

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

February 22, 2001

Chairman Eileen Sieger called the meeting to order at 7:31 p.m.

Roll Call was answered by Sieger, Herb Bartel, Marquette Eilerts, Glen Unrau, Elora Robinson and Bob Unruh. Terry Eberhard, Dean Fincham and Eldon Pankratz were absent. Zoning Administrator David Brazil was present. Sieger said there is a quorum.

Sieger informed everyone that a conference call, regarding the county's comprehensive plan draft, is on the agenda for 9 p.m. She said it has been suggested that the meeting be stopped before 9 p.m., in order for members to discuss the comprehensive plan before the phone call. Sieger asked members if they are interested in doing that, and they said yes. It was agreed to stop the meeting 15 minutes before the conference call. Sieger said there will be an intermission of the meeting at 8:45 p.m. She explained that Brazil will set-up the call, and that this part of the meeting is still open to the public, so the audience is welcome to stay and listen. She said it is just in the formative stages, and there will be a public meeting regarding the comprehensive plan. Brazil added that a public meeting notice will be in the newspaper. Sieger asked if anyone had questions about the agenda or additions to off agenda items. Sieger reminded members to proceed with a timely manner.

Sieger asked for corrections to the Record of Proceedings of the February 1, 2001, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Sieger questioned why there was not a second to nominations for this year's chair and vice chair. It was explained that an unanimous ballot was cast and it was moved that nominations cease, which did not require the motion to be seconded. It was agreed the Record of Proceedings should remain as written. There were no other corrections. Unruh made a motion to approve the Record of Proceedings as written and Robinson seconded the motion.

In favor: 6; Opposed: 0: Motion carried.

Item 5: An application for John Yoder requesting a variance from required setback of 30 feet to 12 feet. This application was published in the January 31, 2001, issue of the Marion County Record. Members are acting as the Board of Zoning Appeals. John K. Yoder, and his wife Viola Grace, were present to speak about the application. This property is located in Centre South Township. There is a well on this property and a well on the neighbor's property. For setback on the front, they are asking for 12 feet, and presently it is nine feet to the deck. It is a total of 37 feet from the neighbor's well to the Yoder's window well. Yoder said they tried to stay away from the well and leave room around the garage. They plan to remove the existing trailer home on the property. Sieger said the front setback does not comply at one place. Yoder said it will actually go back three feet from where it was. Sieger explained that several setbacks are grandfathered-in at the county lake. Sieger asked if this property is hooked up to the lake's water system. Yoder said it is on rural water, but they also use a well for the yard, as do their neighbors. Another neighbor uses a well, Yoder said. For drinking water?, Bartel asked and was told yes. Sieger asked if residents at the lake were not required to hook up to the water? Sieger said the sewer was mandatory. Sieger asked Brazil for a recommendation. Brazil said looking at the present lot and the proposed lot, we are gaining three feet and it will be more in line with neighbor's homes. Sieger asked how much to the back, and Brazil said 20. They ended up having to reduce the garage, Brazil said. From 30 to 12, not more than 18, Brazil said. They are asking for 12, Unrau said. Sieger asked if there were any further questions or concerns, and asked Yoder if he wanted to give any other information. Have you had it surveyed, so you know where the street right of way line is?, Bartel asked. Yes, it has been surveyed, Yoder said. They located existing stakes and placed a couple of new pins, he said. Sieger asked if anyone from the public wished to speak, and no one did. Sieger asked if there was anything else. Sieger closed the public hearing for this application.

Members continued with discussion on this application. Unruh asked if the other side needs a variance, and Brazil said no. Sieger explained that most Village One have 10 foot setbacks. Unruh made a motion to approve a front yard variance of no more than 18 feet for the request from John Yoder. Bartel seconded the motion.

In favor: 6; Opposed: 0; Motion carried.  
Sieger explained this is a final action.

Sieger announced that on the Stuchlik application that Lyle Leppke may arrive at the meeting later than when this application comes up for discussion.

Item 6: Mark Makovec left the meeting, thinking his application would be discussed after the conference call.

