MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

SPECIAL MEETING

August 31, 2006

Chairman Eileen Sieger called the meeting to order at 7:30 p.m. Sieger reminded everyone this is a special meeting, and although it is a public meeting is it not a public hearing, so no public comments will be heard at this meeting. Sieger said there was a public hearing on July 6, 2006, and public comment was closed on July 13, 2006. Because there were no applications for the planning commission or the Board of Zoning Appeals, the regular August meeting was not held last week on August 24, 2006, Sieger said. Because this is a special meeting and according to Robert's Rules of Order, which we follow according to our adopted by laws, it is not correct to read or approve minutes of previous meetings, Sieger said. So, no minutes will be approved at tonight's meeting, Sieger said. After tonight's meeting we will have four sets of minutes before us yet unapproved, Sieger said. The dates of these minutes are July 6, 2006; July 27, 2006; August 10, 2006; and August 31, 2006, Sieger said. I would ask the planning commission to consider having our regular September meeting on September 28, 2006, regardless of whether there are any other agenda items, to address these minutes at that time, Sieger told members. Sieger said that will be considered under off agenda items.

Roll Call was answered by Sieger, Bob Maxwell, Marquetta Eilerts, David Mueller, Glen Unrau, Mary Avery, Willis Ensz and Ervin Ediger. Zoning Administrator Bobbi Strait was present. County Commissioners Bob Hein, Randy Dallke and Dan Holub were present in the audience.

Sieger asked if anyone else had anything for off agenda, reminding members they will discuss meeting September 28, 2006, during off agenda items. No one else had anything for off agenda.

Item 3: Discussion of zoning regulations and related matters. Sieger reminded everyone that they cannot discuss any specific zoning case, and asked they not bring up any previous applications that have either been acted on or taken care of. If you want to discuss an issue, please discuss it in general and not any particular case, Sieger said. First, we need to determine whether or not the planning commission has a consultant, or not, Sieger said. We are due one by statute and our by laws, Maxwell said. And, we have had one, so if that one is no longer available we need to see about another one, Maxwell said. Or, if the one we have had is available, Sieger said. Eilerts asked about legal council or a consultant. Have we been notified that we do not have one?, Avery asked. Members agreed they have not been notified. Right now I'm assuming Jim Kaup

is our consultant, Maxwell said. I believe you have heard otherwise, Strait said. Eileen has been notified, Strait said. There's no need to involve an attorney, we can consult with Dave Yearout, Strait said. I would assume I would hear that from the county commission, and I have not, Sieger said. Mueller asked if this was a decision of the county commission, or Strait's decision. I talked to the county commission about it and they agreed we do not need it, Strait said. Dave Yearout is a certified planner and Mr. Kaup is not, Strait said. If we need an interpretation, he is qualified to do that, and is much cheaper, Strait said. If we need legal advice we can consult Jim Kaup, Strait said. Who's decision is this?, Mueller asked. My decision, Strait said. I disagree, Maxwell said. Statute states we will employ and provide funding for a consultant, Maxwell said. A planning director is not even mentioned in the rules and regulations, Maxwell said. If this gentleman is a certified planner, he realizes this, Maxwell said. I am quoting from the state statute and our by laws, Maxwell said. It would seem to me that if there would be a change, perhaps it would be nice if all members were notified of this so we all have the information at the same time and we all are on the same page and we all are aware of changes, Avery said. Ensz and Ediger agreed with Avery. Let's proceed with the matter on the table from the July 6 hearing, Sieger said. We have not taken action on this and we have not approved the Record of Proceedings from this hearing, Sieger said. I would think we possibly could make a recommendation contingent on approval of the Record of Proceedings, Sieger said. Comments or discussion?, Sieger asked members. How do members wish to handle this?, Sieger asked. You did receive minutes of the July 6 hearing in your packet, but we cannot approve those tonight, Sieger said. Maxwell asked about Randy Dallke's comments at the hearing about the LESA (Land Evaluation Site Assessment) system and Dallke's questions about fairness to property owners when using LESA. If you have 40 or more acres, the LESA evaluation is not necessary, Sieger said. Maxwell asked Dallke if this was a true assessment of his comments and concerns and Dallke said yes. LESA is an assessment, not just a hard line, Sieger said. On LESA, my opinion is if a landowner has a small parcel he wants to sell off and it's not capable of productive agriculture, and if it's a poor producer, in my opinion the parcel will probably be allowed to split, Maxwell said. If the landowner wants to sell off good ag land, LESA also will determine this land should probably not be split, Maxwell said. Then to address the issue of large landowners who are not subject to LESA, I would think enough farm people won't build on good ag land, Maxwell said. It's a good tool, it's not cut and dried, Maxwell said. It's just part of the process, Sieger said. Is there any other discussion about the public hearing?, Sieger asked. I kind of agree with you but think what Mr. Dallke was getting at is there have been landowners that have placed their new buildings not according to LESA, Avery said. I think if we do it for five acres we should do it for 40 acres, too, Avery said. I would be willing to discuss if there's a way to do this, as we want to be fair to everyone, Avery said. I think this has happened and it possibly may happen again, but I don't think it's a major issue with the farmers, Maxwell said. I'm not saying I'm taking a position, I'm just willing to discuss it, Avery said. I think it's a tool, Maxwell said. It has been used in other areas, Sieger said. It was totally new to Marion County,

