

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

February 24, 2005

Chairman Eileen Sieger called the meeting to order at 7:31 p.m., with a quorum present for both the planning commission and Board of Zoning Appeals. Present at the meeting were Sieger, Bob Maxwell, Marquette Eilerts, Glen Unrau, David Mueller, Ervin Ediger and Mary Avery. Willis Ensz was absent. Zoning Administrator David Brazil was present.

Sieger asked about off agenda items. Brazil, Maxwell and Ediger have off agenda items.

Sieger asked for corrections, or additions, to the Record of Proceedings of the January 27, 2005, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Eilerts made a motion to approve the Record of Proceedings as written, and Ediger seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 3: An application for Jerry Siebert, requesting a short form lot split for property located in Grant South Township. This application was published in *The Free Press*. Siebert is requesting a short form lot split for 6.55 acres. He explained they put a different home on the property and have destroyed an old trailer house and moved a modular home on the property, so they need approval. Brazil explained that since Siebert owns 80 acres, they have the availability to have two residences on there. We give permits for 80 acres, with the condition the old structure was to be removed within one year, Brazil said. With a lot split, you're looking at one residence for the five acres, Brazil told members. There's still an old building, Brazil said. That's just a storage shed, Siebert said. The request is to do the lot split?, Sieger asked and Brazil said yes. Todd Siebert, Jerry's son, is the buyer and is purchasing 20 acres. So, why do we have to split it out?, Siebert asked. There is no problem purchasing 20 acres, but this area would be in compliance for construction until you get back to 40 acres and you could build on the whole acreage, Brazil explained. The more away from five acres, the more site assessment will weigh against you, Brazil said. The LESA (Land Evaluation and Site Assessment System) system applies to new residences and not existing sites, Brazil said. You can propose a 20-acre tract, if you want to, Brazil told Siebert. Our lending institution does not require a survey, yet we had to spend \$566 on a survey, for this, Siebert said. There is still judgment involved in this, but it's more of a review process. Brazil said. In the regs for an ag zone, the minimum lot size is 40 acres, unless you do a lot split, then the minimum lot split is five acres, and the more above five acres you go, the more you are judged on the approval, Brazil said. It's best to keep as close to five acres as possible to get the best grade, but there's nothing preventing you from asking for 20 acres, Brazil told Siebert. All development needs to occur on 6.55 acres, until you get back up to 40 acres, Brazil explained. If you don't get a lot split, the land would be in compliance for building, so this should help you, Sieger told Siebert. You need a construction permit to avoid penalty, Brazil said. And a construction permit is required for all construction, including sheds, etc., Sieger said. We did 6.55 acres to include all outbuildings on the property, because

five acres would not include all the outbuildings, Todd Siebert explained. Siebert asked why this process is necessary for a sale between a father and son. It's not your plan, but things can change and it may not always be in your family, Sieger explained. The regs call for an ag disclaimer to be attached and this can protect the adjacent land use, Brazil said. Looking at adjacent uses and how to accommodate, I like using the example of a cartoon showing a fence down the middle and on one side is an alligator farm and on the other side is a skydiving operation, Brazil said. And not just now, but the future, too, Sieger said. It's taken nine months to get this far, Siebert said. You were waiting on the new regs, Brazil told him. Todd and I talked about rezoning under the old regs, which would have been a minimum of 10 acres, Brazil said. Todd Siebert agreed they were waiting on the new regs. Last month was the first month we've done lot splits, Sieger said. This should be much more workable for you, Sieger told Siebert. You do have more options under the new regs, Mueller said. By waiting and getting under the new rules, you have more flexibility, Mueller told Siebert. This is to your advantage, Mueller added. You're maintaining an ag zone, so you can add acres in the future, and you're good to go, Brazil told Siebert. We're sorry for your frustration, Avery told Siebert. Siebert said he was frustrated by it being within a family. I've already lived there for nine years, Todd Siebert said. This has nothing to do with that, Sieger said. We're not looking at the people, we're looking at the land, Brazil said. We've got a lot more flexibility now than we did in the past 13 years, Brazil said. Sieger asked if there were any other questions. Ediger asked if the other acres are adjacent to this property, is he limited to 6.55 acres for building?, and Sieger said yes. Unless he brings the acreage up to 40 acres, with setbacks in mind, Brazil said. Sieger closed the public hearing for this application and opened the floor for discussion.

