

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

February 28, 2002

Chairman Eileen Sieger called the meeting to order at 7:33 p.m., with a quorum present.

Roll Call was answered by Sieger, Oliver Unruh, David Mueller, Glen Unrau, Elora Robinson, and Ervin Ediger. Bob Unruh arrived a few minutes later. Marquette Eilerts, and Mary Avery were absent. Zoning Administrator David Brazil was present.

Sieger asked for corrections to the Record of Proceedings for the January 24, 2002, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Sieger added a clarification on page three, along with a correction of a typographical error on page three and on page four. Unruh arrived at 7:36 p.m. Mueller made a motion to approve the Record of Proceedings with three corrections, and Robinson seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 4: Consideration of by-laws. Members received new copies of the by-laws. Sieger explained members need to mention and have in writing changes at one meeting, and then at the next meeting may take action on the changes. Members reviewed the paragraph, which was added on membership, regarding the Board of Zoning Appeals. There are to be nine members on the planning commission and seven members on the Board of Zoning Appeals. Sieger said members need to think how to do this, saying a quorum of the seven would be four. But if you are on the planning commission, but not the Board of Zoning Appeals, you would not participate in discussion or any action at all on the Board of Zoning Appeals. Sieger reminded everyone that Board of Zoning Appeals actions are final actions, and do not require an action from the county commission. We need to take action first on accepting the changes in the by-laws, Sieger said. Unruh brought up the point that all three districts should have representation on the Board of Zoning Appeals. Another part of this is we will be re-addressing it every year, Brazil said. This needs to run simultaneously with planning commission terms, Bob Unruh said. Sieger said the county attorney wrote the new by-law. Do you want to put some suggested changes and wait until next month to approve the by-laws?, Sieger asked members. That Marion County Planning Commission shall elect from its "members" should take care of it, Sieger said. Mueller said he liked Sieger's suggested amendment. Brazil suggested making the change and take it back to the county commission and then give it final approval. Members were in agreement to make the amended change and send it back. Mueller suggested operating under the by-laws as written for this year, as it is understood among members, and then make the change next year, and all agreed. Bob Unruh questioned going through all the by-laws before accepting them. Sieger explained that members need to review the by-laws on their own time so suggested changes could be proposed, and members should know that every January we address this and you may make changes at that time. Mueller made a motion to approve the by-laws, and Bob Unruh seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Sieger said now members need to decide who will serve on the Board of Zoning Appeals. She said if members have a preference whether or not they are on, please let the other members know your wishes. Ediger said to move things along, he will withdraw his name. Unruh made a motion to cast a unanimous ballot to nominate for the Board of Zoning Appeals for 2002, Oliver Unruh, Bob Unruh, Elora Robinson, David Mueller, Eileen Sieger, Glen Unrau and Marquette Eilerts. Mueller seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 5: A continued application for Cottonwood Valley Development, L.L.C., requesting a Conditional Use Permit (CUP) for recreational cabins, and a rezone from agricultural to rural residential. This application was first presented in November, 2001, and was then continued to January, and then at the request of the applicant, who could not be present at that meeting, it was continued to this month. Members are acting as the planning commission for both actions. Sieger reminded members that action was taken at the November meeting to close the public hearing at that time, which means members heard from the applicant and from the public at that time. We can, at your desire, re-open the public hearing, if there is new information, Sieger told members. Bob Unruh reminded members he has a conflict of interest in this application and once again withdraws from discussion or any actions. Brazil asked members to view a flood hazard map, which they received copies of. The two cabins are just above the flood zone and the home is just below the flood zone, Sieger explained. So, the buildings are out of the flood zone?, Mueller asked and Sieger said yes. Sieger asked if the applicant has any new information? The applicant, Stan Brodhagen, asked if the commission has changed since his application was made? He said he would just report the same information. So no new information, Sieger said. There were two cabins at the time of zoning, so they were deemed a non-conforming use at the time of zoning, on approximately 13 acres, Sieger said. Sieger showed members photos of the cabins. Sieger also showed members photos of the home on the property. Brazil asked where the photos of the home came from? Brodhagen said he just handed them to the members. Those are much better pictures, Brazil said. Sieger said okay, let's discuss the cabins and granting a CUP for recreational use on approximately 13 acres. I have a question I'd like to ask the applicant, so do we need to re-open?, Brazil asked. Sieger explained members may still ask questions of the applicant without re-opening the public hearing. What type of hunting is done on the property?, Brazil asked Brodhagen. One person hunts deer, but I don't hunt, Brodhagen said. We need to address the access, because the way I understand it, an easement would need to be granted, Sieger said. The drive is on the south edge of the 10 acres, Brazil said. So, if we do feel like the access is an issue, we need to address it, Sieger said. That's a recorded easement for the 14 acres, Brodhagen said. So, the easement issue has been addressed, Brazil said. Any thoughts, or ideas?, Sieger asked members. We did have several property owners present at the November meeting, which is in the minutes, Sieger reminded members. The CUP would be for recreational cabins and we might need to make some particular conditions, which could protect surrounding properties as well as this property, Sieger said. If a CUP is not used for six months, or more, the CUP lapses, Sieger reminded members. This probably would not be an issue, since it would be used, occasionally, Sieger said. Mueller questioned the water and wastewater situation. One cabin has running water, and one without, and there is a separate system for the one with

