

MARION COUNTY PLANNING COMMISSION

**RECORD OF PROCEEDINGS
JULY 25, 1996**

Chairman Sieger called the meeting to order at 7:30 p.m.

Roll Call was answered by Clark Wiebe, Dorman Becker, Bud Pierce, Dean Fincham, Sherwin Ammeter, Don Fruechting and Eileen Sieger. Herb Bartel was in attendance. Terry Eberhard and Marlin Jansen were absent.

Eileen Sieger stated that she wanted to add a few items to off agenda items. #9 - B.F.I. public hearing date. #10 - County South Shop location as possible transfer location sight. #11 - Letters sent to Mr. Puttroff on removal of trailer. Agenda stands with these additions.

Eileen Sieger called for corrections or additions to the minutes of the May 23, 1996. There was one change on page 2. The word continent should have read contingent. Change was noted on original copy of minutes. Clark moves to approve the May 23, 1996 minutes with the correction noted. Dean seconds. **In favor: 7, Opposed: 0. Motion carries.**

Eileen stated that all members should bring their regulations with them to the meetings.

Dean wanted to make it known that lights are not on tower yet.

#4 - **Clarence Giesbrecht** - rezone & variance. Duly published on 7/3/96 in the Marion County Record. Address: Rt. 2, Hillsboro, KS 67063. Applicant stated that he wants to sell his other house with yard. Eileen asked how many acres the original property was. Applicant stated he has two "40" acre lots. Applicant stated he wants to parcel off older home with five acres. Don asked if there were other buildings besides the house and how far away from the road is the house located. Applicant stated there was a barn and that the house sits 80 or 90 feet from the road. Applicant stated that new house is a couple hundred feet from the other house. Eileen asked if Applicant farmed the 40 acres, applicant stated that he rents it out. Don asked if both houses are on the water district. Applicant stated that the new house is. The old house will be allowed on rural water if a new meter is installed. Eileen asked Applicant if he applied for a building permit to build a house on the second 40 acres. Applicant stated yes. Eileen asked on what premise did the Applicant apply for the building permit. Applicant stated that he applied under the premise that he was going to sell off the old house. Eileen asked about the boundaries of the five acres. Applicant stated that the trees and yard is the boundary and straight south. Applicant stated that dimensions would be lengthwise. Eileen stated it would be long and narrow at the

edge of the 40 acres. Applicant stated that the existing homestead was built in 1950. Clark stated that there are no other rural residences, small acreages in the area. Area is agricultural. Dorman asked Applicant if he has another 40 acres in the same section and whether there were any prospective buyers at this time. Could not understand Applicants answer. Surrounding property owner, Harold Jost asked what the regulations were at the present time concerning homes in rural areas. Eileen stated that the minimum to be zoned agricultural is 40 acres, if you go less than 40 acres, it would require a rezone to a different zoning classification, then it would require 10 acres to be zoned rural residential. Herb stated that there are no permits required to tear down a house. If the old house was moved onto another sight, the new owner would be required to apply for a permit. Herb stated that if the Commission makes a recommendation on the rezone and variance for the Giesbrecht's, then the lot for the new house would also be nonconforming. Eileen asked if there were any surrounding property owners to address this application. Jonas Giesbrecht stated that he owns the property east of 18-20-2, he has no comments. Eileen stated for the record there was a letter received from a surrounding property owner stating that they were unable to attend meeting, the land is under Westark Trust (17-20-2). This property owner is against the rezone. Letter signed by Anna R. Raymond, Ft. Smith, Arkansas. Don asked that if the property was 10 acres, would it affect the marketability. Applicant stated no. Eileen stated that any change would change the other property also. Clark stated that if this rezone goes through, both lots would be non-conforming. Herb stated that the old structure, if it is going to be occupied, will need the sewer system updated. The discharge goes on a long single line to a natural drainage and flows to the south. Sherwyn asked if five acres is acceptable for drainage. Herb stated it would be fairly close. Clark stated his concerns about rural water, there are people waiting to get on rural water that have an existing house and are not able to. Applicant stated that he was informed that he could get another hook-up for the new house. Bud asked if both houses were on the same sewer system. Herb stated no, the new house has a new waste lagoon. Eileen asked if there was any further information that the Applicant had. Public portion of meeting was closed.

