

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

July 27, 2006

Chairman Eileen Sieger called the meeting to order at 7:33 p.m., with a quorum present for the planning commission. Sieger reminded members they will need to appoint Bob Maxwell to fill the vacancy on the Board of Zoning Appeals for item 4 on tonight's agenda.

Roll Call was answered by Sieger, Maxwell, Marquetta Eilerts, Glen Unrau, and Willis Ensz. Ervin Ediger is expected to arrive late. Mary Avery and David Mueller were absent. Zoning Administrator Bobbi Strait was present.

Sieger asked for corrections, or additions, to the Record of Proceedings from the May 25, 2006, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Maxwell had a correction on page 13, where addressed that should read "addressing it;" Maxwell had a correction on page eight where father should read "farther;" Eilerts had a correction on page four where father should read "farther;" Unrau had a correction on page five where is should read "his;" Sieger had a correction on page six where conscience should read "conscientious;" and Eilerts had a correction on page seven where there were two typos. Eilerts made a motion to accept the Record of Proceedings with the corrections and Ensz seconded the motion. In favor: 5; Opposed; 0; Motion carried.

Unrau made a motion to appoint Maxwell to the vacancy on the Board of Zoning Appeals for this meeting and Eilerts seconded the motion. In favor: 5; Opposed: 0; Motion carried.

Item 4: An application for Warren Kreutziger, requesting a variance from required side set backs of 20 feet to 3.5 feet; from required rear set back of 20 feet to 3.5 feet; and from required front set back of 50 feet to 35 feet, for property located in Gale Township. Members are acting as the Board of Zoning Appeals for this application. This application was published in the July 5, 2006, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Sieger asked if this property is located in Canada (Kansas) and Kreutziger said yes. Sieger asked if the property involved is six total lots and Kreutziger said half of the six lots. I'm just trying to use up as much space as possible, Kreutziger said. It wouldn't be used for anything else, he said. A smaller building would cost me about as much, he added. I bought the lots from the Coop with the intention of building on it, he said. Sieger

asked if the building would face to the east and Kreutziger said yes. The north, west and south sides will stay within three and a half feet and there'll be 30 and a half feet on the east and the county's 100 foot right of way is on the other side of my property, Kreutziger said. There's a lot more there than it looks like, he said. There are no structures close to it that would be a problem if there was a fire, or anything, he said. Maxwell asked if a nearby building belongs to Kreutziger and he said no, it belongs to Norman Mueller. Maxwell questioned the paperwork where it shows 30 feet and Maxwell wondered if it should show 30 and a half feet and Kreutziger said yes. Maxwell asked if this property adjoins other people's property and Kreutziger said Norman Mueller's and the Coop's, which is vacant. Sieger asked if there will be no doors on the building and Kreutziger said it will be open on the front side, which is the east side. Will it be like a pole barn?, Maxwell asked. No, it will be an all steel building, Kreutziger said. It should stand up to 90 mph winds, he added. Ensz asked about the floor and was told it would be gravel. So, our paperwork is not correct, it says concrete floor, Ensz said. No, it will be gravel, Kreutziger said. It will be on a permanent foundation all the way around, Kreutziger said. Including a footing?, Maxwell asked and was told yes. Eilerts asked about the proper spelling of Nighthawk road. I haven't been given an address for the property, Kreutziger said. 1941 Navajo, Strait said. Ediger arrived at this time, which was 7:50 p.m. Unrau asked and was told the building will have a flat, sloping roof to the back. Sieger asked and Kreutziger explained he wants the building pushed to the back of the property to allow people room to get in and out. Sieger asked if water channels through the property and Kreutziger said no, it's on a hill. Sieger asked if anyone from the public wished to speak about this application. Sieger asked if there was any other information, or questions. Sieger asked Kreutziger if there was anything else. Ediger asked and Kreutziger said this property is located directly across the street to the north from the steel bins in Canada. Maxwell said companies normally furnish specs for footings, etc., and Kreutziger said yes. Sieger asked if there was enough room for maintenance around the building. That's why I want to put a steel building up, because it should be maintenance free, Kreutziger said. I'll just need to keep the weeds down, he said. It will be graveled even around the sides and back, and there's a driveway owned by the coop that comes across to the lot, Kreutziger said. It conforms to the fire code, so there's adequate room and they could drive a fire truck in there, Strait said. Sieger closed the public hearing for this application and opened the floor for discussion.

There's already several buildings constructed for storage and the only issue I would have is if a neighbor had a problem, and no one showed up, Maxwell said. And, we have not received any written comments, Sieger said. Eilerts made a motion to approve the application for Warren Kreutziger, application number ZP06.051, for property located on the E1/2 of Lots 7 through 12, Block 6, Canada, requesting required side set backs of 20 feet to 3.5 feet; from required rear set back of 20 feet to

3.5 feet; and from required front set back of 50 feet to 30.5 feet. Maxwell seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Sieger explained to Kreutziger that this is a final action by the Board of Zoning Appeals. Strait told Kreutziger she will have his permit ready.

