

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

February 26, 2004

Chairman Eileen Sieger called the meeting to order at 7:32 p.m. Roll Call was answered by Sieger, Glen Unrau, Mary Avery, Bob Unruh, David Mueller and Willis Ensz. Ervin Ediger and Marquetta Eilerts were absent. Zoning Administrator David Brazil was present.

Sieger asked if anyone had any questions about the agenda. Sieger asked if anyone had any off agenda items. Brazil has drafts of the new regulations for members to review.

Sieger asked for corrections or additions to the Record of Proceedings for the January 22, 2004, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Sieger had two corrections. One on page four, where the secretary was unsure of which member made a comment, and it was determined Mueller made the comment. And, on page 11 where Mueller brought an article for members to review, but he did not write the article. Mueller made a motion to approve the Record of Proceedings with two corrections, and Unrau seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Brazil asked Sieger to skip to Item 6, an application for Lloyd Schroeder, requesting a rezone from agricultural to rural residential and a Conditional Use Permit for a retail tree farm operation. Brazil said the administration requests to continue this application for a month, as area landowners need to be re-notified about this application. Brazil explained that his office works with the appraiser's office to determine notification areas. In this case, landowners were only notified within 1,000 feet of this property, where regulations require notification within one mile, so it will be redone, and will include McPherson County residents, as needed. Brazil said the appraiser's office uses a computer to draw a radius for notification. Avery made a motion to continue this application to the March 25, 2004, meeting and Ensz seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Item 4: An application for Kenneth Gehrler, requesting a rezone from agricultural to rural residential for property located in Centre South Township. This application was published in the February 4, 2004, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Barbara Gehrler, and son Cory, were present to speak about the application. Barbara explained that Cory plans to purchase the pasture around his parent's tract. When we moved here, we didn't realize you have zoning, she told members. We have had our property surveyed and divided into two tracts, she said. Cory questioned why the surveyor didn't mention zoning to them. There are no statutory requirements, Brazil said. Sieger explained you may not get a building permit without being in compliance. Unruh asked if they purchased this property from a realtor, and Barbara said yes, one from Hillsboro. Sieger and Brazil explained we are not sure about the timeline for the new regulations. Brazil explained they could use meets and bounds, instead of paying for a new survey. Sieger asked if they are requesting a rezone for 11.98

acres. Barbara explained they have a total of 61.98 acres, so they were planning on 50 acres of pasture and 11.98 acres for the rezone, which includes the whole eastern boundary of their property, along Sunflower Road. Would all the buildings be within setbacks, okay?, Sieger asked. Yes, and the lagoon, Barbara said. Unruh asked and Barbara said there is well water on the property. And the staff report says it is compliant, Sieger added. Different boundaries were discussed. You would meet your width and depth and have an ag buffer, Brazil said. Is there access to the pasture from the north?, Brazil asked and Cory said if it's not wet. Does the pasture have it's own water source?, Sieger asked and Cory said yes. Cory asked if they have to re-apply to change the boundaries they proposed. Brazil suggested they generally ask for tract two and what's north of it, to be in a rectangle. Sieger asked if anyone from the public wished to speak. Sieger asked if there was anything else. Sieger closed the public hearing for this application, and opened the floor for discussion and recommendation.

Avery asked if Brazil recommends 10 acres. I would stay between 10 and 11.98 acres, Brazil said. All the wastewater needs is fencing?, Mueller asked and Brazil said yes. Unruh made a motion to approve a recommendation to rezone a minimum of 10 acres and a maximum of 11.98 acres from agriculture to rural residential for the applicants, Kenneth and Barbara Gehrler, and that the wastewater system be brought up to compliance by construction of a proper fence around the lagoon. Avery seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Item 5: An application for Richard Forney, requesting a variance from required front setback of 50 feet to 45 feet, for property located in Centre South Township. This application was published in the February 4, 2004, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Members are acting as the Board of Zoning Appeals for this application. Judy Forney, Richard's wife, was present to speak about the application. She said when they bought this property, they didn't know a cement slab by their home was not within the 50-foot setback. She said their project is already in progress, as they applied for a permit, but didn't wait to receive it. Now, their home sits one foot further out than the cement slab. Construction already started when I became aware of it, Brazil said. The appraiser had included the cement slab as part of the footprint of the house, and if they had stayed within that, there would be no problem, Brazil said. But, they added one foot on, which went beyond the footprint, he said. Most properties are zoned Village One in that area, but this is a larger lot and is zoned Suburban Residential, Brazil said. We're still in line with the surrounding neighborhood, but because this is a larger lot, we're dealing with bigger setbacks, he said. Brazil showed members where this property is located on a map. Forney showed photos of the room addition. Have these decks been added, too?, Sieger asked and Forney said yes. It lines up, too, Sieger said. Sieger asked if anyone from the public wished to speak. Sieger asked if there was anything else. Brazil asked Forney if he could put one of the photos in his file, and she said yes. Sieger closed the public hearing for this application, and opened the floor for discussion.

