

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

August 25, 2005

Chairman Eileen Sieger called the meeting to order at 7:30 p.m., with a quorum and all members present. Sieger reminded members there is still one vacancy from District One.

Roll Call was answered by Sieger, Marquetta Eilerts, Bob Maxwell, Glen Unrau, Mary Avery, Willis Ensz, Ervin Ediger and David Mueller. Zoning Administrator David Brazil was present.

Sieger asked if anyone had questions about the agenda. Brazil said he had several off agenda items. Maxwell said he also had several off agenda items.

Sieger asked for corrections, or additions, to the Record of Proceedings of the July 28, 2005, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Sieger had a correction on page one, where "the" should have read "they." Sieger also had a correction on page three, where "guide" wires should have read "guy" wires. Brazil had a correction on page five, where "Chase" County should have read "Marion" County. Ediger had a question on page three, but all agreed to leave it as written. Sieger reminded Brazil to please have his staff stamp "draft" on the Record of Proceedings until approved. And then everyone gets a copy of the corrected minutes?, Maxwell asked and Sieger said they should. I'll see to it, Brazil said. Sieger asked if there were any other changes. Ediger made a motion to accept the Record of Proceedings for the July meeting with three changes. Ensz seconded the motion. In favor: 7; Opposed: 0; Abstained: 1; Motion carried. Avery abstained, as she was not present at the July meeting.

Item 4: An application for Robert Gayle, requesting a short form lot split of 10 acres for property located in Doyle Township. This application was published in the August 10, 2005, issues of the *Hillsboro Free Press and Free Press Extra*. It was explained that the lot splits may be published a week later than rezone requests, as there is only a 20 day notice required for lot splits. Eilerts asked about Brazil's report that there were no public comments as of August 5, 2005. Brazil explained that sometimes he even receives comments the day of the meeting and he makes those comments available and gives members copies of any letters that are received. Brazil explained that August 5 is just the date he made up the packets to send to members for review. Maxwell corrected the spelling of Gayle on the staff report. Gayle was present to speak about his application. He said this is just a simple sale. Sieger asked if the property has access from highway 77 and Gayle said yes, although there is no access at this time due to road construction. Gayle said the Kansas Department of Transportation (KDOT) is concerned that there is not enough of a clear view from the turnoff. But, Gayle added, he measured it and it is well within the requirements. Gayle showed members on a map where the property is located. Gayle said the property is located on the west side of highway 77. It's basically square, Sieger said. It's almost impossible to get it square, Gayle said. They cut the bank away

for the new highway, and to slope it right for the road, it's hard to square it up, he said. Does it border the right of way of highway 77?, Sieger asked and Gayle said yes. There is some lower ground with better soil, but it's marginal rocky soil, Brazil said. It's in the high end of moderately rated for farmland preservation, Brazil said. Is this going to be a home site?, Maxwell asked and Brazil said yes. Is there anything else?, Sieger asked. Sieger asked if anyone from the public wished to speak. Sieger closed the public hearing for this application.

It meets requirements, Brazil said. This is really our first new home site application, Brazil told members. Sieger asked if there are crops, or pasture, nearby? Marginal pasture, Brazil said. You get off the hill and there are some better soils, he added. Ediger asked and Brazil said there is no rural water at this location. We can address the water and wastewater, especially, with that acreage, Brazil said. It's an old home site, Gayle said. I know there's water there, as the house was moved to a new site and this is the old site and the water is better here at the old site, Gayle said. Mueller made a motion to approve a short form lot split of ten acres for Robert Gayle in the "A" Agricultural Zone District as presented by the applicant, with three requirements: One, require access to the split lot be located on Kansas State Highway 77; Two, require that the short form lot split plat and the agricultural disclaimer form be recorded by the Register of Deeds with the deed transfer; and Three, require certification of such actions be filed in the Office of the Planning Commission. Maxwell seconded the motion. In favor: 8; Opposed: 0; Motion carried. Brazil explained he would send a certification form to Gayle.

