

MARION COUNTY PLANNING COMMISSION

RECORD OF PROCEEDINGS

AUGUST 27, 1998

Chairman Eileen Sieger called the meeting to order at 7:35 p.m., and determined a quorum was present.

Roll Call was answered by; Sieger, Marquetta Eilerts, Dean Fincham, Jo Helmer, Bob Unruh, Clark Wiebe and Eldon Pankratz. Don Fruechting and Terry Eberhard were absent, but Fruechting did arrive late. Herb Bartel was also in attendance.

Sieger asked for corrections to the minutes of the July 27, 1998 meeting. There were no corrections. Pankratz moved to approve the minutes and Fincham seconded the motion. Helmer, Eilerts and Unruh abstained, as they were absent from the July meeting. In favor: 4; Opposed: 0; Abstained: 3. Motion carried.

Item 4 - Operating Agreement for Martin Marietta Aggregates. Sieger said a copy of this agreement was on file in the county clerk's office for 10 working days. Sieger asked for suggestions for changes to be incorporated into the agreement. Sieger reminded members that they are working with substance and not legal wording. Sieger said at some point the agreement will need to be viewed by legal counsel. Sieger said members should have received by mail copies of written comments which were received in the county clerk's office during the written comment period. Sieger said members need to finalize the operating agreement and send it on to county commissioners for final approval and legal advice. At 7:46 p.m. Fruechting arrived at the meeting. Unruh made reference to a letter from Martin Marietta officials stating the 660' set back from the east boundary is excessive, although they did not offer an acceptable solution. Unruh called for a discussion concerning set backs from the north boundary. Bartel made reference to a photo which was a Martin Marietta exhibit at a prior meeting. Wiebe said perhaps the word "real" should be added on #10 in reference to "...any damages to the personal and REAL property of the occupants..." Discussion involved #8, #9 and #10 concerning bonds. It was suggested to add in that a claim against such bonds by said occupants or property owners should not be their exclusive remedy for any damages to personal property and such occupants and property owners shall retain all rights to legal and equitable remedies for such damages. It was discussed to add to #6 that in no case shall there be any distance between the 300' requirement and the 660' requirement on the north property line; in no case shall there be any gap. Unruh said that in the event a gap exists between the 300' set back and the 660' set back, that the distance be protected by a 300' set back from the north boundary. Eilerts questioned #1 and asked about using wording from a Douglas County operating

agreement. Eilerts wanted to include wording such that; ..."the first year of operations, and every five years thereafter, the applicants shall submit a detailed report and plans of quarrying operations to the planning office and to the county, indicating the phases of quarry operations, location of stockpile area, estimated volume of material being extracted, and a detailed monitoring and management plan for the areas undergoing reclamation." Unruh said we want an inspection, or review. Wiebe asked Bartel what members should be trying to accomplish with such an operating agreement and who is qualified to review a report from the quarry. Much discussion followed. Discussion involved the number of years to recommend for the conditional use permit (CUP) for the quarry operation. Pankratz said if there are no complaints and the operation is properly bonded, the county could extend the time from 10 years to 15 or 20 years. Fincham agreed the time should be extended to 20 years. Wiebe suggested leaving #1 as is, but adding the sentence back that was previously dropped. Bartel said quarry operations are going to be enforced on a continuous basis. Fincham said extend it 15 years. Finally, it was decided to change the 10 years in #1 to 15 years and add "unless it is extended by the County under the same procedure as it was originally granted," back to the sentence. Sieger asked for individual opinions. Wiebe, Fruechting, Pankratz, Helmer and Fincham said go 15 years and add sentence back. Eilerts said she prefers the other wording, but knows the meeting must move on. Unruh said he is comfortable with the decision. Sieger asked for a motion to approve the changes, reminding members that they are recommending substance and not legal wording. Pankratz made a motion to make the changes, including: changing #1 to 15 years and adding the rest of the sentence back in; change #6 to say, "In the event there is a gap between the 300 ft. set back on the north and the 660 ft. set back on the east, the gap would be protected by a 300 ft. set back from the north boundary line;" and add the word "real" to #10 where "the cost of any damages to the REAL and personal property of the occupants..." and Wiebe seconded the motion. In favor: 8; opposed: 0. Motion carried.