Mueller made a motion to approve a front yard setback variance of no more than five feet, for the applicant, Richard Forney. Reasons are the structure is setback an equal

distance from property lines as the adjacent property structures, disapproval of variance will cause undo hardship upon the applicant, and granting of a variance will not adversely affect public safety. Unrau seconded the motion. In favor: 6; Opposed: 0; Motion carried. Sieger explained this is a final action.

Item 7: An application for Clark Wiebe, requesting a Conditional Use Permit (CUP) for a woodworking shop with retail hardwood lumber sales, for property located in Liberty Township. This application was published in the February 4, 2004, issues of the *Marion County Record, Hillsboro Star Journal and Peabody Gazette Bulletin*. Wiebe explained he was an industrial arts teacher in the past, and is no longer doing any active farming, so he wants to go back to this past love. Any lumber storage would be in existing buildings, nothing new would be added, Wiebe said, and everything would be totally enclosed. The hardwood lumber sales service he would like to offer would provide stock for his own use, and provide the opportunity for area residents to purchase this product which is not usually kept on hand, locally. Also, he could offer classes, as he hates seeing wood shop cut from school budgets. He plans to build cabinets, furniture, and restore antiques. Unruh asked about a possible future addition that Wiebe had penciled in his plans. Wiebe explained he might wish to add a 15x40 addition for a possible showroom and office space. He said it would not impair parking, as there would still be plenty of room. Sieger asked about a sign. Members were reminded they granted a CUP for a retail greenhouse just down the road from this location. Sieger asked if anyone from the public wished to speak. I wouldn't think you'd anticipate a lot of traffic?, Unruh asked and Wiebe said no. Sieger asked if there was anything else. Sieger closed the public hearing for this application, and opened the floor for discussion and recommendation.

Unruh asked about hazardous waste disposal. Wiebe said he does not plan to be in the finishing business, but more into the construction. Members discussed hazardous waste issues and Unruh asked Brazil if he discusses this with applicants. With a CUP any reasonable condition you want to attach is okay, Brazil said. Ensz said he lives within the notification area for this application, and wondered if that is considered a conflict of interest. Sieger said not unless you have specific reasons why it should be. Unruh made a motion to approve a recommendation for a Conditional Use Permit on one acre for a retail woodworking and hardwood sales shop as presented in the development plan for Clark Wiebe, and that no wood materials be stored outside of the shop building, that no parts or related tools be stored outside of outbuildings, that any necessary wastewater system permits be obtained and maintained, all State of Kansas operational permits be obtained and maintained, that one four feet by eight feet non-illuminated sign be allowed on site, that all parking be provided for off street, and that all shop wastes, including hazardous wastes, be disposed of off site at a State of Kansas permitted disposal facility. Ensz seconded the motion. In favor: 6; Opposed: 0; Motion carried. Brazil will work with Wiebe for a description of the one-acre.

Item 8: An application for Daniel Holub, requesting a rezone from agricultural to rural residential for property located in Centre North Township. This application was published in the February 4, 2004, issues of the *Marion County Record, Hillsboro Star Journal and Peabody Gazette Bulletin*. Holub explained he lives on 80 acres, but is no

longer farming and wants to retain 20 acres, or 19.5 acres, at the west end of the 80. Sieger asked Holub where his driveway is located on a map. Unruh asked why not just keep 10 acres, and Holub said because they have horses, etc., and need more room. So, you're intending to stay?, Sieger asked and Holub said yes, I'm not going anywhere. I don't have any plans to do anything with it, I just want to go smaller, he said. Sieger looked at a map and said the boundaries would be rectangular in shape. Holub said there are fences on the west and south and he would add one more. Usually, when we have requests for rezones, people have plans to sell, Sieger said. I'm going to sell 60 acres, Holub said. Sieger asked if there were any other questions. Sieger asked if anyone from the public wished to speak about this application. Sieger closed the public hearing for this application and opened the floor for discussion and recommendation.