Item 5: Members receive and consider the county commission's plan and regulation letter. Brazil offered members copies of attorney Jim Kaup's information. Brazil explained the new proposal breaks down into two sections, one for new home sites and the other for existing home sites. Brazil said this would allow for him to handle existing home sites as an administrative review. Brazil also explained about adding road assessments. He said a road could be brought up to standards with an impact fee. He said the county's road and bridge department would facilitate this, with the county commission. Brazil explained areas of urban influence may find some cities wanting to protect the ground, while other cities may want to develop the ground. Sieger asked which is the proposal, the Kaup info, or the letter from the county commission? Brazil said in his mind, he believes the letter is what the county commission wishes members to look at. Avery asked about procedure, saying changes are generally made in January each year. Brazil explained that state statute requires a once a year review, but changes can occur at any time. If the public perceives that we review in January, we don't want to break the public's trust, Avery said. Maxwell asked about going through the process of public meetings, etc. We will work up a draft, do publication notices, and make copies available, Brazil said. County Commissioner Dan Holub was at the meeting and said he was present just to answer any questions. Holub said he just wants to make sure the letter is clear and there are no misunderstandings, so we don't waste time on misinformation. Maxwell asked a question about the letter from the county commission, saying in paragraph E the word "preclude" is used. Maxwell said his understanding of the word "preclude" is to shut out, or not allow. Holub said yes, that is what the county commission meant, they do not want that to happen. Maxwell asked about paragraph F,

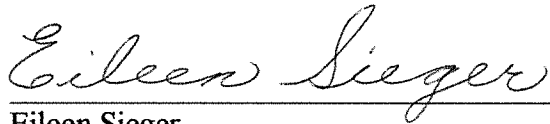
saying there already is a time limit. Brazil explained that once a permit is issued, the owner has 90 days to start construction and two years to complete the project. Holub said the county commission wants to try to avoid someone buying up three-acre lots and then sitting on it. We're just trying to prevent something like that taking place, Holub added. I can see where developers and real estate people need to be active with this, Eilerts said. Maxwell said as for small acreage land purchases, we're going to have to define things better, and it's going to be hard to control. Brazil said he thinks this is more in reference to lot splits. At one point it talks about looking at it on a per section basis, Brazil said. What could happen is one landowner could buy up everything, like a land rush, and that's what they're trying to avoid, Brazil said. If someone bought up property simply to have control of it, with no intention of selling for a few years, this is what we're trying to preclude, Holub said. Maxwell referred to West Branch Township on a map. He said section seven neighbors the town of Goessel. He said it's a pretty unique area, timbered and a lot of brush, and most of it is pretty well hidden. Maxwell referred to section six, saying this ag property is set quite a ways off the road, so there's nothing bad about it. Sieger asked if all these properties have access to the main road, and Maxwell said yes. Maxwell referred to section fifteen, saying it's ag with quite a few trees. He said these are all nicely manicured lots, painted, and probably all on three or four acres, but in the middle of it all is an old barn with a lot of junk, which ruins it. Mueller asked about sections six and seven. If it came in today, would it fall under urban influence?, Mueller asked, and was told no, as Goessel does not have zoning. Peabody, Hillsboro and Marion have areas of urban influence, Sieger said. There are designated growth areas, Brazil said. So, it would be up to the county, since Goessel doesn't have zoning, Maxwell said. Yes, up to the city limits, Sieger said. Holub said you could have stock animals on similar acreages. Usually, it's a common sense approach, administratively, Brazil said. Getting down to urban residential lots and animals are not allowed, he added. Sieger asked about problems between ag operations and residences, and what will stand up in court. It's very valid to have a disclaimer, Brazil said. Holub said the state attorney general said you sign a disclaimer up front, you know what you're getting into. The problem is, you get 15 years down the road and have a new person as staff who may have a different opinion about what is a nuisance and what is not, Brazil said. Avery asked who will address water and sewer issues? For Suburban Residential, currently, the applicant has to get access to public wastewater and water, Brazil said. Sieger asked about sewer and water in the Goessel area. There are lateral fields and lagoons, Brazil said. Ediger asked about "C" on the county commission's letter. Members explained they have asked about rural water, but have never made it a determining factor for recommending approving an application. Then, it's a non-issue, Holub said. But, it's an important issue, if someone is planning to build a house and doesn't have access to water, Avery said. If the three acres does not support a water system, they would have to go more, Holub said. Can you actually put a lagoon on three acres, legally?, Ensz asked. If they can comply with set backs, Maxwell said. Sieger asked if the county commission wants Kaup's proposal in its entirety? Sieger asked about the statement at the bottom of the letter from the county commission. One house per 40 acres, four houses on 160 acres, Holub said. With net density of one per 40 acres, you're looking at each deed, Brazil said. What Dan is getting at is you wouldn't look at the deed, Brazil said. You're really out of the norm in tracking, Brazil said. Maxwell showed Holub a diagram he made. We actually encourage clustering, Brazil

