

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

March 23, 2006

Chairman Eileen Sieger called the meeting to order at 7:30 p.m. Sieger said there is a quorum present for both the planning commission and Board of Zoning Appeals, although both applications are for the planning commission.

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

Sieger asked if there were questions about the agenda, and there were none. Sieger asked if anyone had off agenda items, and Brazil said he had an e mail to share.

Sieger asked for corrections, or additions, to the Record of Proceedings from the February 23, 2006, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Ediger had a correction on page one, where west should have read "east." Maxwell had a correction on page five, where it said he had attended a wind energy meeting, and should have read he "read about" a wind energy meeting. Unrau made a motion to approve the Record of Proceedings with two corrections and Maxwell seconded the motion.

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

Item 4: An application for Jona Prieb, requesting a lot split for less than nine acres, for property located in West Branch Township. This application was published in the March 1, 2006, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Sieger asked if anyone was present to speak about this application, but no one was in attendance. Maxwell questioned the "less than nine acres" for this application and asked if it was 6.79 acres, or what? Brazil explained he had received a call questioning the set backs for this application. Brazil said he wanted to be okay for publication purposes, and explained it needs to be on the long side, rather than the short side, to avoid the need to republish. Members questioned why the set backs on the copies of a diagram they received are not in compliance. Brazil explained the south building cannot be moved and the hay barn is coming down. Brazil discussed the Land Evaluation and Site Assessment System (LESA) for this property, saying the site assessment was low, but the land evaluation was high, as this property is located near Hillsboro. Sieger asked members if anyone is familiar with the hay barn on this property. Ediger said he was not familiar with the hay barn, because there are a lot of trees around it. Brazil suggested a motion include requiring the hay barn be removed as a condition. Brazil explained the garage on the property is grandfathered- in. Maxwell asked if members need to note that in the motion, too.

Brazil explained he has a scale drawing in the file for this property that will demonstrate this point. Sieger asked if anyone from the public wished to speak, but no one did. Sieger closed the public hearing for this application and opened the floor for discussion and determination.

Unrau questioned the timeframe on the hay barn coming down. That wasn't communicated to me, Brazil said. Should we make that a part of the motion?, Sieger asked. If it must be removed as a condition, it would not be approved until it was removed, Brazil said. All conditions must be met before I issue the certificate they need to get the deed, Brazil explained. It should be a reasonable time, Unrau said. If they never do it, it never gets approved, Brazil said. I don't think it creates any hardship to remove it before it's approved, Brazil said. I would also give them the option of moving the property line, he added. We have not changed any set backs for agriculture, Sieger said, and Brazil agreed. And, set backs will be the same if we go down to three acres?, Sieger asked and Brazil said yes. The more I think about it, the more I think we should leave it open for both options, Brazil told members. If you left it where they have to meet the 50 feet, I don't think there would be a problem there, Brazil said. There's a possibility they won't take the building down and go another route, but that was the original intent, Brazil said. If you're not comfortable with it, you can continue it, Brazil told members. Unrau asked if Brazil spoke with the applicant, or the surveyor? There were some communication issues with this application, not meaning anything negative, Brazil said. I'm comfortable we can handle it in a motion, Mueller said. Mueller made a motion to approve a short form lot split for Jona Prieb of less than nine acres in the "A" Agricultural Zone District as presented by the applicant, with three conditions: first, either remove the 55' x 20' hay barn on the north side of the property, or move the north property line to meet set back requirements; second, require that the short form lot split plat and the agricultural disclaimer be recorded by the Register of Deeds with the deed transfer; and third, require that certification of such actions be filed in the office of the planning commission. Eilerts seconded the motion. Maxwell asked if saying less than nine acres is the way to go. Sieger asked Brazil if the motion works okay as stated, and Brazil said yes. Brazil said it is approximately .83 acres that the applicant would be adding. Sieger asked what is on the other side of the property line, and Ediger said a field. In favor: 7; Opposed: 0; Motion carried.

Item 5: An application for Fred Schmidt, requesting a lot split for 6.64 acres, for property located in West Branch Township. This application was published in the March 1, 2006, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Members are acting as the planning commission for this application. Sieger asked if anyone was present to speak about this application and Jim Schmidt was present to speak. He explained that Fred is his brother. JoAnn Schmidt, Fred's wife, was also present, but did not speak. Schmidt explained his daughter and her husband wish to purchase this property from his brother. There is also a small garden shed west of the house, Schmidt said. Sieger said that is not a problem. Sieger asked if Schmidt had anything else

to add, and he said he did not think so. Sieger asked if anyone else from the public wished to speak. Ediger asked about rural water, and Schmidt said there is not rural water on the property. Ediger asked if there is a lagoon, and Schmidt said no, it has a septic system with working laterals. Sieger asked if there was anything else. Sieger closed the public hearing and opened the floor for discussion.

