

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

July 25, 2002

Meeting was called to order at 7:31 p.m., by Chairman Eileen Sieger, with a quorum present.

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

Sieger asked if there are off agenda items, and Brazil said yes.

Sieger asked for corrections or additions to the Record of Proceedings for the May 23, 2002, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Sieger had one correction on page three, where bible should have been viable. There were no other corrections. Mueller made a motion to approve the Record of Proceedings with one correction and Bob Unruh seconded the motion.

In favor: 7; Opposed: 0; Motion carried.

Item 4: Members reviewed correspondence from an attorney representing Gordon and Judy Pendergraft. Brazil explained he was contacted when a complaint was made about a carport that had been constructed at the county lake. There are a couple of things here, Brazil said. First, it doesn't meet setbacks and would require a variance before a permit can be issued, and also it was constructed on property not belonging to the Pendergrafts, Brazil explained. Their attorney is going to try to work it out and resolve the issue of ownership, he added. So, some things have to take place before there can be an application for a variance and it'll depend on what they can work out, Sieger said. Bob Unruh asked how long the carport has been on the property. I believe it was constructed in the early part of this year, as I think the complaint probably came a month after it was constructed, Brazil said. Brazil drew a sketch of the carport and property to show members.

Item 5: An application for Oliver and Elizabeth Unruh, requesting a rezone from agricultural to rural residential and requesting a variance from required 10 acres, to five acres, for property located in Risley Township. This application was published in the July 3, 2002, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. For the first part of this application, members are acting as the planning commission on the rezone request, and for the second part members will act as the Board of Zoning Appeals for the variance request. Since this is Oliver's application, he will present it to us and abstain from voting, Sieger said. Oliver Unruh explained he has discontinued farming. He said boundaries of the acreage he has sold are up against wildlife and parks ground on the south and west, and a road is on the east. He explained

to members where the acreage would be located and Sieger pointed it out on a map. Brazil passed around photos of the property. Does it actually come right down to the lake's edge?, Sieger asked and Oliver Unruh said no. Sieger asked and Oliver Unruh showed on a map where access is, from the east. That's Kanza, right?, Sieger asked and he said yes. Bob Unruh asked if there was any problem with flooding and was told no. There is rural water and a lagoon, Oliver Unruh said. And the lagoon is well within setbacks?, Sieger asked. No, as it was put in before setbacks were required, Oliver Unruh said. Is the hay shed on the boundary, too?, Sieger asked. It's probably 10 feet from it, Oliver Unruh said. So, this is an existing property line?, Sieger asked and Oliver Unruh said yes. The fence on the lagoon is on the boundary line, he added. The only new configuration of boundary is this dash line, here?, Sieger asked and Oliver Unruh said yes. You say you already have someone interested?, Sieger asked. The building site is already sold, Oliver Unruh said. Five acres are sold, he added. If someone has already purchased the five acres, what happens if the variance doesn't go through?, Sieger asked. Then we'll have to have them purchase more, Oliver Unruh said. Mueller asked and Oliver Unruh showed him on a map where the tree line is located. Where would the boundary line be?, Unrau asked. On the north side of the windbreak, Oliver Unruh said. How old is that windbreak?, Unrau asked and Oliver Unruh said 20 years, or more. I'm just speaking from experience, but one of the boys bought a place like this and it just kept growing out and now the boundary is in the trees and it's hard to keep trimmed up without going on the other person's property, Unrau said. So, you're moving?, Sieger asked and Oliver Unruh said yes. Out of the county?, Sieger asked and he said yes. So, I guess we'll lose you off this board, Sieger said and he said yes. Has the wildlife are around your property ever been a problem for you?, Sieger asked and he said no. Sieger asked and Oliver Unruh said the surrounding land is all cropland. Sieger asked and Oliver Unruh explained that a two-acre area came from a previous time when there was a fence and trees there, but it's all been cleaned up. Sieger asked about other rural residential properties in the area and Brazil looked on the zoning map. Sieger asked and Oliver Unruh showed his property on the zoning map. Sieger asked if anyone from the public wished to speak about this application. You're not selling any other real estate?, Unrau asked and Oliver Unruh said no. Mueller showed members where a building is located on the property. Any other questions?, Sieger asked. Is there anything else you want to add?, Sieger asked and Oliver Unruh said no. Sieger closed the public hearing for this application and open the floor for discussion and determination.