said. McPherson County has one residence per 1/16 of a section, Maxwell said. Saline County is one per 80 acres, Maxwell added. Harvey, Butler and Marion Counties are all similar in zoning, Brazil said. By going with 1/16 of a section, it's more accurate, otherwise it's going to be short, Maxwell said. With 36 acres you can't do a lot split, you need 40 acres, Mueller said. Net density is based on a quarter, with four per quarter, Mueller said. So many per acreage, or per deed acreage, Sieger said. You have to specifically address the land rush issue, Brazil said. Not using the deed is a whole other ball game, Brazil said. If you're talking about 16 houses, let's get that in a development where we can address the water and other issues, Avery said. It's important to have a vision and look at how it's going to impact the future, and this should not be a political football every time we change commissions, Avery said. We need a plan of where we're going, she said. You travel around the country and it's really easy to see places that don't have a plan, she said. We need a plan in place that won't be continuously tossed back and forth, Avery said. She used Santa Fe, New Mexico, as an example, saying they had a plan in 1959. We need to look 50 years down the road, she said. I'm frustrated because prior to me (being on the planning commission) there was a comprehensive plan, and this (seemed to bring) a feeling of unrest, she said. We've got to come up with a vision for 50 years down the road, she said. It's close enough to the first of the year, we can get it ironed out, Maxwell said. I want a good plan in place and a vision that's stable, Avery said. One house per 40 acres is the single issue; it wasn't the books, Holub said. I came in and we had a plan and it seemed we were addressing things and before we have a chance they want to change it, Avery said. It's public input, and they don't like the 40 acres, Holub said. I understand where you're coming from, but we've heard it over and over that landowners don't like being told how to do things, Holub said. I thought we found a plan at five acres, Avery said. Five acres would be fine with me, too, Holub said. If five acres is okay, what's left as an issue?, Avery asked. The 40 acres, Holub said. What I don't understand is you don't have to buy 40 acres, Maxwell said. I understand that, but this limits lots of people because they only have 20 acres, Holub said. To file the lot split application you need 40 acres, Brazil said. Mueller pointed out the proposal from Kaup addresses infrastructure. Is there a place that has less than 40 acres, to break off five acres?, Maxwell asked. Most of our neighboring counties have 40 or 80 acres, Brazil said. A lot of counties around us started with 160 acres and have come down to 40 or 80 acres, Brazil said. Sieger read a written prepared comment that she wrote concerning her position. She mentioned the time and money spent on the comprehensive plan, and how it was reviewed several times, as well as the set of regulations. Sieger pointed out that seldom is productive land taken out of ag use. She mentioned there are 660 miles of gravel roads currently to maintain. Sieger asked that it be considered what the cost will be for continuing up keep on county roads. Sieger said she thinks it is good to have a legal opinion in order to be in compliance if changes are made. She said she has visited with a number of people who want to keep in place what we currently have. She said she wants to see the county grow, with the proper planning. She quoted Kaup, from August 1, 2005; he said growth should be "staged orderly growth after improvement of the infrastructure." We want your input on these items, Holub said. Our best idea to prevent land grabs was a time limit, but maybe you have another idea, Holub told members. I think we're at fault some place with the public because they have the mindset that they have to buy 40 acres and they don't have to, Maxwell said. If I'm new to the county and