Item 5: An application for Belinda Engler, requesting a Conditional Use Permit (CUP) for an equine riding school on property located in Clark Township. This application was published in the July 5, 2006, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Engler explained she has been giving riding lessons for several years and did not know she needed a permit and she apologized. She said she feels her business fits with an agriculture community. She said she has been giving riding lessons to at risk kids with Big Brother/Big Sisters and through an after school grant program with Hillsboro's school district. And, I do some private lessons, but I also work with 4-H, she added. I dream about a covered riding arena, Engler said. Sieger asked and Engler said she has 80 total acres. I use six to 10 acres with the riding lessons, Engler said. I have about 20 horses, at various stages of age, she said. They need a certain temperament for beginning riders, she explained. Sieger asked about insurance. I have been looking into that because I thought I was covered, but I found a man who said he could cover me, Engler said. Kansas law says if you share your horses with others and there are no accidents (you are covered) unless something happens and it's caused by equipment failure, which would be my fault, but I found out it does not apply if you charge a fee, which I do, Engler said. Do you take your horses off your property?, Sieger asked. Yes, with experienced riders, Engler said. To roads and land around your property?, Sieger asked. Yes, I have the neighbor's permission, Engler said. And, I do not leave my property during hunting season, she added. Sieger asked Engler if she advertises her riding lesson business. I have flyers up, but mostly it's word of mouth, Engler said. Do you have a sign?, Sieger asked. I have a sign, but I didn't want to put it up until everything was okay, Engler said. Sieger explained the county has sign regulations. Sieger asked if someone helps with lessons. I'm the one giving the lessons, but I require an adult be present per horse, Engler said. I'm trying to cut back to three days a week instead of five days a week, Engler said. Sieger reminded members they are acting as the planning commission for this application. Maxwell asked about the amount of acreage used. I have an arena, Engler said. No extra buildings, or anything?, Maxwell asked. No, if I do that I'd have to come back, Engler said. Unrau asked about riding on the neighbor's property and how that works with insurance and with the CUP. If they have liability insurance, it would cover her horses no matter where they are at, Strait said. I feel there should be a written consent, and if the property owner wants to they could sign it as okay any time, but if not they would need to sign for a specific day and time so the neighbor doesn't do some farm operation that would spook the horses, Strait said. Sieger explained a CUP lapses if not used in a six month period.

Maxwell explained that zoning information is available to the public in the courthouse. And, it's on-line, too, Sieger said. Sieger checked the regulations and a riding academy is okay under a CUP. I'm trying to develop riding trails around the 80 acres, Engler said. There are no structures, she said. But, you use the land space?, Sieger asked and Engler said yes. 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.

Sieger asked if members wished to require that insurance be carried as a condition of the CUP. I don't think we have the authority to regulate that, but for a commercial business it should be in place, Strait said. Sieger asked about horses riding on a public road, saying she knows there are no requirements for this but wondered if it might be a traffic issue. That's her liability and her responsibility, Maxwell said. I did have a traffic concern brought to my attention on 260th, Sieger said. During hunting season it picks up, but there's still not a lot of traffic, even then, Maxwell said. Would this be private enterprise on public roads?, Eilerts asked. You also see signs that could alert drivers to riders, Unrau said. I don't think that's an issue for us to address, Strait said. Traffic and safety is sometimes an issue, Sieger said. You're not acting on the activity, you're acting on the property, Strait said. You don't have the authority to regulate anything on a public road and anyone who drives on a country road knows you can come over a hill and there might be a cow, tractor, combine, or anything in the road, Strait said. The board doesn't have authority to regulate anything outside her property, Strait said. Sieger asked if there was anything else. Maxwell made a motion that application #ZP06.055 for Belinda Engler be recommended for a CUP to accommodate an equine riding school at this location, consisting of 80 acres and there not to be any accessory use such as out buildings, signs, etc., on the W1/2 NE1/4 of section 32-18-3. Ensz seconded the motion. Strait said Engler would need a permit for any accessory use. Maxwell amended his motion to read, that application #ZP06.055 for Belinda Engler is recommended for a CUP to accommodate an equine riding school at this location, consisting of 80 acres on the W1/2 NE1/4 of section 32-18-3. Ensz seconded the amended motion. Members voted to pass the amendment. In favor: 6; Opposed: 0; Motion carried to pass the amendment. Members then voted on the motion as amended. In favor: 6; Opposed: 0; Motion carried as amended. Sieger explained to Engler the timeframe for the application to go to the county commission.