Sieger explained that Brazil shows the LESA as an example, even though it does not apply to existing home sites. It's to get a feel for the system, Brazil said. Sieger asked if there is any discussion. Mueller made a motion to approve a short form lot split of 6.55 acres in the "A" Agricultural Zone District as presented by the applicant, Jerry Siebert, and require that the short form lot split plat and the agricultural disclaimer be recorded by the Register of Deeds with the deed transfer and that certification of such actions be filed in the office of the planning commission. Avery seconded the motion.
In favor: 7; Opposed: 0; Motion carried.

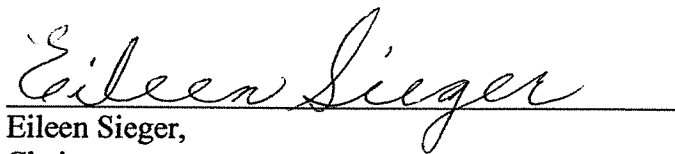
Off agenda items: Avery asked about setting up some kind of rotation for the Board of Zoning Appeals (BZA). Mueller reminded members they had previously discussed making it the seven most senior members on the planning commission. Sieger asked if members wish to have it put on as an item for discussion, as we can't take any action, tonight. Brazil read the by laws, which say the Board of Zoning Appeals members shall serve three year terms. We still only have eight members, Sieger said. Or, you could just remove the staggered terms and just elect each year, Brazil said. That might be the way, rather than trying to figure out the staggering, Sieger said. Sieger asked and Brazil said every year there would be three people to look at. Let's think about it, Mueller suggested. Do you want me to call around and see what other BZA's do?, Brazil asked. The state statute requires seven, Mueller said. Does it say you can't have more?, Avery asked. There could be some debate, but the easy route is to just do what the statute says, Brazil

said. I still like the idea of the seven most senior members present, Mueller said. If that's a possibility, so you'd always have the maximum participation present, Mueller added. It is possible seven members could be here some night, and only five would be eligible, Ediger said. You'd have a quorum, Sieger said. But, you wouldn't have maximum participation, Ediger said. Brazil will put this on the agenda for the next meeting. Brazil reported that on Tuesday at the county commission meeting, they asked him to put together a work session to review the zoning regs for potential changes. It would be a public meeting and no decisions would be made, he explained. Is this to make some immediate changes, or wait until next year?, Maxwell asked. I recommend the same as I told you, I recommend we wait a year, Brazil said. You have to keep in mind the zoning regs have to follow the comprehensive plan, so the first step would be to change the comprehensive plan, Sieger said. The way to look at it is, the comprehensive plan is the planning commission and the zoning regs are the county commission, Brazil said. I think everyone here should be present, or we could do a committee, but I prefer we are all present, Sieger said. I hope we have a healthy discussion, Brazil said. I think good things could come out of it, he added. They want to take a look at it and part of this comes from conversations they've had with their constituents, Brazil said. One item would be to review the state statutes, so everyone is reminded of steps we are to take, Brazil said. Eilerts asked if members could have copies of state statutes prior to the work session, for review. Where were these people when public hearings were held?, Maxwell asked. I've had several other counties request our regs, Brazil said. I think we're being the scapegoat for all the economic development perceived problems in the county, Sieger said. One thing is it's perceived we're against wind generation, Brazil said. Our regs actually encourage wind generation, so a lot is just education, Brazil said. When you have the planning commission and the county commission work together, I'm the middleman and they're my bosses and I have to follow their directions to the best of my ability, Brazil said. Ediger asked about having a work session the same night as the next regular meeting. Brazil will ask an attorney if it's okay to have the entire county commission and planning commission at a work session. It would be a public meeting, not a public hearing, he said. Would it be any different than the county commission meeting with the park board?, Eilerts asked. Sieger asked what all is on the agenda for the next meeting, and Brazil said three variances and one lot split. How long of a session did they ask for?, Sieger asked. Sieger suggested a work session from 6 to 7 p.m., before the regular meeting on March 24, 2005, and all agreed to see if this works. Ediger wanted to ask about 40 acres, for clarification. Are we getting more lax on 40 acres?, he asked. We have not done that on residences under 40 acres, we've held the line, Brazil said. I think it benefits someone who is having land taken away by the state to come to the planning commission because the state is putting them in a position where they have a non-compliant property, Brazil said. The three I've seen us approve are short quarters, for ag purposes, right of ways, and a couple of times for temporary structures, Brazil said. Concerning the modular home application last month, can you call it a modular home or is it a manufactured home?, Maxwell asked. It looks like designs are changing, and the original intent was to have a permanent structure, so this may be one of the things to look at, Brazil said. Maxwell referred members to Article 21-110. Brazil said the definition of a mobile home is in a different location, on page 118 of the zoning regs. It comes down to building codes, which we just reference, Brazil said. The mobile home was constructed