Sieger said. We would have to ask the consultant for any background, Sieger said. Personally, I have always had the view that LESA served as a kind of conscience, Unrau said. It forces you and the applicant to think about what is really the proper use, Unrau said. Sieger asked if there was anything else. Mueller asked about the change in philosophy of land density from one per 40 to 12 per section, which is a major shift of philosophy. Shifting to 12 per section opens up all kinds of problems, Mueller said. There are other ways of planning for development, Mueller said. I'd like to see the commission start with a net density of one per 40. Mueller said. I think it can be done by other methods which we can start addressing, Mueller said. I see a lot of problems with 12 per 40, Mueller said. Sieger asked if there were any other comments. Isn't Goessel just now planning on a little addition there, just out of the city, or they're going to annex it?, Maxwell asked. They are going to annex it, Randy Dallke said. What I see about 12 per section, or 16 per section, or any number like that, you could have helter skelter or haphazard building and someone gets permission to build on an area and there is no order or symmetry, Maxwell said. If someone were to use up the quota, it would prevent others from building on that section. Sieger said. Was there anything else that was mentioned at the public hearing, or did you hear anything that made you think any differently?, Sieger asked. What I heard at the hearing was I heard three people for it and I heard three people against it, Maxwell said. I did not count Mr. Dallke, Maxwell added. That's kind of the way it's been, Maxwell said. It's 50/50, not overwhelming for it or against it, Maxwell said. Do you suggest we take any action, or just continue to table it?, Sieger asked members. I think enough time has gone by, I think it's time to take action, Mueller said. Mueller made a motion to recommend the county commission not approve the proposed changes to the comprehensive plan and regulations as presented, contingent on approval of the Record of Proceedings from July 6, 2006. Ensz seconded the motion.

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

Sieger referred members to the two page draft from Strait, suggesting alternative ways to allow for some development. Sieger asked Strait if she had anything additional. I have actually discussed this with Dave Yearout and he has some other options, Strait said. For A-1 and A-2 districts you would still have to do a rezone, Strait said. Dave Yearout may have some alternatives, if you would hear him, Strait said. Dave Yearout introduced himself as a planning consultant from El Dorado. He said he was retained by Marion County in the early 1990's and worked with the county on the original zoning regs and also worked with the county with the rural addressing system. He mentioned several other cities and counties all over the state he has worked with, including the City of Winfield, Johnson County, and Butler County. This is his 34th year in the business, all of which has been conducted in Kansas. He said he has built a reputation as a county consultant rather than a city consultant. He said he has worked from scratch with the county with the existing regs and what he has heard being discussed at this meeting is not a single bit different from what other counties are discussing. It's very common, he said. You use planning and zoning as a method of protecting ag land, he said. They tried to do LESA in Johnson County and

