

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

March 25, 2004

Vice Chairman Bob Unruh called the meeting to order at 7:30 p.m., with a quorum present.

Roll Call was answered by Unruh, Willis Ensz, Glen Unrau, Ervin Ediger, Mary Avery, and David Mueller. Eileen Sieger and Marquetta Eilerts were absent. Zoning Administrator David Brazil was present.

Unruh asked for corrections or additions to the Record of Proceedings of the February 26, 2004, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Mueller made a motion to accept the Record of Proceedings as written, and Ensz seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Unruh asked if anyone had any off agenda items, but there were none.

Item 4: A continued application for Lloyd Schroeder, requesting a rezone from agricultural to rural residential, and a Conditional Use Permit (CUP), for a retail tree farm operation on property located in Gale Township. Unruh explained the meeting process to the public. Lloyd and Marlene Schroeder were present to speak about the application. They said they have operated for 30 years as Pine Creek Farm, but they are getting older, so they have hired a lot of help, in recent years. One man has worked for them for five years, and he recently asked to buy their tree farm and put up a house next to their property, and buy some of the adjoining land. He is proposing buying 40 acres south of Schroeder's home. He wants to put more trees on his 40 acres, next to Schroeder's trees, and then eventually take over all the trees. Schroeders have lived there 53 years, and they are not ready to leave their farm, but they feel the need to start thinking about it. Schroeder's said their daughter plans to buy their home, eventually. They said they are glad to have a young couple that wants to stay in the community. They said the proposed buyer would plan to run the tree farm and do some other things on the side. Unruh said that several letters have been received, concerning this application. Brazil said he has received additional letters since the packets were mailed to members for review. Unruh asked Schroeders to draw the area on a map with a highlighter. This property was grandfathered?, Unruh asked and Brazil said yes. If they sold the entire tract, the grandfather would continue, but by changing the grandfather, they need to come in for approval, Brazil said. If they operated as a wholesale, they would not need a CUP, but by operating as retail, they need a CUP, Brazil said. Brazil explained they want to rezone the existing home site. You would continue to sell trees off your land?, Mueller asked and Lloyd said yes. The balance is cropland?, Unrau asked and Lloyd said yes. Unruh remembered another application on this property. They were looking to get a variance to 37.5 acres on each tract, but they ended up not using that, Brazil said. Did we approve that variance?, Unruh asked and Brazil said yes. Your present farm site would remain as

it is?, Unruh asked and Lloyd said yes. Unruh asked, and Lloyd said there is rural water on the property, and he irrigates the trees with well water. Unruh asked about the wastewater and Brazil said there is a new lagoon on the property. Unruh asked if it is compliant and Brazil said yes. Unruh asked if anyone from the public wished to speak. Members passed around copies of new letters received since information packets were mailed. Brazil pointed out one letter was just received at the meeting tonight, and said there were copies for all members. This is a rather high and unusual number of letters and I believe I found them all to be opposing to the application, Unruh said. Kevin Hiebert said he and his parents own property surrounding Schroeder's property on three sides, and added that his property is actually in McPherson County. Hiebert asked about the variance that was approved for this property. It never got sub divided, and there is a time limit on using it, Brazil said. And it has expired?, Unruh asked and Brazil said yes. Hiebert said his daughter is the sixth generation on their land. He said based on adjacent farmlands, a compatible use in their neighborhood is agriculture, not retail. Hiebert referred to the factors members consider for recommending a CUP. This is a fairly densely populated area, without another home, Hiebert told members. A possible flood hazard is also a serious concern, he said, and showed members a flood zone map. We have operated a livestock operation on our land for close to 100 years, and have had plans to expand our operation for some time, and the state permits are in place, he said. KDHE requires no residence within a quarter mile of our livestock operation, Hiebert said. This is not a personal issue I'm taking up with the neighbors, he said. Unruh asked how this would jeopardize the Hiebert business. Retail traffic and a new residence will not work by our livestock operation, Hiebert said. Unruh asked and Hiebert said their livestock operation is approximately 200 yards off the road. The house would not be across the road from them, it would be next to our house, Lloyd said. Unruh asked if there are flood issues, and Lloyd said no. To us, it's not agriculture, but it's using our land and it's what has kept us on the farm all these years, Marlene said. Don Hiebert said he serves on the township board (for McPherson County), and said if another tree farm is set up, we don't feel we should have to put more material on the road for them. Mark Religa said he lives down the road from this property, and he questioned the 10-acre requirement. Unruh explained the regulations, and upcoming changes. Religa asked if several homes could be put on the property. Ann Religa, Mark's wife, asked if requirements could be put on the property to only allow one home. Unruh explained the new regulations will allow homes on five acres, but also will limit one per 40-acre tract. Unruh told the public what the staff recommendation is for this application. Robert Glover said he is a neighbor, and the road to this property goes past his property, and the traffic is hard on the roads. Has traffic from the tree farm caused these road problems?, Unruh asked. I can't say for sure, but it has added to it, and I also want to know if taxes will go up?, Glover asked. It will put the property in a different tax bracket and it will be a higher tax, Unruh said. If you're looking at surrounding values, I think that changes the response, Mueller said. Our taxes almost doubled, Glover said. Unruh explained his take on the taxation base in Marion County. Brazil asked if McPherson County takes care of roads within the townships, and Don Hiebert said yes. It could be different for McPherson County, Unruh said. We figure everybody is equal in our township, and if another tree farm is added traffic will double and they are not willing to spend more money, Don Hiebert said. There will not be another tree farm, there will be one tree farm, Lloyd said. Do you anticipate about the

