie of Bucher, Willis and Ratliff gave a report on updating the Comprehensive Plan. Michie explained the county is required by the state to have a Comprehensive Plan. It's a document of substance, if you make it that way, Michie told members. Michie asked members if there were questions about the time frame to complete the plan. There were no questions. Michie said work will continue on the plan this fall and next spring. He said currently they are gathering data and looking at trends. He said the initial part of the process involves meeting and working with the public. Michie gave members a copy of a sample letter to send to selected county residents, telling of a workshop-type focus session to be held in September. Unruh arrived at 7:36 p.m. Unrau arrived at 7:38 p.m. Pankratz arrived at 7:42 p.m. Eberhard asked Michie if the letters will be sent to everyone in the county? Michie said no, certain residents will be chosen to receive the letters, and the letters will go to a cross-section of people throughout the county. Will people be allowed to speak individually at this meeting?, Eberhard asked Michie. Yes, Michie said, but it will be a controlled meeting. Michie gave members copies of an initial analysis demographic report of the county. He said it shows Marion County growing at a modest rate. He said it looks as though demographic age shifts will continue with a trend of a high percentage of older people in the population. Also, we focus back on the basic land and economic development issues, he added. Bartel requested Michie have the file on the Marion Reservoir Project as part of the material to review. Bartel said he is also interested in having a list of an

inventory of the materials Michie does have to review. Members looked at the calendar for a date for the September focus session. Michie suggested Wednesday, September 27. Eberhard pointed out that members have a planning commission meeting the next evening. Members approved scheduling the focus session on September 27 at 7 p.m. Brazil will check to see if a meeting place is available for that date in Marion, and if not he will look for a place in Hillsboro.

Eberhard determined there is a quorum, now. Eberhard asked for corrections to the minutes of the July 27, 2000, meeting of the Marion County Planning Commission/Board of Zoning Appeals. There were no corrections. Fincham made a motion to approve the minutes as written, and Unruh seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 5: An application for Jerry and Faye Makovec requesting a rezone from agricultural to rural residential, which was published in the August 2, 2000, issue of the Hillsboro Star Journal. Jerry Makovec said the request for a rezone involves 12.8 acres, which has a septic system and well and is in Rural Water District #5, but the property is not signed up for rural water. Bartel asked why the property is empty, now? My mother lived there and she died a year ago, and I don't want to rent it out, Makovec said. This property is by the county highway to Florence and 150 highway. Eberhard asked Makovec where buildings are located on the property, in reference to set back requirements. About 300 feet from the road, up a long lane, Makovec said. Eberhard asked how far the buildings are from the north line. At least 75 feet, maybe 100 feet, Makovec said. Eberhard asked if anyone else had any questions, or if anyone from the public wished to comment. Eberhard closed the public hearing for this application.

Brazil said the septic system is fine. Brazil said there are not a lot of other rural residences in the area. Brazil showed members the area on the zoning map. Eberhard asked Makovec where the nearest town is, from this property. It's three miles from Marion, Makovec said. It's a good gravel road, Brazil said. Eberhard asked if there were any other comments, or if there was a motion. Bartel made a motion to recommend a change in zoning from agricultural to rural residential, as this application is consistent with the policy of zoning farm sites and is consistent

with the general plan of the area. Unruh seconded the motion.
In favor: 7; Opposed: 0; Motion carried.

Item 6: An application for Rick Schulz for a variance from set back requirements for property located in Gale Township, which was published in the August 2, 2000, issue of the Hillsboro Star Journal. Members are acting as the Board of Zoning Appeals for this application. This property is located on Eastshore at Marion Reservoir. Schulz said 20 feet from the property line is required, and he is requesting 10 feet from the property line. Schulz said the variance was 10 feet, but recently was changed to 20 feet. He showed members photos of the property. Eberhard asked Schultz where the garage is located, and Schulz said across the street from the property. This spring we replaced the house on that lot, and went by required set backs of 30 feet to the street on each side, Schulz said. As far as we can tell, there would be no obstructions as far as utility lines, etc., Schulz said. I'm not sure when it changed to 20 feet, Schulz said. Basically, it's the rear lot set back, Schulz said. Is access to the garage off of Eastshore?, Bartel asked and Schulz said yes. Bartel pointed out that original set backs at the reservoir were specified by the home owner's association, not the county. Bob Maxwell, Eastshore resident said it was originally platted like that, and it was also listed in our covenants. Then this change occurred and it's been muddy water ever since, Maxwell said. So, we're all looking to get squared away on this, he added. With the lot sizes out there, the set backs don't allow for large homes out there, unless you're talking about a blanket variance, Brazil said. Larry Cameron, Eastshore resident, asked why was the plat changed, and why weren't property owners notified of it? You implement rules and tried to over-ride the plat, Cameron said. If the county commission comes in and changes the rules on me, where does that leave me?, Cameron asked. Zoning takes precedence over covenants, Bartel explained. It's not the function of the plat to determine set backs, Bartel said. If set backs are included in the plat, that's extra information, Bartel said. A plat makes dedications of roads, easements, drainage and utilities, Bartel said. When zoning was done, it was not done for each subdivision to have different set backs, it was done for the county, Bartel said. Is an application necessary, to go with what we have out there?, Maxwell asked. Is it legal?, he asked. We've all gone by this, he added. If covenants were more restrictive, that would be okay?, Eberhard asked. Yes, Bartel said, but it would be up to