decided it simply does not work, Yearout said. It places all the value on cropland, and if it's not cropland it diminishes the price rapidly, Yearout said. It started in Illinois, he said. It's all prime flatland (in Illinois) and that's what it's geared toward, he said. Yearout said LESA has been tried in Saline County and Sumner County, and Butler County looked at it. The truth is it ends up in mid-range and that's the dilemma most planners have come into, he said. How do you manage the change when a landowner decides for whatever reason it's time for them to change or move, he said. If it's truly a matter of accommodation, it's a very brief window of time, he said. If it's a matter of managing small tracts, what I have found works best for an ag lot split is to attach to it a covenant, Yearout said. It's best to get away from restricted lot sizes, because it doesn't fit the real world, he said. Yearout talked about the wastewater code and that you have to have enough area to accommodate the wastewater system. He said there is a covenant or agreement to sign by owners of both parcels and future owners, if in the future there is any further division of the property. He said you would not play the game where every year they parcel another one off. He said you need to decide what you are looking for and what do you want to see. You find yourself losing perspective real fast, he said. The easiest way is to use a contractual agreement, he said. What we saw in Butler County, people would maintain one to two acres and the rest is a giant weed patch, Yearout said. Five acres is too large to mow and too small to grow, he said. Agriculture today is much different than when I was a kid, he said. People down home won't even hay a 40 acre tract, he said. Things change all the time and what do you do with the old homestead sites?, Yearout asked. Whether there's a home there, or not, there's still the remains of a home and you can allow someone else to live there, he said. One thing you can do, this is what Sedgwick County did, when they established the rules they tied them to the parent property, he said. This rule is from 1968 and their regs still say it, today. The entire county is zoned ag with a two acre minimum, but they do require a plat, he said. They do have in there that it can only be a one time split off, he said. And it dates back to 1968, he said. It exists in the same form today as it did in 1968, he said. There are other tools that can be used, he said. How do we handle those intending to create rural home sites, he said. Are we creating a new rural home site?, Yearout asked. There may not be access for a school bus, he said. Those are the real big ticket items, he said. I'm a firm believer that regulations should favor the landowner as much as possible, and they should be able to accomplish development without being run through the bureaucratic wringer, Yearout said. I'm a big believer in that as I've been on the other side of the table, Yearout said. There are appeals procedures, he said. I'm a big believer in creating those regs to accommodate them, he said. They are required to have public water and sewer, he said. Rural districts take care of little town sites, he said. If you look at original plats, that's how they are laid out, he said. How it was zoned at the time the regs were adopted, he said. If they had less than 10 but more than two you were zoned according to the adopted regs, he said. We went from having hardly any non-conforming use to having thousands of non conforming use, he said. That's one of the things you try to avoid, he said. The animosity just festers into something worse, Yearout

said. You try to get to where you have something that works for everyone, he said. We're concerned with the transformation that occurs, he said. Many times you have people moving to rural areas who have no idea what it's like to live in a rural area, he said. When neighbors ride tractors when others are trying to sleep, or neighbors ride their tractor down the road when others are trying to get their kids to ball practice, he said. You can't fix stupid, Yearout said. When they realize they made a horrible mistake, especially if they build their dream home, and can't sell it, they are bitter at everybody, he said. You can use the regs to try to create a path of resistance, he said. They've lost in court a number of times, and I've told folks you have to go through the process, he said. It's not about the relationship between the grantor and the grantee, he said. It has nothing to do with who is going to be moving there, he said. There was an elderly couple who had a grandson and they gave him five acres of land to build a house on, but I said there had already been five acres split off and they said yes, that's the one we gave him the first time he got married, Yearout said. There are inherit rights, but they do not have the right to demand services of all kinds, he said. If there is a demand to make changes in services, it depends on who is doing it, he said. Somebody pays, and if it's the county, everybody pays, he said. There's other tools available, he said. You could look at creating a different zoning category, he said. They are debating now about Butler County going to a county-wide minimum of 80 acres, he said. There are people who farm who own land and they've got no one left to leave the farm to and they'd like to cash out, he said. You try to value the land to keep it intact, he said. Then when you have multiple owners we're carving it up and each one is getting their own thing, Yearout said. That's the challenge you've got in trying to manage the changes, he said. There are no mortgages on more than five acres of land, he said. It's the little red truck theory, he said. The owner gets run over by a little red truck and goes into default, but they're only going to take the house, he said. Those things go on and need to be accounted for in the regs, he said. If you have not got that in writing, you need to get it in writing, he said. There are other ways to do that, he said. I'm not an attorney, Yearout said. I've been hired by attorneys in many cases, he said. I'm the only consultant in the state with the responsibility to administer day to day the regs they've written, he said. It's my responsibility day to day to know what works and what doesn't, he said. Unrau asked Yearout how he spells his last name. Avery asked about changing the comprehensive plan. No, I'm not a fan of LESA, he said. Don't lose site of the forest for the trees, he said. It's not about the saving the farm, he said. Yearout asked Strait how many new homes are being built in Marion County. Yearout spoke about what's happened in Johnson and Franklin Counties. If it's ag, fine it's ag, if you take it out of ag we expect you to develop it, he said. These folks can afford to live out there, he said. What that does is raise the quality of the lots created, he said. There are developers starting to knock on doors, he said. They know there is a level playing field, he said. Maxwell asked Yearout about how you maintain a covenant. The county is a party in the covenant, Yearout said. They can't further divide the property, Yearout said. How do they enforce it?, Maxwell asked. Just don't permit it. Yearout said. What if it's already built?, Maxwell asked. They would be in