Item 6: An application for Benny Key, requesting a rezone from agriculture to rural residential for property located in Clear Creek West Township. This application was published in the July 5, 2006, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. This property is located a half mile south of Lincolnville. Members are acting as the planning commission for this application. Key

told members he has 7.48 acres and wants to build a house on it and needs it rezoned. He said the land slopes to the south and west and he plans to build back into a hill. Sieger asked if this property was already parceled off, but not on the zoning map as such? About two years ago this part came up for sale from the company I work for, so I bought it from them, Key said. Tract B and C they have had for about 20 years, he said. It was surveyed on June 6, 2003, Strait said. Sieger asked if there are any buildings on any of the tracts. Key said yes, on tract B there is a 50x100 shop and they just put up a 30x120 pole barn to park vehicles. This is owned by Shawmar Oil, Maxwell said. Sieger asked if Shawmar owns the surrounding land and Key said no. On the north side it appears a road goes back, it's a gated drive, Maxwell said. I don't know if that was to get back to the rest of the 80 acres, or what, Key said. There is a growth of trees on the east side with 2.9 acres on your property, Maxwell told Key. Would the gated location be the tree dump?, Sieger asked. The Lincolnville burn pit is back there, Key said. Adjacent to your property?, Sieger asked and Key said yes. But, Lincolnville should own that, Sieger said. The burn site extends north of the road and his property is on the south, Strait said. Strait showed members on a map where the burn site is located. When this was all split out and the three lots were created in '03 there was no change of zoning and if this were still ag then we're looking at non-conforming, and rural residential according to regs we don't do any more, Sieger said. Sieger read to members from the regulations. Sieger asked what type of house Key wants to build. We have a rough plan, but we want to build back in the hill, he said. Key showed members the plans he has for the home. Sieger asked if the home will be hand constructed on site, and Key said yes. Maxwell asked if Shawmar owns 7.8 acres and the farmland on the other side, and Key said yes. I think originally Shawmar bought the whole 80 acres, but they sold off everything to the east except the remaining tracts, Key said. I think they sold it off before zoning, Key said. That could be but they still were never platted, Sieger said. Unrau asked if there is grass there now, or is it cultivated? I've just been keeping the weeds down, Key said. Members looked at a zoning map and a nearby tract is zoned rural residential on the N1/2 SE1/4. Maxwell asked if it could be RI single family dwelling. No, it has to have sewer and water, Strait said. Maxwell looked at non-conforming uses in the regs under 24-107 and read it aloud to members. This is of no fault of his own and if we leave this open we cannot prevent him from building a house on it, Strait said. This was published as a rezone and if the planning commission determines a rezone is not required you close as the planning commission and reopen as the BZA, Strait said. He can build on a lot in ag use, Strait said. He can not do a lot split, she said. It would have to stay at 7.4 acres, she added. Sieger questioned acting on this application without a second notice. You could republish but he would have to wait a month and I don't think it's necessary because if anyone had a question they would have shown up tonight, Strait said. Maxwell made a motion to deny application #ZP06.054 for

Benny Key, requesting a rezone from agriculture to rural residential for pt. N1/2 SE1/4 14-18-4. Unrau seconded the motion. In favor: 6; Opposed: 0; Motion carried. If you want to republish and address it again next month that is not going to hold up my issuing him a permit, or it will be a taking, Strait told members. Sieger asked Strait to define a taking. Because no one knew until three years after the fact we are going to be hard pressed to deny him building, Strait said. We can deny a second house and we can deny a rental house, but he still has the right to build on his own property in the State of Kansas if it's a non-conforming lot of record, Strait said. Sieger asked if this will be on the August agenda. We missed the August agenda, so it would have to be September, Strait said. He can still get a building permit tomorrow, Strait said. How do you qualify that?, Eilerts asked. Because I'm not leaving myself open for a lawsuit, Strait said. They have to be an injured party to file against the BZA, Strait said. I think it would be good to republish, Unrau said. All it's going to do is ensure the non-conforming use will remain on the land, Strait said. Not knowing about zoning is no excuse and I'm not arguing about your situation, but you just can't say anybody can build any where or we might just as well not follow any of it, Sieger said. What if we addressed this in September and that would give us time and see where our legal standards are, Maxwell said. I can get a legal written opinion on this, Strait said. Unrau asked if Jim Kaup could be consulted. I would like to have him address this, Unrau said. I think the question is what does this do to our zoning regs?, Unrau asked. We've denied some of these in the past, Ediger said. You're still going to give him a permit?, Maxwell asked Strait. Yes, he can have the permit whether you decide this is a non-conforming lot, or not, Strait said. Strait said she will file a new application and told Key to come get his permit. I'm on the list for concrete the end of next month, Key said. You'll be fine, Strait said.