#5 - **Lester Mowat** - conditional use for firearms business. Application was duly published July 3, 1996 in the Marion County Record. Applicant has been doing this for 35 years and average sale is one per year to maintain federal firearms license. Applicant has had his federal firearms license since March 1993. Applicant does not sell to anyone he does not know. Bureau of Alcohol, Tobacco & Firearms now requires Applicant to go through County zoning requirements to maintain his license. Eileen asked Applicant what type of firearms he sells. Applicant stated rifles, handguns and shotguns. Applicant stated he sells out of his home. Clark asked Herb if the conditional use permit goes with the land and under what conditions will it lapse. Applicant stated that he has been at this location doing business since

1979. Herb stated that as far as Marion County is concerned, this use is a nonconforming use that does not require a conditional use permit to continue. Herb stated that a letter could be written to state that this use is non-conforming and can continue as same, once the present operator terminates it, it does not transfer. Herb also stated he is not sure if a letter would satisfy the federal firearms people. If it would satisfy them, it would not be necessary for the Planning Commission to consider a conditional use permit. Bud moves to table the action on this application until the next regular meeting. Sherwin seconds. **In favor: 7. Opposed: 0. Motion carries.**

#6 - **Dennis Youk/Heartland Wireless** - application for conditional use permit for Cable TV tower. Duly published in Marion County Record on 7/3/96. Larry Ross - Regional Manager and Ken Merlin - Local General Manager. Applicants mentioned that the tower is already constructed and Heartland Wireless is already providing service. Applicant stated that it was not their intention to bypass the Commission, they made a contact with the Commission in January and they were told they would not require any permits. Heartland Wireless received a letter from Karen notifying them of the requirement for permits. Eileen stated that the Applicants knew that Marion County was zoned. Applicant stated yes, we called. Eileen again asked if Heartland had dealt with zoning requirements before. Applicant stated yes, their procedure is to call and find out if any permits are required. Clark asked if it was true that when Heartland called, they asked whether a permit was required to put up a television antenna. Applicant stated that he does not know if that was the case or not. Dean asked if the tower is approved by the F.A.A. Applicant stated that it was approved. Applicant stated that Heartland Wireless leases their frequencies for the Marion area from USD #398, USD #410, USD #397, USD #408. FCC supplies frequencies to the various educational bodies across the country. Heartland Wireless enters into licensing agreements for those frequencies. Clark asked where the signed agreements were showing that the Board of Education deeded their frequencies over to Heartland Wireless. Applicant stated that it is negotiated and they are paid on an annual basis. Heartland Wireless is giving \$47,500.00 yearly for right to lease those frequencies with annual payments of \$7,500.00 to USD #398, \$10,000.00 to USD #410, USD #397, \$10,000.00 to Marion/Florence. These schools have received payment. Dean requested red lights be put on the tower at night and white strobe lights in the day. Clark stated that the tower does **not** have white strobe lights for daytime as of this date. Heartland Wireless apologized for any misunderstanding regarding the telephone call. Public portion of hearing was closed.