them to enforce it. Say it's the other way around, the county would not enforce the set back, Bartel explained. A similar thing happened, and at the county level they made a determination that the set back would be a blanket one time thing, Bartel said. This is about a 31 year old village, with no problems until recently, Maxwell said. There's been no need for a variance until now, he added. Eilerts arrived at 8:25 p.m. Eberhard asked if there were any further questions. Bartel asked if all surrounding homeowners were notified of this application, and Brazil said yes. Eberhard closed the public hearing for this application, and opened discussion among members.

Brazil said staying in uniform with what's been done would be positive. Unruh made a motion to approve the variance from set back requirements, and Pankratz seconded the motion. In favor: 8; Opposed: 0; Motion carried.

Item 7: An application for Lloyd and Beth Pagenkopf requesting a rezone from agricultural to rural residential, which was published in the August 2, 2000, issue of the Hillsboro Star Journal. Attorney Bob Brookens was present to represent Pagenkopf's. Brookens said this property is located one and a half miles north of the north end of Lincolnville, or two miles north of the center of Lincolnville, by U.S. 77 and the east/west road to Centre High School. It is located on the northwest corner of the intersection, Brookens said. Pagenkopf's lived there and farmed for years, Brookens told members. They moved to town and their grandson lives there, now. They wish to deed 10 acres to their grandson, including the farmstead house and some out buildings, Brookens explained. It has a septic system, less than a year old, Brookens said. It's an established farmstead, on a public highway, he said. There is a residence a half mile to the east of this property, with a farmstead on at least an 80 acre piece, Brookens said. They want to give this property to their grandson. I know he has plans of improving it, in time, Brookens said. They are debating on maintaining a life estate, he said. Their grandson will not own land around this 10 acres, and they wish to carve the piece out so he knows what he can do, Brookens explained. The house sits about 250 feet from the south and about 500 feet from the existing highway, Pagenkopf said. The new highway will be 200 feet east of the present highway, so it's getting even farther away than now, Pagenkopf added. Rural water does go right by the property, Brookens said. And a natural gas

line to Centre High School goes right by, so they have access to it, Brazil said. The waste water system was updated, but no permit was requested when it was done, and I'd like to see it permitted so I can check soils and see it meets standards before I sign off on it, Brazil said. The family did the work, and I assume they just didn't think of it, Brookens said. There's about 100 feet of lateral, so they may have to expand it a little bit, but it can be done, Brazil said. Eberhard asked if there were any other questions, and if anyone from the public wished to speak. Eberhard closed the public hearing for this application.

Bartel made a motion to recommend a zoning change from agricultural to rural residential, and that the land owner or the person he designates, make application to the health department for a sanitation system permit. Fincham seconded the motion. Unruh questioned including in the motion to require the owner to get rural water on the property. Bartel did not wish to amend his motion. Pankratz wished to vote on the motion as it stands.

In favor: 8; Opposed: 0; Motion carried.

Item 8: An application for a Conditional Use Permit for a four-wheel drive mud run, which was published in the August 2, 2000, issue of the Hillsboro Star Journal. Unruh said he has a conflict of interest and is removing himself physically from the meeting. Unruh said he submitted a letter of his opinion, but he did not state if he is for, or against, this application. Eberhard said let it be noted that Unruh is leaving the meeting. George and Sonja Gore were present to speak about their application. Gore said he has already had one mud run. He said the pit for the mud run is 200 feet by 20 feet. He said there are 12 or 13 other such pits in eastern Kansas. He said the CMBA (Central Mud Boggers Association) has been organized in Kansas for eight or nine years. No one else had to get zoning approval, Gore said. I apologize for not doing this before, but it was my ignorance that I didn't know this, he said. Eberhard asked Gore for a brief explanation of mud bogging. Gore said it's a competition for four-wheel drive trucks. He said there were 400 to 500 people at the mud run he held July 9, 2000. Of these 400 to 500 people, 250 to 300 of them were Marion County residents, and the rest were from out of the county, Gore said. Several mud run people stopped in Hillsboro and purchased food and gas, Gore said. I think it's a very positive thing for the community, Gore said. Sheriff