violation, Yearout said. It elevates the county's control, he said. Someone has to enforce it, and other people have jobs to do, Maxwell said. I've not had that experience, Yearout said. The only one that can take it to court is the county attorney, he said. They're pretty busy folks, too, Maxwell said. Maxwell asked Yearout if he is now serving Marion County as a consultant. I'm here as an invitation from county staff, Yearout said. Just from staff?, Mueller asked. I met with Mr. Yearout Tuesday evening and discussed some things he presented tonight which are a breath of fresh air, Dan Holub said. He was invited here tonight to hear his ideas, Holub said. He was brought here tonight at my invitation, Holub said. Maybe there's still some way around this, Holub said. There are simple steps that can solve a lot of our issues, Holub said. Have we retained Mr. Yearout?, no we have not, Holub said. I was going to introduce him, but somehow we got by it, Holub said. We're not trying to shove anything down anyone's throat, Holub said. I left a message on your phone, Holub told Sieger. No message on my machine, Sieger said. We were willing to look at Bobbi's proposal and we're willing to look at new ideas, Sieger said. The covenant would be filed with the deed, Strait said. If they sold the property and did a deed search, it would come up on it when they purchased the property, so if they've already split out the property they should be aware of it, Strait said. As you move into as small a lot size as possible and people with small lots would need to meet set backs, and you have people planting flowers and the concern of the neighbor farmer spraying, isn't it a benefit to have some degree of a buffer around smaller properties?, Mueller asked. Most people have no clue what five acres means, Yearout said. If you ask most people if they know what five acres is they think five city lots, Yearout said. I describe it as five football fields, Yearout said. Two acres may be all that's necessary, Yearout said. We're not doing any new 10 acre rural residential zones, Sieger said. Many times farm boundaries stay the same, Sieger said. They do have that option, she said. Yearout said he knew of a huge piece of property that had been haved for years and a family owned it and people had a contract on it and when it was passed on they went out and fenced it and carved off each piece of their interest. It was their right to fence it off, Yearout said. Avery asked if anyone has come in for any three acre existing home site lots. There was one from Lost Springs, Strait said. It was an existing home site and had barns on 80 acres, Strait said. They're trying to get the set backs in line and they're not sure if they're going to do three acres or five acres, but they're trying to make sure the set backs are okay, Strait said. Sieger asked if there was anything else. We will be open minded about any new ideas, Sieger said. We've had discussions on interpreting the regs and a difference of opinion on how it reads regarding if five acres must be split from 40 acres, or not, Sieger said. I'll be the first to admit the wording is vague, Sieger said. We might have three options, she said. The first option could be to change the way we have done this and allow five acres to be taken from any amount of acreage as long as there are no other residences per 40 acres, Sieger said. The second option could be to amend this section of the zoning regs to be more specific, Sieger said. The regs in question are Article 2, under Agricultural District Regulations, 2-101, on page 29, first paragraph, the last sentence, Sieger said. It reads, "The District is