Eilerts asked Unrau if he is familiar with this property, and he said yes, it's clean. Eilerts made a motion to approve a short form lot split for Fred and JoAnn Schmidt of 6.64 acres 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 and that certification of such actions be filed in the office of the planning commission, with the reason being the application meets zoning approval requirements for a short form lot split in an "A" Agricultural Zone District. Unrau seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Brazil pointed out that both applications were existing home sites and as of the 20th, it's now an administrative review, so members won't be seeing any more of these applications.

Item 6: Members consider zoning and subdivision regulation changes from the county commission. Brazil explained that that county commission is asking members to approve these revisions, and members in turn will respond. Brazil said if members do not respond, it will still go back to the county commission and they will take action as they see fit. Brazil reviewed which proposed changes have been approved, and which have partially been approved. He said all approved changes will begin on the same date. Brazil explained one of the proposals that county commissioners sent back for review asks members to change new home sites from five to three acres. Brazil said county commissioners also did not approve the proposed change in terms of the growth areas, as they would like the density changed for the entire county, not just in the growth areas. Brazil said only part of the subdivision regs were approved. He said the county commission also wants flood hazard zone wording to read not for 50 percent of the property, but if all improvements could be out of the flood zone, it is okay. I'm following statutes for the approval process, Brazil told members. Members said Jim Kaup asked if the county commission wanted changes to fit with the comprehensive plan, and they said yes. Since then, the county commission is interested in a density change, which really does apply to the comprehensive plan, Brazil told members. Maxwell asked about resolutions. The resolutions have been published, and are in place, Brazil said. From the recommendations you made, they have partially approved them, Brazil told members. The other components are still hanging out there, so you have to review again, and then it goes back to them, again, he said. If you don't make changes, it goes back to them, and they will make their decision, Brazil told members. Mueller said he identifies four issues. On the proposal members sent

the county commission, they approved all but the following: Article 2, Section 2-1025 concerning new dwellings going from five acres to three acres; Article 6, 3A #10, asking that infrastructure be located outside of the flood zone; that LESA apply to all residences; and last is the density issue. As for new construction, five acres was recommended, unless there are some new ideas, Mueller said. I would hope we would go with what we originally intended, Mueller told members and, members all agreed. Mueller made a motion that the planning commission stick with the previous recommendation for Article 2, Section 2-102, paragraph 5. Maxwell seconded the motion.

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

Members addressed the flood zone proposal for Article 6, 3A-10. Mueller asked Brazil for his opinion. Ultimately, if you're looking at where all the infrastructure can be located outside the flood zone, I'll be the one to make the judgment, Brazil said. It puts more responsibility on the administrator, he said. It also means that any future construction also has to be located outside the flood zone, Sieger said. If you determine it won't work, would it be denied for that reason?, Sieger asked. You're putting more responsibility on the administrator and if you can't meet all the requirements, it would not be approved, Brazil said. So, would it come to the BZA?, Sieger asked. As you get into smaller and smaller lots in the flood zone, there is no place to go, Brazil said. In some ways, the change would meet the goal, Mueller said. There are ways structures can be made to be flood proof, or the land can be raised, Brazil said. The planning commission would make more of the judgment the way it's worded now, and if it is changed it would put more responsibility on the administrator, Brazil said. Eilerts asked if there have been applications in the past where they have raised the land, and Brazil said he is not sure. I think the request for the change on this is very reasonable, Eilerts said. Brazil suggested using the word "structures," instead of infrastructure. Members agreed that would cover all points involved. Members discussed the best way to word a motion for this. Right now, no structure can be located in the 100 year floodplain, Mueller said. Unless it's constructed in a way to make it meet requirements, Brazil said. Brazil suggested that all present or future structures must be located outside the 100 year floodplain. They want to look at if it's possible to put structures on the property outside the floodplain, and if it's not, Brazil explained. Members agreed to leave "A" as is. It was suggested using no lot split would be approved if any existing or future structures are, or would be located within the 100 year floodplain. Mueller asked if that would be workable and Brazil said yes. Not sure how you determine it, Brazil said. Basically, somebody needs to go on site and make a judgment, Brazil said. Why would anyone want a lot like that?, Ediger asked. Brazil said he will run changes by Kaup. Mueller made a motion to recommend to the county commission changes to Article 6, 3A #10, to read; no lot split shall be approved if the lot is for residential purposes in the agricultural district and any existing, or future structures are, or would be located within the 100 year floodplain; subject to review by Jim Kaup. Ediger seconded the motion.