Item 7: An application for Marlene Finney requesting a variance from the required side yard setback, for property located in Centre South Township, at Marion County Lake. This application was published in the January 31, 2001, issue of the Marion County Record. Members are acting as the Board of Zoning Appeals. Finney said she has had the property surveyed and has had an architect draw up plans. Finney said plans are to add another room to the home. A small addition to the back, she said. It will have similar dimensions, although slightly modified to make it fit, she explained. Sieger questioned and Finney said she is still asking for a variance of one foot. There is not much room to give, Finney said. Unruh asked if the property line had been identified. Finney said yes, she just had it surveyed and had an architect make sure it is within the variance requested. It is fairly close to the property line, but look at the precedent up the way, Brazil said. Who owns lot 15?, Bartel asked. Susan Nichols, an in-law, said they don't think anyone lives there. Sieger asked if the resident would have received notification, and Brazil said yes, they would have been notified. As I understand this, the people from lot 15 have not been heard from, and one foot is close enough you're not going to be able to clean your gutter without going on their property, Bartel said. If Nichols owned lot 15, you could make a maintenance agreement, he said. If we've done our work, they had a chance to be heard from, Unruh said. You can't walk around the house without going on their property, Bartel said. For me to vote for this, I'd need some assurance from the owner of lot 15 that they have the right to step on their lot to do maintenance, Bartel said. The arch of the overhang should not be a problem, Finney said. Are you wanting to start real soon?, Sieger asked. Brazil offered to contact the owner of lot 15, directly. The only way you are going to resolve this issue is the rights of the property owners at any given time, Unruh said. You solve it by a maintenance agreement,

Bartel said. Another possibility is, what if this wasn't in place and the property owner decided to put a fence right there?, Sieger asked. It's just one point, Finney said. Is it conceivable to move this?, Unruh asked. The present structure is already there, Finney said. You could narrow things up a little, Unruh said. Yes, and make it less useful, Finney said. I'm trying to do it within the existing structure, rather than remove the existing structure, Finney said. Could you modify the corner?, Eilerts asked. It would still present a problem, Finney said. Sieger asked if anyone wished to speak from the public. Unruh showed Finney his suggested compromise. In other words, take another foot off there?, Finney asked. Unruh showed his proposed sketch. I think you ought to go ahead and act on it the way you want to act on it, Bartel said. We did do a foot before, but all the owners were here to discuss it, Sieger said. What I think would be ideal is if there was three feet on both sides, Unruh said. Why build a house that is not within your own lot that could cause you problems?, Eilerts asked. How does this work if the property is sold?, Sieger asked. It stays with the property, Bartel said. It's different than an easement, Sieger said. Usually when you have this situation, the land is within common ownership, Bartel said. Would this be something we could approve, contingent on?, Sieger asked. Susan Nichols asked if it would then be up to Finney to get the agreement? It will be hard to build, even, without being on that lot, Bartel said. Dennis Nichols, in-law, asked if Finney got a release from the adjacent property owner for routine maintenance, that would be okay? And discuss the construction, Bartel said. Any other comments or questions?, Sieger asked. Sieger closed the public hearing for this application and opened the floor for discussion and determination.

A document of this nature will have to be drawn up so the property owner or future property owner does not build a fence too close to the property line, Unruh said. The staff could look at it, and if there is a problem, have it reviewed by the Board of Zoning Appeals, Brazil said. Sieger asked if members were ready with a motion. Bartel said, acting as the Board of Zoning Appeals, he makes a motion to approve the variance to go within one foot on the corner with the addition, on the condition a document be recorded giving entrance to lot 15 for maintenance and for construction. Unruh seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Item 8: An application for Julie Jantz for a Conditional Use Permit for a construction company at a residence. This application was published in the January 31, 2001, issue of the Marion County Record. Julie and Vincent Jantz have lived at this residence for 18 years. They have run a construction company off this property for approximately four and a half years, as they did not know about zoning requirements. They purchased this property February 1 from Vince's parents. They employ six people full-time and three part-time. They have rural water and a septic system, and plan to put in a lagoon after the wheat harvest. They do not own the wheat. Brazil said the septic system has an open line and is not in compliance. This property is located a half mile from Morning Star Church, so the roads are good. Most of the crew drives directly to the job sites, so there is not much traffic. A construction and maintenance building are in their plans. Eight letters were received of recommendation in favor of this request. Sieger asked what kind of equipment they have. A semi, backhoe, trencher, and trucks. Not all of it is parked there, too often?, Sieger asked and was told no. Sieger asked if anyone had further questions, or if anyone from the public wished to speak. Sieger asked Brazil for a recommendation, understanding the waste water needs to be in compliance. Brazil said he recommends this because the roads are good because of the church, the letters of support, and Marion County needs contractors. He said they will need a Metes and Bounds description for recording purposes. Sieger explained a CUP stays with the property, and it will lapse if not in use for six months, or more. And it does not transfer to another site, Bartel said. Sieger asked if there was anything further. Sieger closed the public hearing for this application and opened the floor for discussion.