same number of trees, as you phase out your operation and he phases his in?, Unruh asked and Lloyd said yes. We collect sales tax every year, Lloyd said. We are agriculture and Kevin Hiebert has a retail business of his own, Lloyd said. There is no comparison to the traffic my son brings in, to what they bring in, Don Hiebert said. Zoning should not be county specific, it should be specific to the property surrounding the application, Kevin Hiebert said. The notification area does include McPherson County, and communities are considered, Brazil said. We try not to change the condition of the community, Unruh said. We give consideration to the immediate community, Unruh said. This business has been here, so it's not like a brand new business to the area, Unruh said. Unrau asked about the letter from the Kansas Livestock Association, and asked about the distance a residence has to be from a feedlot, and is there enough room? Unruh pointed out that they are not asking to change the zoning for the property for the new home. We could table this application for a month, if you feel the need for more information from KDHE, Unruh said. I'd like to know how it will work, Unrau said. If it's divided, and there is a request for construction on the 40, do you take that into consideration?, Avery asked. I have to honor a permit for 40 acres, but I look at flood zones, setbacks, etc., Brazil said. I would be glad to contact KDHE on how a new house will work, Brazil said. Any other public comments?, Unruh asked. I recommend reading the letters that were not in the member's packets, Brazil said. Unrau read a letter from the Kansas Livestock Association. Unruh read a postcard from a resident who previously sent a letter of opposition. I'll close the public hearing for this application, unless members have other questions?, Unruh asked. I do, Mueller said and Unruh said okay. Where you pointed out the first 40 acres, have you already planted trees on that 40 acres?, Mueller asked and Schroeders said yes. And, your interest would be to sell the 40 acres?, Mueller asked and Schroeders said yes. Have you considered keeping 68 acres, and we would not need a rural residential zoning in that case, would that be an option?, Mueller asked and Marlene said sure. We would need to sell more for retirement, Lloyd said. So, your interest is to sell off some now, and more later?, Mueller asked and Lloyd said yes. I think the fact that you have some density in population in the area, it would be beneficial to know about the drainage in the area, and I'd like to know if KDHE can override some of the zoning regs, Unrau said. No, I don't think they can override the zoning regs, but issues such as flood zones or setback issues are a concern, then, are we interested in providing a CUP, or zoning changes to allow activity to continue forward?, Unruh asked. So, I lean to defer this for a month, Unruh said. There are a couple of questions concerning the feedlot, Mueller said. I believe the distance separation is a quarter mile, he said. But, where does the distance begin?, Mueller asked. If they establish the permit and someone comes in and builds, does that not kill the permit?, Brazil asked. I assume it's first come, first serve, and that all has to be weighed and considered, Brazil said. I am concerned about placing undo burden on the neighborhood, and I would like to have this explored more, Unrau said. We have a livestock operation north of us, and they have no opposition, and tractors tear the roads up more than cars, Marlene said. I think the information from KDHE would be helpful, Avery said. Avery made a motion to continue this application to the April meeting, and Ediger seconded the motion.

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

I commend the Schroeders for what they have done, and I also commend the Hieberts on what they have done, and I think we can reach a compromise, Mueller said. Perhaps

Marion County can help with the road, since Marion County benefits from the tree farm operation, Mueller added. For clarity, we had two applications, and we voted to continue both of them, Brazil said.