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

Members discussed the density and LESA issues, next. This is a pretty tricky road, Brazil said. I think there is some difference between large and small acreages, Sieger said. There is some very good rationale for applying it to small acreages and not large ones, Sieger said. LESA is designed to raise the bar, Brazil said. I think it would be too restrictive on large acreages, Sieger said. I agree, Eilerts said. Brazil read the purpose and intent for LESA. You're going to have to reword the comprehensive plan, or you're going to have to add some words, Brazil said. A residence as part of an ag operation is just that, its part of an ag operation, Brazil said. Ediger asked if this involves only residences, or all structures? Residences that go along with ag operations are there to support the ag operation, Brazil said. LESA is to help determine which sites are appropriate for residences and which sites are not appropriate, Brazil said. There isn't any perfect system, he said. If the local jurisdictions take time to use LESA it helps you to determine what areas should be developed, and which should not, he said. Dickinson County is now looking at the LESA because we are using it, and there are others that are becoming aware, Brazil said. Sieger said she believes consultants recommend using the LESA in all the plans they do. If it were to be applied across the board, I'm not sure it would be as effective, Brazil said. I would say we need to go on the record defending the LESA system, Unrau said. Unrau told members about an article in the *Newton Kansas* from earlier in the week, telling about a proposal northeast of Halstead, for a golf course. He said they want to put in a driving range and a housing development, and they want Halstead to annex the property. It was interesting to me, because the farmers asked them to listen to the planning and zoning, who were strongly objecting to this, Unrau said. They are concerned about water and sewer, and they want Halstead to run services to the property, he said. I think we need to support LESA, Unrau said. I want all the rules to be the same, across the board, Brazil said. Just like there are more rules for semis than for passenger cars, and you have to recognize the difference, he said. I will do what is necessary, but I believe LESA is right for small acreages, Brazil told members. Maxwell asked, and Brazil said most farmers want to preserve as much farm ground as possible, or in another case, the owner may not be associated with agriculture, Brazil said. I think it gives you a little control over a developer that may come in and he's looking at it as how he can develop it and make dollars off it, Maxwell said. I've been directed, and I've contacted Jim Kaup already, to develop language to the comprehensive plan in regard to a density change, so over the next week Jim Kaup will be developing the changes with me, as needed, throughout, Brazil told members. You're probably talking about language in a paragraph that would be inserted, as needed, Brazil told members. Mueller asked how long the comprehensive plan has been in place, and was told since zoning began in 1992. Originally there was a development plan from 1972, and it was utilized as a comprehensive plan, Brazil said. One hold back may have been the cost involved, Sieger said, and Eilerts agreed. You go through all the public hearings to develop the plan, you have two factions, one wants to preserve agriculture and the other wants to develop property, and the consultant had to balance it out, Brazil said. The other philosophy is, don't bother me, I should be able to do what

I please with what I own, Sieger said. Preserving ag use is no different than preserving the top soil in 1935, Brazil said. Brazil gave members copies of an e mail from Steve Schmidt of McPherson. Members continued to discuss changes requested by the county commission. What benefit, at what cost?, Maxwell asked. Unrau said there is no guarantee we are going to get more people in the county by doing this. Members want concrete evidence of benefits that will occur by making the changes. Mueller said he suggest a summary of the position of the planning commission.

Mueller made a motion stating the planning commission does not support applying the LESA system to all residences developed on 40 acres, or greater. There are appropriate and inherent reasons to apply LESA to smaller residential acreages. It would be restrictive on agriculture (greater than 40 acres) acreages, and agricultural operations.

The planning commission does not support changing the net density. Fourteen years of input into the comprehensive plan, public input, and public hearings support the current net density process of one residence per 40 acres. The recommended lot split process has addressed the issue of "owning" 40 acres to build a residence. The change of philosophy to 16 per section, or 12 per section, has too many negative concerns, with complicated administration, and the potential for undesirable development. Maxwell seconded the motion. Mueller added four words (to build a residence) and Maxwell agreed to the change. In favor: 7; Opposed: 0; Motion carried.

Off agenda items. Sieger noted members already received a copy of the e mail Brazil was going to share in off agenda. Brazil said it was asked at last month's meeting how many acres are in our overlay district, and he said it is approximately 43,500 acres. Mueller asked Sieger to please send a response to Steve Schmidt from the planning commission. Sieger said she has told him she appreciates his interest and asked if he wanted her to share a copy of his e mail with members, and he said yes. Sieger agreed to reply to Schmidt's e mail. Brazil went to the regional solid waste meeting last night, and said in April or May; McPherson County will address a CUP (Conditional Use Permit) for a landfill. Sieger said the next meeting is scheduled for April 27, 2006. We may have months when we don't meet, unless you want to do training, Brazil told members. Unrau made a motion to adjourn and Ensz seconded it. In favor: 7; Opposed: 0; Motion carried, and the meeting adjourned at 9:54 p.m.

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Eileen Sieger,
Chairman