

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

March 24, 2005

Chairman Eileen Sieger called the meeting to order at 7:34 p.m., with a quorum present for both the planning commission and Board of Zoning Appeals.

Roll call was answered by Sieger, Marquetta Eilerts, David Mueller, Ervin Ediger, Willis Enszt, Bob Maxwell, and Glen Unrau. Mary Avery was absent. Zoning Administrator David Brazil was present.

Sieger asked about off agenda items. Sieger and Maxwell both have off agenda items.

Sieger asked for corrections, or additions, to the Record of Proceedings of the February 24, 2005, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Maxwell asked about the last sentence on page four, where it said a \$500 administrative fee can be enforced. Brazil explained, and members agreed it was okay as written. Mueller made a motion to approve the Record of Proceedings as written and Unrau seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 4: An application for William Kaempfe, requesting a variance from required backyard setback of 50 feet to 29 feet, for property located at Marion County Lake. This application was published in the March 2, 2005, issues of the *Hillsboro Free Press and Free Press Extra*. Members are acting as the Board of Zoning Appeals for this application. Kaempfe said he received a 37-foot variance in January, but has changed his mind and now wants to make a loft and overhang it two feet. He said he is asking for 29 feet, so if he wants he could also make a six-foot deck and not have to come back, again. Sieger asked and Kaempfe said yes, they have two lots. Mueller asked and Kaempfe said yes, one side of the property faces pasture. Sieger asked if there were any more questions. Maxwell asked if the request is just for one lot, #19, and not #20? You could limit it to one lot, if you want, but it was published with both, Brazil said. You can't publish and go more, but you can publish and go less, Brazil explained. I would approve it for what he has proposed, Brazil said. The Supreme Court says if you have two lots together it is considered one and the same, but if one lot is sold off in the future that would make a difference, Brazil said. I think I would keep it to the structure, Brazil said. 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 reminded members they are acting as the Board of Zoning Appeals. Mueller said he does not see any problem with this. Mueller made a motion to approve a backyard variance of no more than 21 feet, as proposed by the applicant, William Kaempfe. Ediger seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Item 5: An application for Derek Klingenberg, requesting a short form lot split for property located in Peabody Township. This application was published in the March 2, 2005, issues of the *Hillsboro Free Press and Free Press Extra*. Sieger mentioned that Brazil checked on the publication of a previous application after it was questioned at the last meeting, and the application was published correctly. Brazil explained that legally he is not required to publish lot splits, but he is doing it as usual, anyway. Brazil also explained that applicants are welcome to come and make comments about lot split requests, but they are not required to come to a meeting. Klingenberg was not present to talk about his request. Members reviewed the application, the Land Evaluation and Site Assessment System (LESA), and the survey of the property. Sieger asked if there were any comments, or discussion. Brazil explained the LESA factoring is not required for lot splits, but he is going through the motions to help members gain familiarity with the process. If this was in a predominately ag area with few residences, it may be different, but due to the location it scored a moderate evaluation, Brazil said. Maxwell asked and Brazil explained how he figures a LESA rating. He said even if the soil rates fairly productive, the site assessment may still allow for the land to be developed. Brazil said he looks at an entire 80 acres when determining soil evaluations. Sieger asked if there were other questions, or comments. Sieger reminded members that lot splits do not go on to the county commission for final approval. It is just for review, Brazil said. Sieger explained that lot splits could be totally handled administratively. I think it's wise not to put this in one person's hands, Brazil said. And let the group review it, he added. Ediger made a motion to approve a short form lot split of five acres for Derek Klingenberg in the "A" Agricultural Zone District as presented by the applicant, and require that the short form lot split plat and the agricultural disclaimer be recorded by the Register of Deeds with the deed transfer. Maxwell seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 6: An application for Clarence Giesbrecht, requesting a variance on the definition of a guesthouse, for property located in Liberty Township. This application was published in the March 2, 2005, issues of the *Hillsboro Free Press and Free Press Extra*. Members are acting as the Board of Zoning Appeals for this application. Giesbrecht was present to speak about the application. He said they need to put in a lagoon and they need a variance. He said they plan to run it somewhat like a guesthouse. Brazil explained that in 1995 they built a new residence on this property, with the stipulation that the old house be removed. In 1996 they applied to rezone 10 acres with the old house included, and the application was denied. In 1999 the application was resubmitted and again was denied. Brazil said there was a change of direction during this timeframe, as the previous director wasn't able to enforce the zoning regulations for this property. So, the old home sat there as is, and the owner was not able to subdivide the property and sell it off, and the director at the time allowed it to remain. Eilerts looked at the zoning regulations. It doesn't have a kitchen and is for a temporary residence, not a permanent house and should not be rented, Brazil said. Brazil said the only solution to both houses staying on the same parcel is for the old house to fit under servant quarters or guesthouse regulations. The best option with these circumstances is to allow the couple to use the property and keep it up, Brazil said. Brazil explained he could not size the wastewater system for this situation, so he couldn't issue a construction permit until it was brought here. The fact that the second home wasn't removed could be considered a breach of contract, so if the county wanted it could