running water. So it's in compliance?, Mueller asked. We don't have a permit on it, but probably okay as it's currently used, Brazil said. Sieger asked Brazil for a recommendation. If there is anything new, it would have been submitted with the application the first time, Brazil said. Sieger read the staff recommendation. Part of the staff recommendation said the cabins and house are on one meter right now, and Brazil suggests separate meters. Mueller made a motion to recommend a CUP on 13.43 acres for two recreational cabins and that they be served by compliant wastewater systems with separate meters for the residence and the cabins. Unrau seconded the motion. In favor: 6; Opposed: 0; Abstained: 1; Motion carried. Sieger explained this recommendation will go to the county commission for final approval.

The next part requests a rezone from agricultural to rural residential on the other property, with is approximately 10 acres with a house and a barn on it. To me, there are several issues, first the property is totally divided by the Cottonwood River, and for this to be all rural residential does not make sense to me with the river running right in the middle, Sieger said. Sieger requested members look at the zoning map, to see where we have rural residential in Fairplay Township. Brazil showed members on the zoning map. Also, another issue, we did have quite a few people, who were surrounding property owners, who were against this proposal, Sieger reminded members. This property was created totally by other divisions of the land, so it's not like it was divided out by it's own right, it is a self-imposed hardship, Sieger said. Did we take a look at the restrictive covenant?, Brazil asked. Let's look again, Sieger said. It is dated March 29, 2001, Sieger said. So, the restrictive covenant was there on the large parcel before it was split, Mueller said. So, do those restrictive covenants apply to both of these properties?, Sieger asked. Yes, Brazil said. Members reviewed the restrictive covenant. Mueller asked about the concern about crossing the river. I'm just saying, having the river go right in between seems to split the property and rural residential works well as one continuous property, Sieger said. I think there was opportunity for this to be included in the other purchase, and I don't think this would have been the only solution, Sieger said. Brodhagen withdrew his application, saying he was going back to Harvey County. I'm just making my opinion known, and we're done, Sieger said. I believe phone calls to members should be handled by telling the caller they need to make their comments in a meeting, Sieger told members. This is the only fair way, in my opinion, she added.

Item 6: An application for Roma Becker requesting a CUP for automobile repair, restoration, and sales, and a variance from required side yard setback of 30 feet to 12 feet. This application was published in the February 6, 2002, issue of the *Marion County Record, Hillsboro Star Journal and Peabody Gazette Bulletin*. Roma Becker was present to speak about the application. My house adjoins a huge building and I'm asking for a little less space on the variance because the buyer is wanting to use the building for auto repair, restoration and sales, Becker told members. We are already rural residential out there, she said. The whole area adjoins the city limit of Hillsboro, but is not actually part of their city, Sieger explained. The request is for the side yard to have the variance of 30 feet, back to 12 feet, Sieger said. They split off an acre to the southeast corner, and with an application before there was not an easement, so where before it would be 82 ½ feet, now would be a leg off the property and the one acre can be sold off, Brazil said. So,