intended to allow net density of one residence per 40 acres, and sell-offs of five acre lots," Sieger said. So, it could be interpreted either way, she said. The third option could be to propose totally new language in a new amendment that addresses this issue, Sieger said. Sieger went over the options again. First option being to go with a new interpretation and allow five acres to be taken from any amount of acreage as long as there is only one residence per 40 acres, she said. Second option is to amend a section of the regs on page 29, Article 2-101, Sieger said. And, the third option is to propose totally new language that would revamp this issue, she said. The first is a pretty significant change in my mind, Mueller said. It's like waving a magic wand, he said. There's got to be another way of wording this, Mueller said. It's an administrative decision, Strait said. What if there is a change in administration?, Mueller asked. Before that point comes it needs to be changed in your books, Strait said. I'm not arguing there's not another possible interpretation, but that's different from the previous administration, Mueller said. It's not different from other administration interpretations, Strait said. What if there is 39 acres and they want to build a new home?, Mueller asked. If there are no other homes within 40 acres, they could build a home, Strait said. It wouldn't have been allowed in the past, Sieger said. A few were brought to the BZA, Sieger said. In at least one instance, and maybe a second, they were granted a variance because it was not of the property owner's doing, it was because of road construction, Sieger said. So, they were granted a variance because it was not of their doing, she said. So, there's a difference, Mueller said. But, there's not a difference between what David Brazil allowed and what I allow, Strait said. I have a problem with going through with this without nailing it down, Mueller said. The focus is still there, it's the same results, Strait said. It shouldn't operate that way, Maxwell said. I guess I don't understand what you're saying, Strait said. I guess I don't understand what you're saying, either, Maxwell said. I was not here at the beginning of this process, but I respect that they participated and the board wanted to make it easy for people to go through the process, Avery said. We are at a transition and it's important that we work in a partnership, so I would like to see us work together in a way that we're not, Avery said. I think everyone is confused and this is not in our best interest, Avery said. We need to find a way to work it out in a way that is responsible, Avery said. In lieu of being able to decide this tonight, I would feel most comfortable working under the previous understanding until we work this all out, Avery said. Because we put in a new language to allow more interpretation, it's important to continue the interpretation that has been the standard of practice, Avery said. To wave a magic wand and say we're going to interpret things in a new way and not take it to the public would be a concern, Avery said. I suggest continuing under the standard of practice and consistency this board has been following until we can work this out, Avery said. Right now the public doesn't know who to believe, and that's not good, Avery said. How long do we make the public wait?, Strait asked. We can start discussing it at the next meeting, in an orderly way, Avery said. Bring your proposal to me and I can have it for the next meeting, Strait said. We've hit a bad patch, here, Avery said. We've had a change in staff, and I don't know if that's what brought it about, but

let us address it in an orderly fashion, Avery said. Sieger asked if there were any other comments. I think Mary said it very well, Maxwell said. They said some things in the newspaper that everyone wants to work with everybody, and I'd like to see it happen and begin at the next meeting, Maxwell said. Sieger talked about the purpose that was set, the intent that was there, and precedents. What has happened in the past two years with certain applications of the purpose and intent, if there are changes, how will that affect those people?, Sieger asked. This administration went into effect when?, Strait asked. December, 2004, Avery said. They were applications that didn't meet all the guidelines for it to be an administrative decision, or they wouldn't have been in front of the planning commission or BZA, Strait said. The planning commission operates in a different way than the BZA, Sieger said. I know that, but it's either an administrative decision, or it has to be rezoned, Strait said. If it's denied it goes to the BZA, Strait said. We just went through something like that so maybe we can address that at the next meeting, also, Maxwell said. It can go both ways, Sieger said. It appears when they were written, they just weren't written the best way and are not as accurate as possible, Sieger said. We need to be working in conjunction with the county commission, Mueller said. Is there some way we can work together on a united front, for a goal that we all can live with?, Mueller asked. I can request the county commission be present at the next meeting, Strait said. That would be great, Mueller said. Until then, how do we proceed?, Avery asked. If we don't agree, we need to voice it, Maxwell said. We received a list of permits that have been issued, Maxwell said. It's a matter of public record, and anybody can come in and see them, Strait said. Why couldn't you furnish some of that information?, Maxwell asked. Do they fill out a form?, Maxwell asked. We didn't even know these things were happening until we requested this, Maxwell said. If we're going to work together and assist each other, I think it should have come to us instead of having to drag it out, Maxwell said. In issuing the permits, are you saying that all proper zoning was in place?, Sieger asked, and Strait said yes. That's by your interpretation, Maxwell said. No, it was lot splits on all of them, Strait said. Sieger asked why members have not received minutes from the July 27, 2006 meeting. They were incomplete, and I am redoing them, Strait said. Margo (Yates) takes her notes, and she doesn't get everything, so I am transcribing them, Strait said. They will be verbatim?, Maxwell asked. Pretty close, Strait said. Verbatim?, Maxwell asked. Yes, Strait said. It's easier for me to have a written record of things, Strait said. Maybe we need a court reporter?, Sieger asked. For years we had minutes, and we're not arguing it's better to have a Record of Proceedings, Sieger said. It's not necessary, Strait said. There were just a lot of things at the July 27 meeting, Strait said. Why not give it back to Margo to do?, Sieger asked. Because I'm doing it for free, Strait said. It's not free, the county is paying you something, Maxwell said. I'm on a salary, Strait said. If I put in 17 hours this month, it costs a lot less than if I ask Margo to transcribe those minutes, Strait said. Is there anything else regarding the minutes issue?, Sieger asked. I wonder if we can have the draft mailed out?, Avery asked. If Margo O'Dell can do that?, Avery asked. Margo O'Dell can do that, Strait said. Sieger asked about the time table for taking the drafts to the county