If we do eight acres, we have to refer to Metes and Bounds, Sieger said. I don't have trouble doing 10 acres, and then it would be a quarter, Bartel said. We need something more than Vince stepping it off, Julie Jantz said. If it was 10 acres, we could just figure it. When I think about it, I like 10, Bartel said. It seems with almost every rural residential we're getting a zone change, so I guess I have a preference for 10, he said. Acting as the planning commission, I make a motion to recommend approval of a CUP for 10 acres for Julie Jantz for the NW1/4 NE1/4 24-17-1 in Logan Township, and to include in the recommendation to improve the waste water system as a condition of the permit, Eilerts said. Robinson seconded the motion. Unrau

asked what about the waste water delay? Do we add that?, he asked. I'm willing to extend the permit, as long as there is an understanding, Brazil said. You may want to include the plans for a new building, Brazil added. Unruh questioned including the new building. They have to get a construction permit, anyway, Sieger said. Brazil questioned if members may want to limit the size of the building. Or they could have buildings all over the 10 acres, Brazil added. I don't think it's necessary as long as application is made that is within the CUP, Bartel said. Does the 10 acres include the homestead?, Eilerts asked. Eilerts amended her motion to say the waste water must be improved by the end of 2001, and to say the 10 acres includes the homestead and current buildings. Robinson seconded the amended motion. Unruh questioned how to determine where the 10 acres are?

In favor: 6; Opposed: 0; Motion carried.

Sieger explained this is a recommendation that goes to the county commission for final approval. Sieger asked if they want to start right away, and they said no. Brazil explained this will go to the county commission the second Monday in March. Julie Jantz asked if they will need measurements by then, and Brazil said yes, by the second Friday in March.

Item 6: An application for Mark Makovec requesting a rezone from agricultural to rural residential. This is a two part application. The first part is a rezone, and members act as the planning commission. The second part is a variance from 10 acres to two acres, and members act as the Board of Zoning Appeals. This application was published in the January 31, 2001, issue of the Marion County Record. This property is located in Colfax Township. I had a place out there in November of 1992, and was told then it was grandfathered-in, Makovec said. Who told you that?, Sieger asked. Herb Bartel, Makovec said. We moved the house off of there to Herington. We had a REA contract and we had a water well dug in November of 1992. The county put in two culverts for us and I paid for one of them, Makovec said. They gave us specifications on how to construct a lagoon, he said. If you move the house off of it, does it automatically go back to agricultural?, Makovec asked. They moved the house off in 1994. The deed is dated December 23, 1992, does it set out two acres at that time?, Unruh asked. And at the time the deed was drawn there was a livable home on the property?, he asked and was told yes. We want to move a different home on the property, now, Makovec

said. Is the lagoon still good?, Unruh asked and Brazil said yes. It's a fairly large lagoon, Brazil said. It's not fenced off, he added. It's not 50 feet from the property line, Brazil said. Makovec said he understood it was grandfathered-in before zoning. Zoning happened before the deed was recorded, Brazil said. It was passed from family, Carol Makovec, Mark's mom, said. Pasture surrounds this property, Makovec said. I don't think it could or will be anything but pasture, he added. Is electricity still hooked up?, Sieger asked and Makovec said yes. And rural water will be available with the new district, Makovec said. Sieger said members need to take a brief recess at this point, but they are not ready to close the public hearing, yet. She apologized for the way the schedule is.