Item #5 - Application for Myron Schmidt to rezone 10 acres on 34-20-1 from agricultural to rural residential, which was published June 24 in the Peabody Gazette Bulletin. Mike and Theresa Ross were present and explained they wish to buy the property and build a home on it. Mike Ross said he had called Gerald Kelsey about hiring an engineer to address any possible flood plain problems. Ross' proposed building their home approximately 250' from the riparian area, and said they would not tear down any trees, dam up the creek or have any livestock, and will improve the area by planting native grasses and trees. Mike Ross said he called the rural water district and service is available to the property. There is also a well on the property. He also contacted Flint Hills Rural Electric and electricity is available by running a quarter mile of line to the property. The only

thing they will need is about 200' of gravel to their driveway. Bartel made a presentation and reminded members that this is a repeat application for the exact piece of land where an application had a tie vote. Bartel said he did not make a formal presentation at the previous application for this property. Bartel said the application is a scattering. Bartel submitted for the record a copy of the "Marion County Non-Point Source Pollution Management Plan and Riparian and Wetland Protection Plan." Bartel submitted an appraiser's map with the area highlighted to show cropland and riparian areas. Bartel submitted copies of: "Holding Our Ground;" "A Time to Act;" "Clean Water Action Plan: Restoring and Protecting America's Waters;" "Watershed Planning for Riparian and Wetland Area Management;" "Protecting Floodplain Resources;" a "Kansas Geological Survey;" "Marion County Wetland & Riparian Areas Protection Project;" "Lawrence Riparian Technical Team Fact Sheet;" and "Legumes native to the Great Plains region." Bartel gave a history of the property's owners and sales. Bartel said the farm is the model for land use and not sprawl, and said he will recommend to members the original farm site. Bartel spoke about long term stability for farmland and said I'm proposing to you that this is the work we have to do in Marion County to protect farmland. Bartel spoke of the cost of maintaining roads leading to and running through subdivisions. He said the statement that residential developments increase the tax base is true, but the statement that it pays it's way is not true. Bartel said one of our most precious resources is farmland. Bartel said farmland costs just 43 cents to service for every dollar taken in. Bartel gave local agricultural income figures for crops and livestock last year. Bartel said the farm is the model for land use in the unincorporated areas of Marion County, and not sprawl. There is no way a home site protects riparian areas, Bartel said, and asked everyone to learn more about the areas. Bartel said there are 32,800 plants globally that are in danger of being lost. Sieger asked for comments from the public. Irene Lehrman, real estate agent, questioned planning commission regulations and asked why the property does not meet criteria. There were no more comments from the public. Sieger asked for further comments from the applicants before closing the public hearing. Schmidt said what Bartel said is exactly what they wish to do. He said the 10 acres does not produce anything but hay and the Ross family are country folks who work outside the community and bring their money in to spend. Unruh questioned the dry creek which runs through the property and Schmidt said it only runs when it rains. Unruh asked about Bartel's recommendation to approve the old home site, but Schmidt said the old home site is not for sale, but that Jenkins who owns it, is in favor of this sale. Theresa Ross said to Bartel that they researched the riparian area and believe they can improve the area and will not build close to it and will protect the farmland. Mike Ross said it is not going to be a subdivision, just a single family dwelling. Helmer asked how close the home

would be to existing homes. Schmidt said it will be three-quarters of a mile and a quarter mile from other homes. Bartel said a home site will generate up to six times as many materials that are harmful to a riparian area. Bartel said riparian areas in Marion County are as important as the roads. Sieger said someone who did not give their name called Karen today and asked to keep the area from becoming over-populated, and said applications should be kept to a 40 acre minimum lot size. An unsigned letter opposed a change from agricultural to rural residential. Another letter was in support of the change and was from Mr. and Mrs. Dennis Schmidt. Sieger asked for further comments and there were none. Sieger explained that members will hear all applications and then return to make decisions. She closed the public hearing at this point.