Sieger reminded members they are acting as the planning commission for the rezone request for rural residential. Fill us in on the history of when we did the rezone across the road, Sieger asked Brazil. it may have been more than 12 acres, Brazil said. They talked about less than 10 acres, but it worked out, the way it's situated, he said. The reservoir is what makes this property unique, in my opinion, Bob Unruh said. Sieger explained if members recommend a rezone to rural residential, it would be a minimum of 10 acres. Bob Unruh made a motion to recommend a rezone of 10 acres from agricultural to rural residential, with factors 1, 2, 4, 6, and 8 supporting it, and Mueller seconded the motion. In favor: 6; Opposed: 0; Abstain: 1; Motion carried.

Sieger reminded members they are acting as the Board of Zoning Appeals for the second issue requesting a variance from 10 to five acres. We need to find something very unique because we've held the one right across the road to a minimum of 10 acres and we need to be consistent in case someone would challenge it, Sieger said. I struggle with that an awful lot, Unrau said. I know what the zoning regulations are, but there are situations where it just makes sense to grant a variance, Unrau said. I've had people ask me how I think it will go, and I've explained that we have to stick with 10 acres or we're asking for some very difficult issues ahead if we're going to get away from what the regulations are, Unrau said. I voted against that variance because as I understand our regulations, when we have a request for a variance, it has to meet all five requirements, Bob Unruh said. But, as I look at this property and this variance, I can see it, he said. If you look at the property across the road, it was taking attractive land out of a half section, and if you look at this property and the boundary lines and where it lies, they are very different, Bob Unruh said. Looking at the five conditions, in my opinion, if there was a property that fits these five conditions, I think it meets it as good as any property I can remember, he said. I think we have to look at the application and not compare them and not look at whether we treat them the same, Bob Unruh said. Don't we have to be consistent?, Sieger asked. No, they are just different properties and different dynamics, Bob Unruh said. Any other discussion?, Sieger asked. I guess I'd like to have Bob explain a little more in detail how it relates to the five factors, Unrau said. Bob Unruh went through the five factors, commenting on each one. For number one, you can't expand the property to the south or west, so to meet the 10-acre requirement the only option is to go north, he said. Number two, it won't adversely affect the owners. Number three, I think that's a reasonable argument the applicant can make, because unless he creates some unique property lines, he's going to split up a building. Number four, I think that's fairly self-explanatory. Number five, you could argue this one as being the more liberal interpretation, but if this property didn't sit where it does, as it does, I don't think I can make this argument, Bob Unruh concluded. Unrau said he agreed that if he owned this property, he would see this as a real problem. Sieger asked and Brazil said he didn't recommend the variance for approval because he's going back to the precedent and the pattern and stay the course. Brazil's job is to uphold the current regulations and he doesn't have the authority to grant a variance, but we do, Mueller said. We've established a pattern of granting variances at the county lake, because it's a necessity the way it's laid out, Brazil said. I just want to be sure we can say to people who have been denied, why this is different, Sieger said. Oliver Unruh asked if he could make a comment, but Sieger said sorry, no. Bob Unruh made a motion to approve a variance of five acres due to meeting all five of the criteria and Mueller seconded the motion. In favor: 4; Opposed: 1; Abstained: 1; Motion carried.