#7 - **John Craft** - Regarding the reconsideration of his application to rezone property from AG to RR, owned by Myron Schmidt (34-20-1): Eileen stated that John Craft sent a letter to her and she responded by letter, all Commission members received a copy of both. Applicant apologized for not obtaining a copy of "Roberts Rule" before sending his letter to Eileen

Sieger. Applicant asked if the Commission was deciding to re-hear the application. Eileen stated that the way it was left, was that the Commission would reconsider it. Eileen stated that the status is that we are reopening it, to allow Applicant to state additional information or concerns regarding the application. Applicant presented a slide show presentation showing various residences on the county zoning map, including the property he is requesting to rezone. Applicant wanted the Planning Commission to know that at the last meeting, it was stated that the parcel he wants to rezone is out in the middle of nowhere, there were no nearby houses and that is not correct. Applicant asked for questions. Herb Bartel stated that all residences in this area existed prior to zoning being implemented. Applicant made comment on watersheds. Applicant stated that he is not an opportunist. Applicant also stated that his family is involved in his business. Eileen Sieger stated that she had driven through the area and asked what the Applicant has moved onto the property. Applicant stated it is a building that will be remodeled into a two car garage, if the rezone is granted. Herb Bartel stated he has a concern about Applicant's statement on watersheds, agricultural lands and native vegetation impact watersheds less than rural residential developments. Clark asked Eileen Sieger if we are going to reopen this application. Eileen stated that we would reconsider it. Clark asked if we are going to re-act on it again. Eileen stated it is at the Commission's discretion whether or not we act again. Clark stated that if we are going to reconsider this application, he would like to make the comments made to him by the Applicant, after the last meeting was adjourned, part of the record. Various discussions/arguments continued. Applicant stated that he talked to adjoining property owners, none had any objections. Eileen asked members what they wished to do. Sherwin asked what would be done about the farmstead that sold off ten acres without being rezoned. Herb stated that enforcement of zoning is through the permit system, if that property owner requests a zoning (building) permit, he will not be issued one. Herb also stated that splitting the land does not require a permit, perhaps subdivision regulations should be initiated. Eileen called for a motion. Sherwin stated that he felt the motion should come from someone who had voted against the motion previously. Don stated that he was not at the initial meeting and does not have the wisdom to make a decision. Eileen again called for a motion to vote again and stated that if we do not get a motion, we will move on. Eileen stated that if we do not vote again, the original tie votes which fails, stands.

#4 - Clarence Geisbrecht: Clark moves that the request to rezone be **denied** for the reason that there are no other RR in the vicinity, area is agricultural and is suitable to the zone which it has been zoned. Don seconds. **In favor: 6, Opposed: 1.**
Motion to deny carries.

#5 - application tabled.

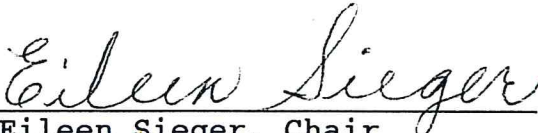
#6 - Dennis Youk/Heartland Wireless: Dean asked what would happen if this application is not approved since the tower is already built. Dorman made a motion that the conditional use be **approved**. Bud seconds. Dean stated that strobe lights are to be on the tower. Dean amended the motion for daytime strobe lights. Sherwin seconds. Vote on amended motion to **approve** conditional use: **In favor: 7, Opposed: 0. Motion carries.**

#8 - Off Agenda Items: Discussion of possible dates in August/September for B.F.I. public hearing, 8/22, 8/27 & 9/19. Eileen asked which date is best for Commission Members. Eileen made a suggestion that all Commission Members go to the proposed area around the landfill to get familiar with the area. Herb Bartel stated that the county has a 32 acre parcel and 5 acres in another parcel, the old Riddle property. On Monday, the board made the sight available for a temporary transfer sight, they are open for bids on August 1, 1996 and the county selects an operator. Prior to this time, we were contracted using the Grosses, that contract is in default. Herb stated that it is his preference for the county to go out for bids for temporary transfer sites.

Eileen Sieger talked about the trailer owned by Fred Puttroff and whether or not we would get cooperation from Mr. Puttroff in moving the trailer off his property.

Dean motions to adjourn, Dorman seconds. **In favor: 7, Opposed: 0. Motion carries.**

PLANNING & ZONING COMMISSION


Eileen Sieger, Chair