commission. When it gets to me, I'll take it to the county commission, Strait said. I'm not in the habit of taking unapproved minutes to the county commission meeting, Strait said. I don't want to take them to the county commission if they are invalid, Strait said. We will begin having "draft" typed at the top, Sieger said. We can make a clean copy for the official record, that is signed, Sieger said. So, you're going to wait until they're approved to take them to the county commission?, Sieger asked. Are there any agenda items for the September meeting?, Sieger asked. No applications, but we do have a zoning text amendment, Strait said. What if I take the draft to the county commission and have the resolution done, and then you change the content at your next meeting?, Strait asked. So, when we tell the applicant their application will be taken to the next county commission meeting, that is not happening?, Avery asked. Right, Strait said. Because at the last meeting we told the applicant that, Avery said. We need to work on this because we don't want to make the applicant wait, Avery said. So, are you recommending I just take the draft minutes to the county commission?, Strait asked. I'm suggesting we discuss this, Avery said. I have no problem with that, I've just never done it that way, Strait said. I'm not comfortable with this, Avery said. We need to know so we tell the applicant correctly, Avery said. If the county commission does not want to go on with the draft minutes, we need to figure this out, Avery said. We don't get the draft for a long time, Sieger said. Do you think the minutes could be sent out as soon as Margo has them done?, Sieger asked. I can make copies available at the office, Strait said. Some of these people live a long way, Sieger said. I don't know how this works with you, Strait said. Can we have drafts mailed out?, Sieger asked. I think the cost of postage is less than gas, Sieger said. Bobbi, I work in Wichita, Avery said. I'm not sure I have staff available to make copies every month, Strait said. I don't think this is too much to ask, Sieger said. I'll ask her to do that, Strait said. Mueller made a motion requesting the county commission support administration of the regs as they have been done in the past and that they join us at our September meeting for a discussion and work session. Unrau seconded the motion. I'd like to not just limit the discussion to zoning regs, Maxwell said. I think there are other items that we need to bring up and address at the meeting, Maxwell said. Maxwell made a motion to amend Mueller's motion to include reviewing and visiting about the application we did on the non-conforming property and learn about a permit that has been issued from the July 27, 2006, meeting. Eilerts seconded the motion for the amendment. First members voted on the amendment. In favor: 3; Opposed: 5; Motion denied. Next members voted on the original motion. In favor: 8; Opposed: 0; Motion carried. Sieger asked members about the September meeting, and taking action on the minutes. I think we need to, Avery said. Avery asked if a motion was needed to hold the regular meeting on September 28, 2006, for the purpose of approving the minutes. It was decided no motion was needed. Sieger reminded members there are four sets of minutes to approve at that meeting, and a work session with the county commission will also be held that night at the regular meeting time of 7:30 p.m. Sieger asked if there was anything else. Mueller made a motion to adjourn and Maxwell seconded the motion. In favor: 8; Opposed: 0; Motion carried and the meeting adjourned at 9:37 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

Eileen Sieger,

Chairman

Margo Yates