Members began discussing the comprehensive plan and questions they have for the consultants. Building codes for the county is mentioned on the first page, Sieger said. Is anyone else concerned with this?, she asked. Yes, how are we going to enforce it?, Eilerts asked. On page five they address rural subdivisions, Sieger said. And also the net density issue, she added. On page seven it says the City of Marion experienced moderate to high growth in recent years, Sieger said. On page nine, I don't know what they mean by inconsistency in solid waste issues, and also they pick up (trash) more than once a week, Sieger said. An audience member questioned the trash tonnage figures on page nine, wondering if that is per year? I assume it is, Brazil said. They refer so many things to the Marion County Economic Development Council, I wonder if there should be some consideration for a part-time economic development person to work on that council?, Sieger asked. On page 30 they talk about uncertainties about solid waste statistics, Sieger said. On page 28 the second action step talks about coordinating with area realtors to reduce sale commissions. An audience member said bankers may also have some comment about the statement right under that. Sieger wanted to be sure two photos on pages 36 and 39, were actually taken in Marion County. They refer to Hillsboro as having recycling, and Marion and Peabody do also, and I don't think it says this, Sieger said. On page 39 it talks about building permits coming before the planning commission, Sieger said. On page 54 it talks about a regional planning commission. The suggestion was to have both planning commissions meet together, Sieger said. I think this is the reference that is needed, Bartel said, referring to a report of the Central Kansas

Regional Solid Waste Authority Implementation Committee's activities and efforts from October, 1997 through July, 1999. Brazil had trouble getting the call set up. Sieger asked if they are ready to set up a time for the consultants to meet with members. We can call as many times as we need, but once he comes down, we've used up the trip, Brazil said. Maybe we need a separate time to do this, Sieger suggested. Unrau suggested a separate meeting with no other agenda. Brazil explained to the consultants we will set up another time, as we could hear them, but they could not hear us on the conference call. It could just be a continuation of tonight's meeting. It was decided to call again on March 6 at 7:30 p.m. The consultants asked if it was possible for members to put together a list of questions tonight, to send to them in advance. Members agreed.

Members returned to discussing the Makovec application. Sieger asked what else members wished to explore, or ask. You say there is pasture all around these two acres, and it's owned by your family?, Sieger asked and Makovec said yes. If it was there when zoning was done there wouldn't be a permit issued, Bartel said. Members passed around letters. Sieger asked if anyone else wished to speak. Just in favor of it, an audience member said. I live next to them, and all the electric and everything is still there. I dug the lagoon for them, another audience member said. Once the house is removed, the grandfather rights are lost, Bartel explained. Why?, the audience asked. It's that way so grandfather uses are given preference, so they can't be re-issued, Bartel said. The use changed because the house was moved, Sieger said. But it hasn't changed, it's still pasture, Makovec's mom said. You did say there was a gas line that runs on the other side of the road?, Brazil asked. No, we use propane, Makovec said. Is there anything further before closing the public hearing?, Sieger asked. If this tract would have been recorded before zoning, it would have been shown today, Brazil said. Is there anything else?, Sieger asked. Is the road gravel to your driveway?, Sieger asked and was told yes. Unruh asked if power is to the site and was told yes. If there were a residence there the lagoon would need proper fencing and more ground around it, Brazil said. Is there proper setback of the lagoon from the road?, Unruh asked and was told yes. Sieger closed the public hearing for this application and opened the floor for discussion, reminding members to discuss this in two parts.



