

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

March 28, 2002

Chairman Eileen Sieger called the meeting to order at 7:33 p.m., with a quorum present.

Roll Call was answered by Sieger, Mary Avery, Marquette Eilerts, Oliver Unruh, Bob Unruh, Elora Robinson, Ervin Ediger, and David Mueller. Glen Unrau was absent. Zoning Administrator David Brazil was present.

Members welcomed Mary Avery. Sieger asked if anyone had any questions about the agenda, or additions to off agenda items.

Sieger asked for corrections or additions to the Record of Proceedings for the February 28, 2002, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Bob Unruh had two typographical corrections on page two. There were no other corrections or additions. Eilerts made a motion to accept the Record of Proceedings with two corrections and Robinson seconded the motion.

In favor: 8; Opposed: 0; Motion carried.

Sieger explained to Avery there are nine members on the planning commission, but at the last meeting seven of those members were assigned to the Board of Zoning Appeals, as well. Sieger said this meeting's applications are both for the planning commission, so everyone will be involved.

Item 4: An application for Morning Star Church, requesting a Conditional Use Permit (CUP) for the church, which is located in Logan Township. This application was published in the March 6, 2002, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Sieger explained that members have received information concerning this application, and Brazil has photos to view. Calvin Wiebe was present to speak about the application. He said the old church's loft was too small to build onto, so church members decided they needed more ground to work with. They have added three acres, so they own about five acres, total. Sieger asked and Wiebe said yes, the old building would be removed. Wiebe said there are no plans at this time for a sign. Eilerts asked about regulations for signs. No larger than 4 x 8 is the precedent we've set, Brazil said. When we update our zoning regs, that's a chapter I hope to add, he said. We have no sign now, and have not discussed the size of a sign, if we would consider one, Wiebe said. This property is currently zoned agriculture, and was brought in as a non-conforming use, but in compliance, Brazil said when Sieger asked. Sieger asked and Brazil said he recommends approving a CUP on five acres. Sieger asked about parking and was shown the parking area on a diagram. We may not use the whole parking area, but it would be available if there was a large funeral, or something, but not very often, Wiebe said. The church will go from 5,000 square feet to just over 10,000 square feet, Wiebe said when Sieger asked. Sieger reminded members to look at the 11 factors to be

considered in a CUP recommendation, which were included with the staff report for this application. Sieger asked and Brazil said the nearest residence is to the south and west. They have some high clay content soils, so I'd rather go with a wastewater lagoon, than a septic, Brazil said. There is a possibility of using an alternate system, but the expense would be more and I recommend the lagoon, Brazil said. Bob Unruh questioned why the present septic system would not work. This will be for a larger congregation and how old is the system?, Brazil asked and Wiebe said 40 years old. The design system of 40 years ago does not compare to today, and 40 years ago there wasn't a sanitary code, Brazil said. Is there enough space for building, parking and a lagoon system?, Oliver Unruh asked. We're talking less than 100 feet square for the lagoon, Brazil said. Does anyone from the public wish to speak?, Sieger asked. Is there anything else you'd like to add?, Sieger asked Wiebe. We may not begin building for a while, yet, Wiebe said. The zoning regs is six months, but we've extended that out to a year before, but since the church is in use I don't think it's a problem, Brazil said. Sieger closed the public hearing and opened the floor for discussion and determination.

I would like for us to try to more consistently put some of the factors into our motions, Sieger told members. And we might want to include something about the wastewater system being in compliance, and David mentioned something about the parking situation, she said. The congregation is how big?, Brazil asked and Wiebe said 130 people. The new church will seat up to 200, Wiebe added. Bob, you were asking about the wastewater system, and I'm comfortable with an alternate system if that's the way they want to go, Brazil said. It will probably involve an engineer, because you'd probably be looking at a mechanical system, but that's their choice, Brazil said. You're looking at a large field and a mechanical pressurized system, and there are some risks, Brazil said. Bob Unruh made a motion to recommend approving a CUP for Morning Star Church on five acres located pt. of SE/4 of 13-17-1 in Logan Township, as this application is in compliance with CUP factors 4, 6, 8 and 10, with the requirement that the wastewater system be brought into compliance with the sanitary code, but the options for the type of wastewater system be left to the owners. Mueller seconded the motion.

In favor: 8; Opposed: 0; Motion carried.