Item #6 - Application for Michael Buller for a rezone pending from agricultural to rural residential in West Branch Township, which was published July 30 in the Peabody Gazette Bulletin. This property is located two miles east of Goessel, where Buller owns all but four acres of an 80 acre tract. Buller said he would like to sell his 76 acres as one piece, but he has had offers for 46 acres. Buller is asking for a rezone, so the remaining 30 acres could be a potential building site for a future buyer. Buller said he is looking for guidance as boundaries need to be established for the property. He said he would agree to rezone either the entire 76 acres, or just 30 acres. There is a home site on the four acres, now. There were three or four mobile homes on the four acres, as well, which have now been removed. Buller said he has offered all his property for sale but buyers are only interested in the grassland, which is brome, with the other being wheat. The four acre property is on rural water and Buller is signed up for a meter on his property. Bartel said the four acres was zoned rural residential in 1992. Not grandfathered-in, but zoned, Bartel said. Wiebe asked about the possibility of attaching Buller's property to the north 80 acres. Buller said he did not know, but that it is owned by his grandfather. Bartel asked if the properties were farmed together, now, but Buller said no. Sieger asked Bartel about any flood plain problems, but Bartel said very limited, if any around the center of the cropland area. Sieger asked if members of the public wished to speak to this application. Irene Lehrman said potential buyers have a contract on the 30 acres, pending on the zoning decision. Lehrman said the buyers do not want to put a modular home on the property. Sieger closed the public hearing.

Item 7: Application for Clifford Delk for a rezone pending from agricultural to rural residential in Liberty Township west of Hillsboro, which was published July 30 in the Peabody Gazette Bulletin. David and Kim Hanigar and Clifford Delk were present to speak for the application. This property is located one mile west of the stop light in Hillsboro, on the south side. David

Hanigar explained that Kim is a physician in Hillsboro and after a two-year option, they have decided to stay in the community. He said they want a rezone so they can build a home on the property. Bartel said since the county does not have subdivision regulations, the city's subdivision regulations apply. Sieger said if the property is re-zoned the city's subdivision regulations would apply, but it is not at this point, yet. David said he is an EMT, so both he and his wife need to be close to town and the hospital. There is an existing farm house in the middle of the 40 acres and Hanigars wish to build a new home in the pasture and sell the existing house. The 40 acres has been surveyed. Hanigars are not sure how they will divide the property, but they want 20 acres for their own. They want to sell three to five acre lots. This property is just off old 56 highway, by Hillsboro's airport. Sieger asked for further questions. Wiebe said it would be difficult to approve a rezone without definite plans from Hanigars. David Hanigar said he would like advice about splitting the property up. Sieger said members do not need an actual survey, but would need boundaries for rezone approval. Hanigar said he would have to figure out the best way to divide the property and his contract is pending on if rezoning is approved. Hanigar said an officer in Hillsboro would buy the farm house from them. Sieger reminded Hanigar about set back requirements. Sieger asked if there were any further questions, and if members of the public wished to speak to this application. Wiebe presented a letter for the record from Ervin Ediger, Rt. 3, Hillsboro, saying he owns the 120 acres joining to the west of the 40 acres in question and water flows off his land to Delk's land in two places. Hanigar said he would not wish to build where a house would flood. Keith Harder, who lives a half mile east of the Delk property, asked who would have final authority for the property. It was explained that the city would process approval and a subdivision plat because the county does not have subdivision regulations. But, they cannot begin the process without proper zoning by the county's planning commission. Bartel said keeping the doctor is not a consideration for zoning. Sieger agreed that it is true that members are trying to make decisions on land and these decisions stay with the property, permanently. Bartel said just the sale of such property for a subdivision would change the tax structure for the whole neighborhood because we do not have agricultural tax deferential in Marion County. We have not increased the density on a single 40 acre tract, Bartel said. If we subdivide, this is nothing short of leap frog division. That has all kinds of implications for the property, Bartel said. There is one less than a mile away, that we denied, Bartel reminded members. Bill Hein, adjacent land owner a quarter mile to the south on the other side of the road, said as a land owner and farmer he is concerned about more people in the neighborhood. Hein asked who is liable for roads, etc., if the property becomes a subdivision. The property is connected to rural water. Sieger asked for further comments from the public. There were none. Sieger asked