One other question, Sieger asked, is there a possibility of having more acreage, since it is in the family, so the lagoon could be in compliance? I'm sure we could get the proper distance around the lagoon, Makovec said. This property may stay in your family for years, but we try to protect any future property owners from potential problems, Sieger explained. What about the possibility of increasing it to 10 acres?, Sieger asked. I don't know, Makovec said. It wouldn't necessarily mean the use would have to change, Sieger said. Could you do an easement?, an audience member asked. To satisfy lagoon requirements, it would be okay, but to satisfy rural residential, it does not, Bartel said. There's always something to be positive and negative about, Unruh said. One positive thing is it was a residence at one time and two it has the utilities, Unruh said. My opinion is we need to be consistent with the rules, which is 10 acres, and it's not in compliance because the deed was not recorded and the house was moved off the property, Unrau said. I would feel more comfortable if they could work something out with 10 acres, Unrau said. Audience members tried to speak, but Sieger explained the public hearing is closed for this application, unless members wish to ask additional questions. Would you want to come back to another meeting or do you want to give them the opportunity to discuss this in the hall in private?, Unrau asked members. Are you ready to move the new residence in?, Sieger asked. It's north of Goessel, Makovec said. Is it a single-wide?, Bartel asked. It's a double-wide, Makovec said. Makovec said they are planning to dig a basement for the home. I've talked to a guy and got an estimate on digging a basement, and I talked with movers from Galva, Makovec said. Sieger asked Makovec if his family wished to discuss this among themselves? What would be involved in an easement?, Makovec asked. An easement would be for lagoon separation, to prevent an adjacent landowner from constructing a well in the area, Makovec was told. Makovec's mother said his grandmother is in a nursing home and is also involved in this property decision, so they cannot make a decision tonight. Sieger asked Makovec if he wanted to wait until next month? I don't know what we'd gain by waiting a month, he said. If your choice is to not try to work anything out..., Sieger said. Bartel reminded members there are two parts to this application. The first is to rezone from agricultural to rural residential, he added. Bartel made a motion to recommend a zone change to rural residential for this site. I want it to be clear this is not a recommendation on the two acre site, Bartel said. Unruh seconded the motion.

In favor: 6; Opposed: 0; Motion carried.

Eilerts questioned if members need to include the acres in the motion? We don't have to, it's a minimum of 10 acres, Sieger explained. We could table the request for a variance, or act on it, Bartel said. Sieger explained to Makovec that the zoning recommendation now goes to the county commission for final approval. Members are now acting as the Board of Zoning Appeals to address the variance request. Sieger explained members may deny, approve, or table this request. I recommend we continue this request for a variance to our next meeting, so the applicant has enough opportunity to consider the 10 acre requirement, Bartel moved. Unrau seconded the motion.

In favor: 5; Opposed: 1; Motion carried.

Item 9: An application for Larry and Susan Stuchlik, requesting a rezone from agricultural to rural residential in Lehigh Township. This application was published in the January 31, 2001, issue of the Marion County Record. Members are acting as the planning commission for this application. Lyle Leppke, with Leppke Realty and Larry Stuchlik were present to speak about this application. Stuchlik's own 160 acres, the southeast quarter of section 14. They purchased the property in 1994. It has been surveyed. They wish to sell the existing home with 23.05 acres. The remaining land can be left agricultural. They are requesting a rezone so only one home may go on it, Leppke explained. All the improvements on the property they have done since 1994. They moved the home on the property from Lehigh. Leppke said Larry farms this quarter. I admire him that he had the heart to get into the farming business, while working in town, Leppke said. His intention at some point may be to sell the entire quarter. We brought this application to you so he has the option to offer the property for sale either way, Leppke said. The intent is to offer 23 acres for sale, as it's best the way the property is laid out, Leppke explained. The water well to the north of the house is sure to meet setback requirements, Leppke said. The lagoon needs a fence, he said. All buildings are within close proximity to the house, Leppke said. This property is not on rural water. There is propane. Stuchlik said he intends to sell this property and purchase another quarter. He intends to purchase another farm, Leppke added. There would be access to rural water in the future, Brazil said. There is no problem with the well going dry, Stuchlik said. They hit ground water at sixty feet and dug the well to eighty feet, he said. This property was recently

surveyed. We apologize we have no description on 10 acres at this point, Leppke said. We would move the border to the west, Stuchlik said. Are there no natural borders?, Sieger asked and was told no. They guess the house is 200 feet from the road. Sieger asked if there was anything else before closing the public hearing. Sieger closed the public hearing for this application and opened the floor for discussion and a recommendation.

Sieger asked for questions or concerns. Unruh made a motion to recommend approving a rezone from agricultural to rural residential for 10 acres, with a 23 acre tract being a complete unit. Eilerts questioned if members should include the home and out buildings in the motion. Unruh amended his motion to include the home and out buildings in the 10 acres and Unrau seconded the motion. Brazil said the actual boundaries will need to be determined by the second Friday of next month.

In favor: 6; Opposed: 0; Motion carried.