Item 6: An application for Monty Cruse, requesting a variance from required rear setback of 20 feet to 15 feet and side setback from 10 feet to five feet, for property located in Centre South Township, at Marion County Park and Lake. This application was published in the July 3, 2002, 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. Cruse was present to speak about the application. Cruse said on the application it states the setback different from the letter that was sent out. Sieger explained the confusion between setbacks and variances. Bob Unruh asked and Cruse

said yes, he is requesting five feet from the rear and five feet from the side. Cruse explained he wants to put up a two-car garage on the northeast corner of the lot, with one double door. Photos of the property were passed around to members. Now there is a 65-foot trailer sitting at an angle on the lot, and I would like to remove the trailer and put a smaller home on the lot, Cruse said. So, where you're planning to put the garage now, would accommodate the future plans?, Sieger asked and Cruse said yes. I have an electric line that serves just my property, he said. The garage would sit north of the pole, but is there a rule you can't be too close to the pole?, he asked. I'd be within about 10 feet of that pole, he said. We're just dealing with the setback from the building to the property line, so that would have to be something you'd have to check with the electric company about, if they have an easement then you'll have to work with them, Brazil said. They're probably going to want to make sure they maintain access to their line, Brazil added. Cruse said he plans to store a vehicle and a boat in the garage. Is this just a weekend home?, Robinson asked. Yes, I'm a single dad and this is our time alone to get away, Cruse said. Charlie Cowan in the audience questioned the access and Cruse said it would be on the south side. Cruse explained where the driveway would be, etc. So, your driveway would be all on your property and not interfere with other's access?, Sieger asked and Cruse said yes. So, you say you've visited with adjoining neighbors?, Sieger asked. Yes, there's no problem except maybe with the electric pole, Cruse said. Bob Unruh asked and Cruse said he is planning a 24' x 24' garage with a 16' door. Concrete floor?, Bob Unruh asked. Yes, with a stem wall, Cruse said. Cruse questioned if there is any expiration for the variance, as he would like to do this project on a cash basis. Brazil explained that construction just needs to start within 90 days. Bob Unruh asked if the construction will fit in with the community and Cruse said yes. Will this have steel siding?, Bob Unruh asked and Cruse said yes. Sieger asked and Brazil said he does not see any problem. My only real concern was the easement back there, but I don't think that's a problem at this point, as that's between him and the power company, Brazil said. Sieger closed the public hearing and opened the floor for discussion and determination.

Mueller made a motion to approve a side yard variance of no more than five feet and a back yard variance of no more than 15 feet. Robinson seconded the motion.

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

Sieger explained this is a final action and Brazil explained the timeline for the construction permit to be issued.

Off agenda items: Brazil will take a copy of the letter from Stinson, Morrison and Hecker, regarding Industrial Wind Turbines in the Flint Hills, to the county commission. For the future, when we do get to our zoning regulations, wind farming is something I'd like to address, Brazil said. Oliver Unruh asked where is a good place for such turbines? Where there's a low environmental impact and where noise pollution is not an issue, but when you start talking about native grasslands, it's another thing, Brazil said. I think there are appropriate areas and inappropriate areas, but a lot of times zoning regulations can prevent something from happening, but they can also help make something happen, Brazil said. Bob Unruh questioned since taxes are not received from such turbines, would there be an employment gain from this? Brazil showed members two books from a library of information he is collecting. The last thing is there's a workshop on Saturday,

August 24, in Wichita with a pretty inexpensive registration fee and I have enough in the budget to take seven of you, if you want, Brazil said. There's only seating for 120, so if you're interested get back to me in the next couple of days, he said. Also, it's cheaper if you get it in early, Sieger said. Sieger and Mueller are going. Sieger encouraged newer members to especially consider attending. August 22 is our next meeting, Sieger said. Avery said she will be gone, unless something changes. Unrau made a motion to adjourn and Oliver Unruh seconded it.

In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 9 p.m.

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Eileen Sieger by *Robert R. Zuehl*
Eileen Sieger, V. Paick 8
Chairman