Deputy Tammy Gross was there, and said everything was going great, no problems. She said she was going to be at the next one, as a spectator, Gore added. Eberhard asked if participants are timed as they go through the pit, and Gore said yes. Only a couple of trucks made it through the pit, Gore said. How do you charge?, Eberhard asked Gore. It's \$5 per person and \$20 for trucks to enter, Gore said. It's a sanctioned meet, he added, and all the money goes back to the drivers. It took three days to prepare the pit, and the mud run lasted six hours, Gore said. No alcohol was served on the premises, Gore said, but you could bring your own alcohol. We had beverages and food available, he said. What about restrooms?, Eberhard asked. They never showed up, Gore said. He explained he ordered port-a-potties, but they were not delivered. He said it would be easier to rent port-a-potties rather than construct a lagoon, because of the expense involved. How many times a year would you have meets?, Brazil asked. Twice a year, for now, Gore said. It's an event for all ages, he said. Do you own this property?, Eberhard asked. Yes, 40 acres, Gore said. What kind of signs will you use?, Brazil asked. I put a 2x8 piece of plywood on fence posts by the highway, Gore said. I put it up that morning and took it down the next morning, Gore said. Brazil asked Gore if he had a letter from the CMBA, saying it is sanctioned? No, Gore said, the guy didn't get it to me. Labor Day in Florence is having a mud run sanctioned by the same organization, Gore said. Gore showed members the back of his shirt, which promotes the CMBA. Pankratz asked about liability insurance. Yes, we personally carry it, Gore said. It insures the drivers, as well as the spectators?, Pankratz asked. Yes, \$250,000 liability including injury, Gore said. I have a rail put up along the side where the spectators sit, Gore said. Eberhard asked about safety fence and if Gore's facility was adequate with the association? Yes, Gore said. I went to one at Halstead and all they had was t-posts and rope, Gore said. Eberhard asked if there were any further questions or comments. Bartel asked Gore if he has looked at the material being prepared for plans for Marion Reservoir. No, Gore said. The pit is a half mile away from Marion Reservoir, Gore said. I'm a very avid outdoors man, and there's no way I would hurt the reservoir, he said. I put the pit where I did because of water running across my driveway, Gore said. I'd like to make the Marion Reservoir Plan Project part of the record, as it is a significant project which has been underway for over a year with a significant amount of public money being spent, Bartel said. It's the Marion Reservoir

watershed area water quality plan project, Bartel explained. The whole thrust of this effort is to achieve the highest quality water possible for Marion Reservoir, Bartel said. It includes funding some public demonstrations to improve water, Bartel said. Frankly, it's a better funded project than our comprehensive plan, he said. I'll say to you, this use is not consistent with the interest of the Marion Reservoir Plan, Bartel said. If I thought it was going to hurt our reservoir, I would never do this because I hunt and fish that reservoir probably more than anyone else in this room, Gore said. The cows in Mr. Winter's pasture hurt the reservoir more than my mud run ever would, Gore said. There are two wells and a lagoon on this property. Eberhard asked if there were any further comments. Eberhard closed the public hearing for this application.

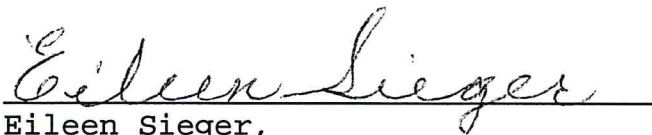
Pankratz questioned tabling this application and reviewing the Marion Reservoir Plan. Pankratz made a motion to table this application and review the plan and address this at the next meeting. Eilerts seconded the motion.

In favor: 7; Opposed: 0; Abstained: 1; Motion carried.

Gore said his next mud run is scheduled for October 1, and he has had it scheduled and will not cancel it. If you don't want me to have it, I won't have it next year, Gore said. The county could have an injunction that you will not have your mud run, Bartel told Gore. Eberhard noted there are two letters on file from neighbors.

Fincham made a motion to adjourn the meeting, and Robinson seconded the motion. In favor: 7; Opposed: 0; Motion carried and the meeting was adjourned at 9:05 p.m.

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Eileen Sieger,
Chairman