Item 7: Record of Proceedings from the July 6, 2006, public hearing. Members do not yet have a copy of these minutes, so this will be continued.

There are no applications for the August meeting. There is a special meeting August 10, 2006, so that is the only August meeting, Strait said. We could review the July 6, 2006 Record of Proceedings at the August 10, 2006 special meeting, Sieger said. Sieger told members Strait had submitted some alternative ideas in the packet of information members received in the mail. Strait apologized for not signing the document. She will sign off on a copy for the record, Sieger told members. Unrau asked if the other members not present tonight will be at the August, 10, 2006, meeting. Sieger reminded members to keep track of their mileage. We're limited to \$100, Unrau said and Sieger said yes. There has been some discussion to change how mileage is calculated and they may pay mileage from your house for 12 meetings per year and have that in the budget, but it has not been decided, Strait said. I put site visits down, too, Maxwell said. It's still a work in progress, so keep doing that and we'll see what is

decided, Strait said. The info is pretty short on some of these items, Maxwell said about the info members received in their packets on the applications. Members asked that properties be highlighted on the maps in the packets. Eilerts said staff recommendations help, too. Sieger asked for the Record of Proceedings to be stamped "draft" until approved. Sieger asked what members wished to do about discussing any oral comments from the July 6, 2006, public hearing. We do have people gone tonight, so whether or not you want to discuss things is up to you, Sieger told members. Strait explained her proposal pages. A-1 and A-2 zones could be interchangeable, determined by the lot size, Strait said. Whether you want to say it's a radius or if you want to break it down, it could be determined on a section by section basis, Strait said. You could have all the homes in one corner with a community sewer system, and the rest could remain ag, Strait said. If he sold it he would have to disclose that and it would be part of the deed and that would be a requirement before any building permit is issued, Strait said. Strait reported she went to a workshop with Jim Kaup in Wichita. If A-2 would have been in our regs tonight, would that have helped us tonight?, Ediger asked and Strait said yes. We've struggled with 30 acres several times since I've been on here, Ediger said. They still have to meet five acres, Ediger said and Strait agreed. If you have 16 or 12 on a section you could use LESA on the whole section to determine whether you can cluster the houses, Strait said. It's more feasible for sewer and rural water, and you save more ag land, she said. We can recommend the houses be grouped however the land is laid out, Strait said. Maxwell said he had a comment from the public hearing. I have never heard an overwhelming desire one way or another and I didn't hear any overwhelming desire at that meeting, Maxwell said. There was not much of the public represented (at the public hearing), Sieger said. One time I went to real estate dealers and talked to them and they were split, too, Maxwell said. One man (at the public hearing) said we weren't strict enough, Eilerts said. You can't please everyone, Ensz said. I don't get any endorsements for three acres, none, Eilerts said. The say people don't want to mow, well then they shouldn't move to the country, Sieger said. When your house is just a few feet from an ag operation, you're in a different setting and some people don't mind, but they just need to be aware, Sieger said. Eilerts asked if any counties have gone back to 40 acres. Maxwell said McPherson County talked about it. Strait said McPherson County is still at three acres. You hear about as many opinions as buyers, themselves, Unrau said. We still have the proposed changes before us, but we've got Bobbi's proposal to think about, too, Sieger told members. Unrau said he wants to wait for David Mueller, to get his opinion. Sieger said Mueller had said if members took any vote at this meeting, he would want to be contacted. If we use some of Bobbi's suggestions, how do we proceed?, Eilerts asked. Strait said members could make a motion to not take action on the proposal on the table and to take some of these ideas to the county commission. Career farmers have a tendency to self-regulate, Strait said. We have to make some guidelines that can all fit together, she

said. There would have to be some formal presentation, Strait said. So, are we ready to move on to off agenda?, Sieger asked members.

Under off agenda items, Sieger explained to members there was a publication error on the Whiteman application and we decided to continue it because we have always adhered to correct publication, Sieger said. So, we need to decide whether we make a motion to continue it, or just note it will be addressed at the special meeting scheduled for August 10, 2006 at 7:30 p.m., Sieger said. Maxwell asked and Strait said 1702 220th Street is Whiteman's address. Sieger asked if there were any other off agenda items. When Margo (O'Dell) made phone calls to request the special meeting on August 10, a couple people were not very nice to her and now I have to hire a full-time person to start January 1, Strait told members. You mean she has resigned because of this?, Sieger asked Strait. I just want you to know that everything that comes out of that office is my responsibility and if you have a problem it needs to come to me and I won't tolerate my employees being treated without respect, Strait told members. If you have a problem and your temper is short, you can call me, Strait said. Unrau make a motion to adjourn and Ensz seconded the motion. In favor: 6; Opposed: 0; Motion carried and the meeting adjourned at 10:15 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



Eileen Sieger,
Chairman



Margo Yates,
Secretary