Avery made a motion to approve a recommendation to rezone 19.5 acres from agricultural to rural residential, and that the private wastewater system be inspected for compliance. Reason is this application is comparable to the precedent set by approval of similar applications. Mueller seconded the motion.

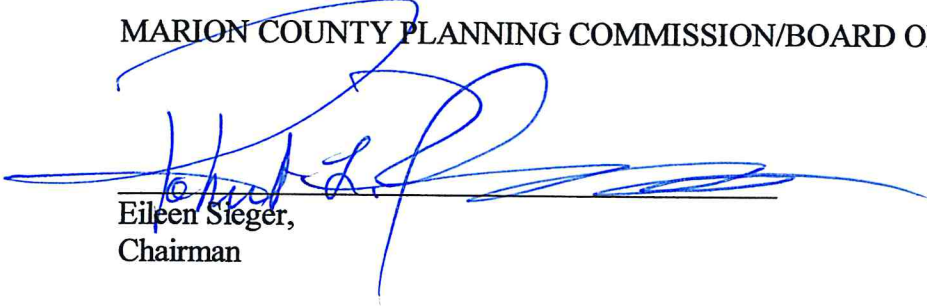
In favor: 5; Opposed: 1; Motion carried.

It's wrong for us to rezone acreage that doesn't need to be rezoned, Unruh said as his reason for voting against the motion. Sieger explained this application now goes to the county commission for final approval.

Off agenda: Members received copies of the draft of regulations, with updates from last week's work session, Brazil said. I would suggest we set up another work session, Brazil told members. Unruh discussed sub division regulations, and questioned lot sizes. Brazil said members would see under Article 29 that something a little different was done, because legal staff recommended we not do it like we suggested. Members discussed administrative fees, or penalties. Brazil explained such a fee or penalty would need to be paid before a contractor would be allowed to continue working on a project. Unruh asked if the fee would be against the contractor, and Brazil said yes. Unruh wanted to know how it would be enforced, and Brazil said he would not issue a construction permit until fees are paid. If it doesn't get paid by the contractor, then we could put it on the homeowner and they wouldn't be in compliance, Brazil said. Past cases have gotten attention by saying they could be fined up to \$500 per day, Sieger said. Unruh asked if a lien could be put on the property, and Brazil said he was not sure. Unless they remedy the situation, the owner is still in violation, Brazil said. My guess is the owner would pay and then take the contractor to court, Avery said. Having a fee is one thing, but having the power to collect is another matter, Unruh said. Could you say no other construction permits would be issued to the contractor?, Avery asked. But, we issue the permit to the property owner, Brazil said. Pull their license for the county, Unruh said. I deal with contractors ignoring the process pretty regularly, Brazil said. Members discussed realtors not telling buyers about zoning. They should write a letter to the state real estate commission, Avery said about the applicants whose realtor did not inform them about zoning. What if we developed a flyer for realtors to give to buyers?, Unruh asked. The responsibility falls to the landowner, Brazil said. Where did the \$500 amount come from?, Avery asked. The rationalization was you're taking up a lot of staff time, unnecessarily, Brazil said. I wonder if you could have it in association to the project,

because when you'll get their attention is if it significantly cuts into their profit, Avery said. You could go to a percentage, or \$500, Mueller suggested. Members discussed an application a couple of years ago involving construction in a pasture that was denied by the planning commission, but the county commission overrode the decision. Members said currently this property is not occupied and the wastewater system is not compliant. I do think it's a good idea to send information out to property owners with their taxes, Avery said. If they don't pay, you could put it on their tax bill, Mueller said. I need more clarity from Scott, (the consultant) Brazil said. Brazil will mail a copy of the draft to Eilerts, and Ensz will deliver a copy to Ediger. Sieger told members to let Brazil know about questions, or concerns, so he can ask Scott about it. Sieger will be gone for the March meeting. Members decided to have a separate meeting for a work session. Brazil pointed out changes in the draft, including in Village One where members had suggested five feet for the side yard setback, but Scott said it should be more like seven feet. If we go less than their covenants at Eastshore, we will have to address that, Brazil said. Members set a work session for March 18 at 6:30 p.m. Mueller made a motion to adjourn and Ensz seconded the motion. In favor: 6; Opposed: 0; Motion carried and the meeting adjourned at 9:48 p.m.

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Eileen Sieger,
Chairman