keep a minimum width and depth and split off two and 2/10 acres and add the bootleg, which does contain the building, he said. So, to attach the building isn't a problem except the distance is less than zoning requires, Brazil added. Members are acting as the Board of Zoning Appeals, so everyone but Ediger will participate. Sieger questioned, and Brazil showed the parcel for the auto repair. Don Brubacher is the buyer and is present. The building is all that is on the property, correct?, Sieger asked and Becker said yes. What is in there, now?, Sieger asked. Storage, Becker said. The issues are whether to allow a CUP and variance, Sieger said. I don't see how you can put a CUP on property not compliant, so a variance needs to be addressed, first, Brazil said. Members received a copy of a memo to Brazil from Steve Garrett, of the City of Hillsboro. Sieger asked how the surrounding property is zoned, and Brazil said it is considered suburban residential (SR). So, this property would be SR with a CUP on it?, Sieger asked and Brazil said yes. I really don't have a use for the building, and it would really help me, Becker told members. There are already similar buildings to the south, and I understand they are not going to run 100 cars a week through there, said Lee Becker, the applicant's son. I have a full-time job at Tabor College, so this is a sideline job, only, Brubacher said. I have done restoration and auto body repair for 20 years, and have been working out of a family business in Hesston, he said. But, this would be very convenient, close to home in Hillsboro, he added. Sieger asked if anyone from the public wished to speak. Don Graumann, who owns land across the road, said he knows it will be kept up and said it will compliment other such buildings in the area. Clark Wiebe, who owns land across the road, said he couldn't see where the house will be accessed from the road. It will be from a private road on the west. I don't see any problem with auto repair, except perhaps the dilemma that the tract came in after zoning and I think the planning commission approved that, so it was not necessary to grandfather it in, he said. Wiebe said there are several ranches in the area, and that ranches and commercial operations are two things that are not exactly compatible. And do you want to continue this commercial trend with mini ranches in the area?, Wiebe asked members. I just think the planning commission should look at long range possibilities, as there is some more space in there, and it would be nice if more residents in the area were here to give their views, Wiebe said. Do you know what year that was rezoned?, Brazil asked Wiebe. I can't tell you exactly, but I remember the application to the planning commission, Wiebe said. I don't have anything against this, said Carl Friesen, who lives on the main road. I have no main objections, just wanted to point that out, Wiebe said. Suburban residential is suppose to have public water and public wastewater, and these properties have public water, but not public wastewater, Brazil said. One other thing I'd like to bring up is making sure to have some criteria to base your motions on, to be able to refer back to give a reason and justification, to back up your motion, Wiebe said. Members should have a list of reasons on the staff report, Sieger said. Anything else before we close the public hearing?, Sieger asked. We have now established easement access on the west side of this property, from the old highway, Bob Unruh said. Part of my staff recommendation is it is 15 feet short of the typical right of way, Brazil said. There could be future setback concerns, if it's not platted, it may continue to be a private drive, which draws concern to public utilities and services, Brazil said. Sieger closed the public hearing for this application. When I was here before, I was splitting the property into three, and this would just be one split, Becker said. Okay, now we close the public hearing, Sieger said.

Members will address the variance, first, and are acting as the Board of Zoning Appeals. Sieger referred to the staff report and five conditions that have to be met in order to grant the variance. The variance is the number of feet that varies from the setback. The problem there was there was no real way to get to the back of the property, Bob Unruh said. Now, gaining the easement, it seems the property can be serviced, he said. But, the easement is only 45 feet, but the problem is more of a city issue, he said. Bob Unruh questioned if there is room to put a street in there in the future, but Brazil surely looked at this, he said. It's going to take action by the neighborhood to make an agreement and work toward getting it platted, Brazil said. If they put a 60 foot street in there, would there be homes within three or four feet?, Bob Unruh asked. The two houses next to the highway would be in question, Brazil said. Sieger read the five things to consider when making a motion for a variance. Bob Unruh made a motion to grant a side yard variance of no more than 18 feet, and read the staff recommendation, advising the individuals holding and individual whom granted easements for right-of-way within northeast quarter of section 3 that right-of-way should be widened 15 feet for future compliancy with subdivision regulations, and failure to do so could result in unnecessary costs for supporting infrastructure of the area. Mueller seconded the motion.