require one home to be removed, Brazil said. Brazil read the regulations on page 12, Article 1, and #113 under guesthouse. We would have to reconsider if this were a rental, Brazil said. Brazil reviewed previous meeting minutes about this property. Sieger explained they are requesting a variance from the definition in order to allow for a kitchen. We tried to sell it but couldn't and didn't want to demolish it, Giesbrecht said. Sieger asked and Giesbrecht said it was built in 1952. They have started some remodeling?, Sieger asked. They're a long way along with it, Giesbrecht said. They're not living there, just preparing it, he added. I'm concerned that we're not saddling these people with a lot of regulations, Ediger said. If I want to put in a guesthouse or a servant's house I could, but not as a rental, Brazil said. If you ultimately set a precedent here, I would put a condition on it that it is not to be rented, Brazil told members. What's to control this?, Maxwell asked. I check on such things, but it's questionable, Brazil said. It's impossible for David to enforce things, too, Sieger said. Some places do have a person to enforce, she added. We just have to say we depend on the integrity of the applicant, and I'm satisfied with that, Unrau said. Is this a relative?, Maxwell asked Giesbrecht. It's a friend, Giesbrecht said. We have lots of cases where they want to build a new home, and I require that the older home must be removed within one year of completion of the new home, Brazil said. Sieger pointed out that in one such case the older home has been used for storage. And, one has been converted to a workshop, Brazil said. Sometimes finding someone to buy it is a challenge, Sieger said. I'm following the regulations where it's one house per lot, but I realize sometimes it takes some time to work it out, Brazil said. Sieger asked if there were any other questions. Sieger asked if anyone from the public wished to speak. Sieger closed the public hearing for this application and opened the floor for discussion.

Sieger reminded members they are acting as the Board of Zoning Appeals for this application. We are looking at giving a variance to a definition in the regulations, Sieger explained to members. Maxwell asked about the wastewater system. With this approved I can issue a permit, Brazil said. Sieger pointed out this house was constructed after zoning was in place. Unrau asked Brazil to review the history of the property. I would feel better about this if the applicant would have come in at the end of a year and say I couldn't do anything with this, Unrau said. Ultimately the construction permit was a contract and I guess since it was in such good shape they hated to tear it down, Brazil said. Ensz asked if the person moving in there would work for Giesbrecht. No, just keep the place up, Giesbrecht said. I'm guessing it's on the tax roll as a residence, Brazil said. Sieger asked how long the home has been vacant and Giesbrecht said since 1995. If they're going to pay taxes and not collect rent, how long are they going to stand for it?, Unrau asked. They can keep it up and they can save him a lot of labor, rather than just let it deteriorate, Mueller said. We just heard from the commissioners that we need to be flexible, Ediger said. My first concern is let's not saddle these people with more regulations, Ediger said. I think they're trying to work with the regs and come up with a solution that will work, Mueller said. My concern is down the road, what will happen in the long term, as a permanent residence, without rent?, Mueller asked. It'll become a burden to someone else, as things change, Unrau said. I'm more reluctant to put a timeframe on how long we will allow this to continue, Unrau said. I believe it's a workable situation, Mueller said. Mueller made a motion to approve a variance from Article 1-103 (paragraph 113) of the

Marion County Zoning Regulations, for the applicant Clarence Giesbrecht, to allow for a guesthouse to be used on a permanent basis with kitchen facilities and separate utilities as a separate dwelling, with two conditions, first that the guesthouse may not be subdivided from the parcel and second that the home may not be rented. Ediger seconded the motion. In favor: 3; Opposed: 3; Motion denied.

Sieger called for a Roll Call Vote: Sieger – no; Ensz – no; Ediger – yes; Mueller – yes; Maxwell – no; Unrau – yes; and Avery – absent.

Mueller asked about the voting, saying he didn't hear any opposition in the discussion, so could members please give reasons for why they voted the way they did. Maxwell said the definition of a guesthouse is fully defined, and it bothers me what will happen in the future. Sieger concurred with Maxwell. Someone applying material and labor, in essence in a way is compensation, or bartering, Sieger said. For the individuals that have been remodeling, there is a hardship there for what they have already accomplished, Brazil said. From my understanding from the applicant, there has been an investment out there, so there's a bit of a hardship there, Brazil said. What happens next?, Mueller asked. I can't issue a construction permit, Brazil said. I realize there is a whole history there, but I'm identifying with the hardship there, Brazil said. I recognize this is a hardship, but I did it reluctantly, because when it was time for them to come back they weren't here and that bothers me about their integrity, Unrau said. Eilerts asked if members can call for another vote, or if they can even do that? Another motion could be made, but it would have to be a different motion, Brazil said. I do need some guidance, Brazil said. The hardship factor did not come up during our discussion, either, Sieger said. I can do wastewater systems for toilets only, but not for a whole septic system for a house, which doesn't meet regulations, Brazil said. Could they come next month and go through this, again?, Ensz asked. They have to wait a year, Brazil said. What's keeping them from building a whole separate lagoon and living in it without a kitchen and rent?, Maxwell asked. I don't know if anyone would want to do that, or not, but it would get a roof over their heads, Maxwell said. Are there any ideas for an option, or anything else?, Sieger asked. My concern is how long is it going to last this way?, Ensz asked. I don't feel right about it, because what if things change?, Ensz added. I live within two miles of this and I don't like to see this house vacant, Ediger said. The options this leaves the owner are to either demolish it or move it off, Brazil said. Mueller made another motion. Mueller moved to approve a variance from Article 1-103 (paragraph 113) of the Marion County Zoning Regulations, for the applicant Clarence Giesbrecht, to allow for a guesthouse to be used on a permanent basis with kitchen facilities and separate utilities as a separate dwelling, and include three conditions, first that the guesthouse may not be subdivided from the parcel, second that the home may not be rented, and third that this application must be reviewed at the end of a two year period. Ensz seconded the motion.