want to buy three acres, can I?, Holub asked. If you come to me and do the process of the lot split and currently you can do it with five acres, Brazil said. Realtors I've talked to do feel this is a way to address clients needs, Avery said. With the new regs, originally it was too restrictive, but they think many issues were addressed in the current plan, Avery said. I haven't heard from any realtors, it's farmers who have talked to me, Holub said. I do believe those who are knowledgeable of the new plan feel what was put in addressed their concerns, Avery said. I think we need to sit down and address the 40 acres, Holub said. Maybe it's a matter of public education, he added. Avery told Holub that is an excellent idea to sit down, as a lot of misinformation is out there. Brazil explained the difference between a rezone and a lot split. Brazil pointed out that Holub's application was with the old regulations. Maybe we just need to clear up the 40 acres, Holub said. There was nothing dictator about the letter, Holub said. We just needed this conversation, and maybe we need it with the other two, too, Holub said. Brazil used Brad Putter's application as an example of property that was not previously a home site. The only other issue in this case was the road and the RS road requirement, and with an impact fee it can be addressed, Brazil said. Sieger asked Unrau to explain how great-grandfathers bought a section or a half section a mile long, making four strips of land 15 acres each. How would you like to farm a half mile of 15 acres?, Unrau asked. Some of these folks live in New York and California and they will never sell the land they inherited, Unrau said. Maxwell said McPherson County is at three acres right now, and are limited to a 1/16 of a section. Some people want to go to five and some to 10, he said. It's not the perfect scenario over there and they are working it out just like we are, he said. We're just caretakers of this land, so we need to be good caretakers and good stewards, Sieger said. Maxwell said McPherson County had a wind farm meeting. They had a good turnout with about 75 folks there, he said. Mueller said it was a good idea from Avery to get together with the county commissioners. Mueller said it seems the issues are: #1 to keep lot splits on RS roads, or anywhere with an impact fee; #2 what to do with under 40 acre lots; and #3 density base line. And we need to verify that, legally, Sieger said. Brazil suggested a work session with the county commission and Kaup. Sieger asked if anyone has any other issues? Avery said we should ask the county commissioners if they have any other ideas. Maxwell said he visited with five realtors in Hillsboro and Marion. One wants 10 acres, others want minimum lots with no restrictions and several want something right in between, Maxwell said. You're not going to please them all, Avery said. Brazil told members about a Kansas Renewable Energy and Energy Efficiency Conference in Topeka in September. It should be a pretty good conference, if anyone is interested in going, Brazil said. Brazil said he will be on vacation next week, and the following week will be at a conference on Blue Green Algae. Brazil explained about notifications on lot splits. He said there were errors on two applications, which were not sent in time to the newspaper. Brazil said since that time he has asked the county commission to fund a fulltime person, instead of a part time person for his office. He said they are busy in the fall and have too many tasks. He said ultimately it is his responsibility to see that publications are made the number one task, but a fulltime person should make the difference and hopefully he'll get a new fulltime person, as they need more staffing. Avery said she thinks it would be nice to give retiring members a token of appreciation from the planning commission. She said not a plaque, but something would be nice. Maxwell said McPherson County has several new members and they are trying to work

on wind farms, so they have their work cut out for them. They were smart enough to know they didn't know enough about it, so they were smart enough to put a moratorium in place, Maxwell said. The moratorium is a feather in you guys' cap, Brazil told members. Sieger reminded members the next meeting is scheduled for September 22, 2005. Avery made a motion to adjourn and Ensz seconded the motion. In favor: 8; Opposed: 0; Motion carried and the meeting adjourned at 9:35 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

A handwritten signature in cursive script that reads "Eileen Sieger". The signature is written in black ink and is positioned above a horizontal line.

Eileen Sieger,  
Chairman