Item 10: An application for Michael and Annette Jacobson, requesting a variance from the required side yard setback of 30 feet to 10 feet and rear setback of 50 feet to 35 feet. Members are acting as the Board of Zoning Appeals. This property is located in Liberty Township. This application was published in the January 31, 2001, issue of the Marion County Record. Brazil said he needs to change the staff recommendation, as there was a problem with the publication on this application. The applicant intended a variance of 30 feet to 20 feet on the east side yard and 50 feet to 15 feet on the rear. Brazil recommended discussion on this application, but that members not take action until proper publication has been completed. There was some question as to whether or not Hillsboro has jurisdiction on this property. It is addressed in the comprehensive plan, Brazil said. We are still working out how those areas will be handled, Sieger explained. Did the Hillsboro city officials believe they had previous jurisdiction?, Leppke asked. As long as the county had not zoned, and the county must relinquish to the city, Bartel said. The county has to formally relinquish to the city, Bartel added. Jacobson is wanting to construct a 30x40 wood frame building in the southeast corner of his property. He wants to get it back as far as possible, so his kids have room to play. His front yard is next to old 56. Sieger asked and Jacobson said the building is for a shop. It will be a "dressy" building, he said. It will have a small six foot porch around the corner and overhangs around it

and wanes coating, Jacobson said. My comments to a 30x40 is initially this sounds like a big building, but I was out there today and I thought gee, he's putting up a smaller building than what he thought, Leppke said. The building is not a lot larger than this room, Leppke added. Sieger asked about access to the building and Jacobson said he will put in a driveway to the building. Currently, this is SR?, Sieger asked and Brazil said yes. The waste water lateral field limits what you can do, Brazil said. My major concern with this application is this is an area that is unplanned, he said. If this becomes part of Hillsboro in the future, they'll need room, so how much of a variance can we approve and still keep it off the right of way?, Brazil asked. Jacobson said he measured 24 1/2 feet from the curb to the edge of his building with 12 1/2 feet left on the property plus the easement. Leppke pointed out area residences and buildings and setbacks. Mike would like the same opportunity, without cramping, Leppke said. I don't think the back is as much a concern as the side, Sieger said. Jacobson asked what city requirements are for setbacks. We haven't addressed that issue, Brazil said. I don't know if the City of Hillsboro is ever looking at annexing?, Sieger questioned. No, they're not, Brazil said. I think the city's are 10 and that would be 12 1/2, Jacobson said. Is there anything else before we close the public hearing?, Sieger asked. Anyone wish to speak from the public?, she asked. Carl Friesen said he owns land on both sides of Jacobson and he has no problem with this. He owns land on the east and south. He owns the road, Leppke added. Sieger closed the public hearing for this application and opened it for discussion and a determination.

Members need to address side and rear setbacks. David, did I understand you correctly that you want to republish for the rear setback?, Bartel asked. We may republish for both, Brazil said. We might need to keep the public hearing open and continue it for after republication, Sieger said. The indication of what will take place matters to Mike, as he has this building on hold, Leppke said. At least three other buildings come to mind that are of this approximate size in this area, so this is not something unusual in this neighborhood, Bartel said. If we continue this, I could approach the City of Hillsboro to get an idea on what setbacks they would impose on this, Brazil said. Unruh said he wishes to indicate he supports this application. I'd say this is consistent with the character of the neighborhood, Bartel said. I'd approve it, Robinson said. It is consistent with the

neighborhood, Eilerts said. Yes, Unrau agreed. If you are asking the city about setbacks, is there a possibility of pushing it back, more?, Jacobson asked. You can always ask for more and back off from there, Brazil said. If you want to change the application, we can document that, Brazil said. But we indicated what we were thinking as to the way it was presented tonight, Sieger said.

Conference call is scheduled for March 6 at 7:30 p.m. Maybe we should have some time to discuss, and schedule the call for 8:00 p.m.?, Sieger asked. Are there any other questions?, Sieger asked. Sieger and Brazil will work on questions to send the consultants ahead of time for review. Brazil had one off agenda item. He checked out the Wilson Ranch and they were just using an ultra light. No airport there. Unruh asked members for their e mail addresses. Unruh made a motion to adjourn and Robinson seconded it. In favor: 6; Opposed: 0; Motion carried and the meeting adjourned at 10:30 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



Eileen Sieger,  
Chairman