In favor: 3; Opposed: 3; Motion denied.

Sieger called for a Roll Call Vote: Sieger – no; Ensz – yes; Ediger – yes; Mueller – yes; Maxwell – no; Unrau – no; and Avery – absent.

I'll deny the permit and it'll be a matter of either moving the structure or meeting the guesthouse definition, Brazil said.

Item 7: An application for Ron Beeton, requesting a variance from required front yard fencing height and setback, for property located at the county lake. This application was

published in the March 2, 2005, issues of the *Hillsboro Free Press and Free Press Extra*. Beeton was present to speak about his application, and he introduced his wife Kathi, to members. They built their house in June of 2004. They explained the house faces the lake, which they consider to be the front of their house, but they have a different address. They showed members photos of what they consider to be the back of their house. Ensz asked why they don't have a Lakeshore Drive address, if the house faces the lake, and they said they did not know. Ensz asked where the property line is in the photo and they showed him and said it is 10 feet off the road. Beeton explained he wants to install a five-foot tall wrought iron fence. Ensz asked if Beeton plans to attach the fence to the house, and Beeton said yes. Dan Crumrine was present and said there are water and sewer line concerns with what Beeton plans. It has a brand new grinder pump, Beeton said. If we have problems, we will have to tear the fence up, Crumrine said. What if we put sections in?, Beeton asked. Crumrine said that would work. If this were a privacy fence I would reach a different conclusion, and since there is a narrow road I would hate to see a fence go right up to the road, Brazil said. Is there anything else?, Sieger asked. I have no objections as long as they put sections or a gate in, Crumrine said. Does anyone from the public wish to speak about this application?, Sieger asked. Is there anything else?, Sieger asked. Sieger closed the public hearing for this application and opened the floor for discussion.

Sieger explained the fence is five feet high, so the fence height variance request is for two feet. Sieger reminded members they are acting as the Board of Zoning Appeals for this application. Apparently they feel this will be adequate for their dog?, Ediger asked and Beeton said yes. Ensz made a motion to approve a front yard variance of no more than 10 feet for Ron Beeton, and approve a fencing height variance of two feet, with the condition that fencing must be wrought iron as presented. Ediger seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Off agenda: Crumrine thanked members for everything they have done for residents at the county lake. Crumrine presented members with smaller individual copies of the latest map of lots at the county lake, and a large map for the department to keep. Sieger asked when the new map was done and Crumrine said it was printed two weeks ago, but the fly over was prior to that. Members thanked Crumrine. Maxwell asked about the wording used by the administration. He referred to subdivision #6, page 17, item C under site plan approval conditions. Brazil said he can include the complete wording, if members wish. Brazil explained that in the zoning regs, Article 2 is part of it, too. The two work together, Brazil said. I'm trying to give the applicant an overview and I'm pulling the information from both places in the regs, Brazil explained. I combine both for the applicant, he said. Maxwell questioned the date on a notification, saying the date used was the date in January when members approved the application in question. Sieger explained this is not the notification date this is the resolution. Brazil explained after the county commission's final action, a resolution is published. Sieger said the *Free Press Extra* comes out on Thursdays. Sieger addressed the Board of Zoning Appeals composition. Brazil discussed the idea from the previous meeting with an attorney. Brazil gave members copies of a proposal, and Brazil read the proposal to members. Brazil said the attorney suggested members could have two alternates. Brazil said the attorney said it

is kind of unique to have a nine member planning commission and a seven member Board of Zoning Appeals, and said this may be something other jurisdictions may want to consider. Brazil asked members if they are comfortable with the proposal and he will run it by the attorney and members then can address changes to the by laws. Sieger said if this were in place tonight, Eilerts could have been an alternate for Avery, which still may not have solved things, but should help. Members agreed this is a good way to go and gave Brazil the go ahead to take it back to the attorney. Ediger asked and Sieger explained that there may be one member per district from a city. Sieger reminded members the next meeting is scheduled for April 28, 2005, and members are waiting to hear back from the county commission about the next work session. Sieger asked if there was anything else. Unrau made a motion to adjourn and Ensz seconded the motion. In favor: 7; Opposed; 0; Motion carried and the meeting adjourned at 9:30 p.m.

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Eileen Sieger,
Chairman