for further comments from Hanigars. David Hanigar said he believes this would be really good for the community as lots of people are constantly asking for a few acres out in the country. He said the only reason they want to sell is so they can afford to build a home. He said they would sell only what they have to. Sieger said there could be 20 homes on the property, because of the one acre minimum. Wiebe said east of Hillsboro there is an area which is still not filled. He said there is a lot of available acreage at this location. Kim Hanigar said Hillsboro is growing and expanding and people would like to buy land. She said this is because of a re-distribution of the population, but also because the population is growing. She said she knows it is a difficult decision because farmland needs to be preserved, but they would like the opportunity to develop a suburb area. Bartel said the American dream to own a couple of acres in the country is actually a nightmare. We have a big problem coming because these things are not being done in a logical method, Bartel said. If we put as much into upgrading and building, then little towns would avoid this, Bartel said. Sure people want to move out of urban areas, but it needs to be addressed in the urban area, Bartel said. The health of the soil is just as important as the health of the body, Bartel said to Kim Hanigar. Jona Prieb said he is concerned about the subdivision because of evaluation and tax increases on the 60 acres he owns. He said he is not concerned about rural residents, but about a subdivision. Sieger closed the public hearing at this point.

Item #8 - Application for Robert Cannon for a rezone pending from agricultural to rural residential in Centre North Township, which was published July 30 in the Peabody Gazette Bulletin. Charles Kannady, real estate agent, spoke for the application. Kannady explained the property is owned by Dr. Cannon, who lives outside Kansas City. Kannady said the property is on a gravel road and is signed up for rural water. There is a well on the property. Of the 80 acres, Cannon proposes selling 10 acres to people who have rented the property for several years. A house, out-building and an old barn would be sold on the 10 acres. This property is located two and a half miles north of U.S. 56 at Cedar Street in Marion. Kannady said there would basically be no changes, except ownership. He said it would probably be better maintained after the sale. Sieger asked if anyone from the public wished to speak to this application. Gordon Groening, who owns property adjacent on the east, said it was good to keep the homestead intact. No one else spoke from the public. Sieger asked for further questions, and there were none. Kannady asked how many members live in the country. He said land usage is going to change and you can try to prevent it, or you can do it in a correct manner. He said it seems that members are trying to limit the number people who can afford to live in the country. Bartel said he would like to see more farmers as we have lost a lot of them because most buyers do not farm, but commute to work. Unruh said the issue is not as simple as whether or not people

understand the soil and the land. He said you can't simplify it that much. Some people are just looking for a good investment, Unruh said. Sieger closed the public hearing at this point.

Item #5 - Application for Myron Schmidt for a rezone pending from agricultural to rural residential. Pankratz said perhaps he should abstain as he is chair of the rural water district that Schmidt belongs to. Other members had no problem with this and Pankratz said he just wanted to mention it. Wiebe asked about any changes, since the prior application. Bartel said the land use is the same now, as it was then. Bartel said all other homes in the area were zoned in 1992, and showed members on a map. Helmer said there are residences in the area, and it is not like they are plopped down in the middle of a wheat field. Bartel said when neighboring properties were sold there was not any where near the pressure there is now. He said all were part of original zoning in 1992. Bartel left the room, so members would not feel uncomfortable. Sieger and Wiebe referred to regulations for a rural residential district. Helmer said the application was very well thought out and well planned and that they researched the area. Helmer said she was willing to put forth a motion at this point. Eilerts questioned how a house would damage the riparian area, and Bartel was called back in to answer. Bartel said you use all kinds of substances, such as soap and detergent, with a residence, that are no way a part of farm land. Crop land is the best, all the models have proved, Bartel said. Riparian areas are the filter for everything, Bartel said. Sieger mentioned for the record that she has had a phone conversation with Schmidt about this application. Unruh said Schmidt called prior to the July meeting. Wiebe said Schmidt called after the last application, and Fruechting said the same as Weibe. Unruh said Martin Marietta's set backs from the creek is a harsher use of the land than a home site. Unruh said he believes these folks would do their best to care for the site. He said it would seem it is not such an extreme danger from the home to the dry creek bed and agreed they seemed to have a well laid out plan and have given a lot of thought to this. Unruh said he did agree with Bartel about riparian areas. Bartel said he did not make a point that this is an inefficient land use. He said if all I left you with is a concern about the riparian issue, then I have not done my job. Bartel said if we want sprawl, it is a good site. Sieger said some states have put stiff controls in action, to prevent this. Bartel said some areas have gone to 160 acre zoning. Sieger asked if there was any further discussion. Wiebe suggested a notice of agriculture operators be attached, because zoning stays with the land. Bartel asked if members are going to ask for deferential tax legislation for agricultural land. That is what comes along with sprawl, Bartel said. Sieger said this affects a whole trend of decisions. Bartel reminded members they are public servants, deciding the use of the county's resources. Helmer made a motion to accept the application to rezone from agricultural to rural