Item 5: An application for Charles and Lynn Unruh, requesting a Conditional Use Permit for a guest house with nightly rental, for property located in Gale Township. Charles and Lynn Unruh were present to speak about the application. This property is already zoned rural residential, Bob Unruh pointed out. This property is located one mile from Marion Reservoir. Bob asked and Lynn said there is a bed & breakfast association we would like to be a part of. Do they have regulations?, Bob asked. They inspect the bed & breakfasts, Lynn said. I think her standards might be higher than most, Charles said. Lynn said there is parking in front of the house and the driveway. Bob asked and Lynn said at this point nine guests is the most, and it would be rented out as one unit. Mueller asked and Charles said yes, there is well water. Each home has a separate lagoon?, Mueller asked and Charles said yes. There is a cedar row between the homes, but we would want to put a fence up, too, Lynn said. Bob asked and Charles showed where each home is located on a map. Bob asked and was told the property is on a gravel road, and there is no rural water. Is the well water in compliance?, Bob asked. A couple of years ago I inspected it, but anytime you start dealing with the public you have to pay attention to water, Brazil said. Our water is very hard, so we would have Culligan water for our guests, Lynn said. Rural water is about a mile and a half from us, Charles said. This would not be an every day thing, Lynn said. Bob questioned traffic concerns. I can't see there would be more than if a family lived there, Lynn said. This would be a seasonal thing?, Ediger asked and Lynn said yes. We have natural gas, Lynn said. Brazil showed on a map where the lake is located. Bob asked and Brazil said there have been no letters from the public concerning this application. I would like to see some limits placed on the use for any future expansion, Brazil said, to limit the number of properties around the reservoir with this kind of access to the lake. I don't think it's appropriate to put in a commercial use next to our drinking water, Brazil said. This is fine, but I don't want a large RV park, or something, in the future, he said. If we finish off the basement, we might be able to accommodate 15 people, Lynn said. I recommend no more than 12 people, and no more than two RVs on site, Brazil said. Mueller and Brazil discussed RV dumpsite issues. If they limit the RVs, is it an issue?, Mueller asked. I'd prefer they dispose of it offsite, Brazil said. Bob asked Charles to highlight the property on a map. Bob asked if there were other questions. I can't see any problem with what they want to do, Ediger said. Bob closed the public hearing for this application. Bob asked Charles and Lynn if they are aware of signage regulations. Brazil explained this to them. Lynn questioned a sign for Country Dreams Bed & Breakfast. Mueller pointed out that the Country Dreams sign is located offsite, so that would be under KDOT (Kansas Department of Transportation) regulations. Unrau asked about ADA (Americans with Disabilities Act) regulations. The material I've read said most B & B's are not handicap accessible, Lynn said. Mueller made a motion to approve a recommendation for a Conditional Use Permit on two acres for a Bed and Breakfast facility as presented in the development plan, and include in the recommendation to limit maximum occupancy to no more than 15 total persons and no more than two Recreational Vehicles (RVs) onsite at any one time, and that all RV wastewater be disposed of offsite, that all signage comply with KDOT signage

regulations, that all parking be provided for off street, and that the cooking and drinking water supply be tested for sanitary conditions at least once a year. Unrau seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Brazil explained the timeline and the need for a property description prior to presenting this application to the county commission.

Item 6: An Application for Jeff Foster, requesting a variance from required rear setback of 20 feet to 10 feet, for property located in Centre South Township. Unruh read a letter dated March 22, 2004, withdrawing this application.

Unruh asked for a quick overview of the recent work session. Brazil explained some of the issues that were discussed at the work session, including Wind Energy Conversion Systems (WECS) overlay districts. He said WECS would be split into two categories, one for private (that would include height limits), and one for commercial. He said the overlay would stay agriculture, and it would need a CUP. Unruh asked if it would involve one CUP, or several? Unruh also asked about Coops. Unruh asked if there is another work session scheduled. The next work session is scheduled for April 15, 2004, at 7:30 p.m., at the courthouse. I think we need to address Coops, Unrau said. We need to make sure we comply with open meeting regulations, Unruh said. We also talked about putting a time limit on new construction, Avery said. There should be a certain percentage complete, she added. But, also, what happens if they are not in compliance?, Avery asked. Ediger made a motion to adjourn, and Ensz seconded the motion.

In favor: 6; Opposed: 0; Motion carried and the meeting adjourned at 9:23 p.m.

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Eileen Sieger,  
Chairman