previous to 1976, so we don't issue construction permits for anything prior to 1976, Brazil said. Is a secondary residence temporary, or permanent?, Maxwell asked. The original intent was to have permanent residences and that's what a masonry wall does, Brazil said. So, this unit should have been on a permanent foundation, Maxwell said. I want to gather info, because there may be some changes in design that make them permanent, or safer, and we can adjust to that, Brazil said. Eastshore has five or six new units, and five are permanent foundations and one has block supports with tie downs and metal skirting, and it was put up between two homes, Maxwell said. Brazil said a loophole exists as there is no beginning and ending to construction, so people can just claim to still be under construction. I voted the wrong way, Maxwell said, concerning the previous application. If we're supposed to be going by the guidelines, he added. It's an extra expense and that's why they don't want to go that extra step, Brazil said. One thing that was unique was they were using a cement-skirting product, which is a new product, Mueller said. It has no structural aid, Maxwell said. But, there were no other choices in the past, Mueller said. Maxwell read modular home requirements that says it must sit on a concrete foundation. If we go to a tie down and a pier situation, that is different than what is in here, Maxwell said. So, you're thinking we should not have granted the variance?, Sieger asked. A variance is really the relief valve from the regs, Brazil said. The problem with approving something is setting a precedent, he added. Although I don't think a precedent is set with just one application, Brazil said. We need to hear from someone other than a salesman, Sieger said. He was asking for a variance and that's what he got, Maxwell said. Eilerts asked about supporting every so many feet instead of constant support all along the side. Maxwell said he questioned that, too, but didn't push it. It's not as good, but it has been an acceptable practice, Maxwell said. We are not reopening, we are just talking about some issues we want to be sure about, Sieger said. We're not going to backtrack on a decision we made, but this is an opportunity to discuss this, Brazil said. Is this something we want in our county and if not, why not, Avery said. We need to clarify what we want in our county and why, she added. We need to know why it's temporary, Maxwell said. It's better to discuss some of these issues before something does come up, so we can be clear on it, Sieger said. Brazil will try to gather some information. Maxwell asked Brazil if he follows up on all items. If you put a condition on an approval, it's the applicant's responsibility to follow through, Brazil said. With a lot of our rezones there are conditions, such as when a wastewater system is to be updated, and we follow through on that, Brazil said. In each of our areas, you need to pay attention to what's going on and make note of it, or let David know, Sieger told members. Eilerts asked if there have been any applications for wind farms. I don't think companies are going to be interested in doing anything until legislation has everything set, Brazil said. Does Marion County endorse any of the universal building codes?, Maxwell asked. There are not building codes in the county, yet, Sieger said. The comprehensive plan calls for building codes in the county, so we could put building codes in place, Brazil said. You'd have to have a building inspector to do that, Sieger said. As time goes on and cities annex, buildings would be brought in and would be under city codes, Brazil said. Maxwell asked about applicants that have already started construction. With the new regs they have to pay double fees and fix setbacks and ultimately get approval or a judge can fine them up to \$500 per day and can jail them up to six months, Brazil said. We will be attaching a \$500 administrative fee if it was not approved after the fact, he added. I can't

just fine them; we have to go through the process, Brazil said. We can also hold the contractor responsible, he added. Nine times out of 10 what they've done meets the regs, Brazil said. Avery asked why the county couldn't include a zoning notice on tax notices, as it's directly related. Maxwell pointed out in Article 9 on subdivision regs, on page 31, it says Article 10 throughout, but it's Article 9, and needs to be corrected. Brazil made a note. Maxwell asked about the legal publication notice, saying he did not see it in the newspaper. It should have been in there, I get an affidavit back from them, Brazil said. I like it because it gives us a little heads up, Maxwell said. Brazil said he will double check. Sieger asked if there was anything else. Sieger said they would wait to hear about a work session. Avery asked for notice as soon as possible, so she can change her schedule. Mueller made a motion to adjourn and Maxwell seconded the motion. In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 9:17 p.m.

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Eileen Sieger,
Chairman