residential, with an attachment of Agriculture Operations Notice. Their plan is very well thought out and is consistent with other residences. Fruechting seconded the motion and there was no further discussion. In favor: 6; Opposed: 2. Motion carried.

Item #6 - Application for Michael Buller for a rezone pending from agricultural to rural residential. A minimum of 40 acres, or more, is met with part of the property, so a future buyer can build a home on it after obtaining a permit. Buller has a prospective buyer for the 36 acres. Unruh said it looks like a fairly rough piece of land. Weibe believes Buller could sell the property as agricultural without a home site on it. Weibe said, here again, we'd be setting another precedent. Sieger said if the property is rezoned to rural residential it could be possible to put three homes on it. She said she really thinks that's not the plan, but it could happen down the line. Bartel said, or you could just zone 10 acres of it and let them come back with a description of it. Helmer liked the idea of designating 10 acres and then telling us what 10 acres. Unruh said he would prefer zoning the entire tract one way with a covenant on it saying they can only have one home site. The four acres was zoned rural residential because it had a house on it when zoning was enacted in 1992. Unruh said if we are going to do it, he suggests zoning it rural residential with only one house on 30 acres. When Bartel was asked for his recommendation, he said I don't want to make a recommendation to you because you have to find who you are as a committee. I want you to find out who you are, because you just did one thing which is totally different from where you were in 1992. Wiebe said he would oppose the home site on 30 acres. Wiebe made a motion to deny the application. Fincham seconded the motion. There was no further discussion. In favor: 6; Opposed: 1; Abstained: 1. Motion carried and application was denied.

Item #7 - Application for Clifford Delk for a rezone pending from agricultural to rural residential. Eilerts noted that surrounding farmers objected to the application. Wiebe said he would be more than happy to see Hanigars buy 40 acres. Eilerts made a motion to deny the application for rezone with a variance, because of land use compatibility and the need to consider neighbor's wishes. Bartel added that it is similar to other 40 acre tracts in the immediate area, that were not approved. Eilerts agreed to insert Bartel's addition. Eilerts also noted there are several other places around this area, which are available for development. Fincham seconded the motion. There was no further discussion. In favor: 8; Opposed: 0. Motion carried and application was denied.

Item #8 - Application for Robert Cannon for a rezone pending from agricultural to rural residential. Pankratz made a motion to approve the zoning change from agricultural to rural residential on a 10 acre tract, with an attachment Notice of Agriculture

Operations. Helmer seconded the motion. There was no further discussion. In favor: 7; Opposed: 0; Abstained: 1. Motion carried.

Sieger announced that September 24, 1998, is the next scheduled meeting. Fincham made a motion to adjourn and Fruechting seconded the motion. In favor: 8; Opposed: 0. Motion carried and meeting was adjourned at 11:50 p.m.

MARION COUNTY PLANNING COMMISSION

Eileen Sieger

Eileen Sieger,
Chair