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

Members are now acting as the planning commission for the second part. Bob Unruh questioned vehicles sitting outside. Sieger explained the concern is the property could be sold and the CUP stays with the property, as long as it does not lapse for six months. Sieger explained the county commission will have the final decision. Unrau questioned why only three operational autos? I looked at the property and determined three vehicles is about all you can squeeze in there, and I don't think Don is thinking of dealing with too many at one time, Brazil said. I can have a half dozen inside the building, if I want, Brubacher said. I was concerned about the number of cars sitting outside, as it may turn into a health and safety concern, Brazil said. Your recommendations is for the CUP on a half acre?, Bob Unruh asked. Bob Unruh made a motion to recommend approving a CUP as presented by the staff recommendation and no more than three vehicles outside and no parts or tools be stored outside. Oliver Unruh seconded the motion.

In favor: 7; Opposed: 0; Motion carried. Sieger and Brazil explained the time frame to Becker.

Item 7: An application for Anita Svoboda requesting a variance from required front yard setback of 75 feet to 46 feet, for property in Clear Creek West Township. Anita and Steven Svoboda are present to speak about their application. This application was published in the February 6, 2002, issue of the *Marion County Record, Hillsboro Star Journal and Peabody Gazette Bulletin*. Members are acting as the Board of Zoning Appeals. This property is located just south of Lincolnville. Svoboda's explained they want to build a shop on their property. Our frontage road was a county road, which they had officially closed in 1989, they told members. They are requesting a variance from the center of the closed road, even though the property owner to the west of them still uses his fence as the property line. Members received copies of a written statement, which Sieger read into the record. It was from a neighbor who lives adjacent to this property.

We are going to be moving our house from town, out there, Svoboda's told members. There was a trailer house out there, but it is gone, now. This property is zoned agricultural, and totals 48 acres. Svoboda's are not asking for a zone change, they just need a variance. You would need to keep the measurements even though it's doubtful they would ever reopen a road, but it is possible, Sieger said. Bob Unruh questioned if a road is closed does the property convert to the property owners? I believe so, Sieger said. Is there any other information to present?, Sieger asked. Does anyone from the public wish to speak?, she asked. Sieger closed the public hearing for this application and opened the floor for discussion and determination.

Members are acting as the Board of Zoning Appeals. Mueller said in light of support from surrounding landowners and the condition of the road and property line, he makes a motion to approve a front yard variance of 29 feet. Robinson seconded the motion. Bob Unruh wanted an explanation of why 29 feet instead of 25 feet. No problem. In favor: 6; Opposed: 0; Motion carried. This is a final action.

Item 8: An application for Sue Talbott, requesting a variance from required side yard setback of 10 feet to six feet. This application was published in the February 6, 2002, issue of the *Marion County Record, Hillsboro Star Journal and Peabody Gazette Bulletin*. This property is located at Marion County Park and Lake, and is in Centre South Township. Bob Priest, a friend of Talbott's, was present to speak about the application. He gave members a sketch of the original house and a sketch of future plans. It is a 50-foot by 100-foot lot. With the plans Suzy and a man named Reuben and I drew up, on each side the setback we would be asking for is six feet, which is a variance of four feet from the 10-foot regulation. At this point she's just asking for the variance, Priest said. She's still working out the financial part of the project, he said. She has already owned the property?, Sieger asked. For five or six years, Priest said. Does anyone from the public wish to speak?, Sieger asked. Ronald Cole, who owns property directly to the east, said he does not have a problem with the six feet, as long as it does not block his view of the lake. I assume from the sketch the structure will come 20 feet forward, which I don't have a problem with, but I would if it came forward much more, he said. At this point, she hasn't filed for a construction permit. I don't have a problem with the sketch, but it looks like a pretty large deck, Cole said. He questioned if the deck would block his view of the lake. Cole said he is okay with 20 feet extending out from the existing structure on the side setback, but if the deck also is allowed a six-foot side setback, he would question if it would block his view of the lake. Bob Unruh questioned, and Sieger said, Talbott doesn't know what the plans on the deck are, for sure. She plans to rebuild the existing deck, Priest said. What guarantees the structure will be like this?, Cole asked. She hasn't filed a construction permit, but I guess we could look at granting the six feet as outlined by the proposed sketch, Sieger said. Does the garage limit our view?, Ediger asked. Not the way this is drawn, Cole said. Unruh questioned why is it important that there be a variance approved now, before there's any building plans? It seems to me you look at a variance once you have a proposed building plan, he said. I haven't forced people to get a construction permit, Brazil said. I tell them they have to go through the variance process first, to avoid an additional fee, which is not necessary if a variance is not approved, Brazil explained. The problem I have is, I don't need surprises after the fact, and I think

that's what Ron Cole is concerned with, Unrau said and Cole agreed. Could we address it as what has been presented in the proposed drawing?, Sieger asked. Mueller suggested granting a six-foot variance for 20 feet for the existing structure, forward, then convert it back to 10 feet. Anything else?, Sieger asked. She closed the public hearing for this application and opened the floor for discussion and determination. Members are acting as the Board of Zoning Appeals, Sieger reminded everyone.

Mueller made a motion, in light of support of neighboring property owners and the condition of the narrowness of the property, to grant a variance on the east side of four feet from the existing structure 20 feet south to the front and a variance of four feet on the west side of the property. Bob Unruh seconded the motion. Bob Unruh questioned if the existing property had proper setbacks? Wouldn't it be appropriate to get the rest of this property in compliance?, he asked. Existing conditions are previous to zoning, and we haven't done that before, Sieger said. In favor: 6; Opposed: 0; Motion carried.

Off agenda items: Sieger reminded members the next meeting is March 28, 2002. Members were brought up to date on the status of the comprehensive plan. The county commission voted to send the plan, as it is now, to their attorney Jim Kaup, to check legalities. It is not known when we will hear back on this matter?, Sieger asked. Brazil said he will meet with them tomorrow and he does not foresee Mr. Kaup having any problem with the plan. I would assume the consultants would be up on the legalities, Sieger said.

There are three articles for members to take copies of and Brazil will give copies to the county commissioners. They are not necessarily pro zoning or planning, just related information. These articles were submitted by Brazil, Sieger and former member Terry Eberhard.

Delores Dalke was present to find out an opinion on two properties that are one acre, each. In one case they purchased it in 1983, and the other in 1991. Both are one-acre tracts out in the country. One is an old site with electricity and well water, and the second was a school yard purchased in 1991 where they intended to put a mobile home on it, but never got around to it. Both properties are now in probate and need to be sold. When zoning came in they weren't designed as a home site. Brazil can't issue a permit under a grandfathered property. Sieger questioned what the properties are classified as on the zoning map. Brazil will look on the zoning map. One is surrounded by ag land, and is overgrown and messy. Both have electricity and wells. One has a graveyard on one side. Oliver Unruh lives near one of the properties. You farm around it now, anyway, Unrau told Unruh. Oliver Unruh talked about dust and noise concerns. Their children live outside the area, and need to settle it, Dalke said. One has a gravel road, and one does not. One was up for foreclosure. One is located in Logan Township. One has a buried foundation. I just need some guidance because these families need to know what to do, Dalke said. The site with a rock road with five acres might be a building site, Brazil said. But then someone who has nothing to do with it would have to sell some ground, Dalke said. Well, we've had this come up before, Sieger said. Can they sell it to existing landowners?, Bob Unruh asked. Like he (Oliver Unruh) said, he doesn't want to clean it

up, Dalke said. The one that's not on gravel, that would be an issue, Sieger said. If I were Oliver, I'd buy that tract and I wouldn't farm around it because the first time you have an over-spray problem it will cost you more than the property, Wiebe said. Another thing I kick myself over is when they gave me the chance to buy my own land back from the railroad, I should have done it, Wiebe said. And if it had water on it that might be a benefit to the pasture, Sieger said. I don't know what other ideas we can give you, Sieger told Dalke. We do have a line in the comprehensive plan calling for an inventory of these types of properties, Brazil said. We probably need to prioritize that, Unrau said. Have you investigated the possibility of putting more with it?, Sieger asked. No, Dalke said. In one case it's a pasture with fence around it, Dalke said. I know there are more of these, I just happen to have two drop in my lap at one time, Dalke said.

Brazil reported it will be his third year attending a seminar in Kansas City. I have room in my budget to take two people, he said. The cost is \$199 per person and it is on May 22, 2002. If you are interested, I'm leaving a brochure to look at, Brazil told members. If not, we'll have money left which could be used for other seminars, later in the year, he said. You probably don't know if there are more later in the year, for sure?, Sieger asked. Not for sure, Brazil said. What is the deadline?, Sieger asked. You usually can register right up to the time, Brazil said. I'm trying to get a little more proactive and bring information back to the group.

Bob Unruh made a motion to adjourn and Unrau seconded the motion.  
In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 10:34 p.m.

#### MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

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Eileen Sieger,  
Chairman