Item 5: An application for Debbie Mackey, requesting a rezone from agricultural to rural residential on property located in Menno Township. This application was published in the March 6, 2002, issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Sieger reminded members they are once again acting as the planning commission for this application. Members have copies of information about this application, and an aerial photo of the property. Roy Mackey was present to speak about this application. He said the property is zoned ag wasteland. He said the appraiser's office listed it as commercial. Mackey explained there have been motorcycle races on this property for a number of years. Mackey's family has moved to Fort Collins, Colorado, from Newton, and they no longer have time for the racetrack and think it would be a nice place for a home, and there would not be a traffic problem, anymore. We had some problems in Harvey County with planning and zoning about passing up sites like this without 40 acres, and I always voted favorably on applications such as this because this is ag wasteland and will not be taking any land out of ag production, Mackey said. We put

in rural water, and rocked the road a quarter mile from the facility, to the west, Mackey said. Some folks out of Hillsboro have offered us a contract on the place, so we are asking you to consider our application, Mackey told members. When was it a racetrack?, Sieger asked. Since the late 60's, Mackey said. We bought it like that, he added. We found if we didn't go out regularly, it was a prime location for parties and vandalism, which is frustrating, and we can't go out there all the time because of my job, Mackey said. So, one way to solve it is to have someone live there, he added. I drove by there, yesterday, Sieger said. It is 18 acres, right?, Sieger asked and Mackey said yes. There was never a home site on the property?, Sieger asked. I don't think so, there is a concrete slab and an outbuilding, but as far as anyone living there, I don't think so, Mackey said. Mackey's have owned this property about seven years. If someone were to build on the property, how would they make it level so a home could be placed?, Sieger asked. There are several areas where a home could go, Mackey said. Would you say it would take extensive work to make it a home site?, Sieger asked. I don't think so, Mackey said. Is there any intention to continue with the track?, Brazil asked. We have a couple options if you don't rezone it, Mackey said. Would this be an acceptable use?, Sieger asked. As long as they maintain the non-conforming use, I think it's okay, Brazil said. This year's taxes were \$1,500 plus, on 18 acres and they had it zoned commercial, Mackey said. You're grand-fathered non-conforming use and it's essentially like having a non-conforming use placed on top of the zone, Brazil said. The tax and commercial status would not bother me if I had agreed to that, and if it were going to be appraised and taxed as commercial, then I would want to be using it as commercial, Mackey said. Does anyone from the public wish to speak?, Sieger asked. Jayson and Jan Hanschu were present and Jayson wished to speak about this application. Both he and his wife were born and raised in Marion County and they wish to purchase this property and build a home, he explained. Pat Nuss suggested we look at Happy Hills Racetrack, and we have a contract signed and a price agreed upon, if we get zoning approval, Hanschu said. We have no intention of running a racetrack, he added. Hanschu gave members an outline of their plans, and showed members photos. Some of the photos showed trash on the property and Hanschu said they counted at least 300 tires, and said when you take those up you're probably going to find more underneath. Part of the contract with Mackey's is to remove the tanks on the property. I don't want to use the word eyesore, but we have plans to improve this property, Hanschu said. The neighbors say the noise from the racetrack is a concern, as is the trash, which goes through the neighbor's farm equipment, Hanschu said. It's not suitable for farming, in my opinion, Hanschu said. I grew up on a farm and I wouldn't want to run farm equipment over this property, he said. Other than goat farming, I'm not sure what anyone would do with this property, he added. Hanschu showed members two sketches in watercolor by a high school student, imaging what this property could look like without all the barrels, etc. The scenery is great out there, Hanschu said. I have talked with the soil conservation people and they said it looks like there already was a pond there, in the past, Hanschu said. I contacted Mr. Brazil about wastewater, etc., and a lagoon seems to be the way to go, Hanschu said. I figured \$500 to \$1,000 expense to dispose of the tires out there, as I will dispose of them properly, he said. I do not have an official survey, but in my opinion, looking at the map, none of the property is in the flood zone, Hanschu said. There already is rural water on the site, he said. The road is already rocked, as Mr. Mackey mentioned, Hanschu said. It is

landlocked, so if we need more acreage, we would be taking land away from production, as all around this property is farmland, Hanschu said. He showed members photos of their property in Wichita, to show pride of ownership. We have construction contacts with my wife's family, and they said in a couple of days those hills could be leveled out, Hanschu said. We could spend the rest of the year cleaning up the property, then build in the spring, although we'd like to be in our new home by Christmas, he said. This is an emotional deal for us, he said. This is something we've put a lot of thought into, he added. Hanschu thanked members for their time and asked if there were any more questions. Ediger said he lives two and a half miles from this property, and asked if anyone feels he has a conflict of interest with this application, but no one thought there was a problem. This would cut down our weekend traffic, considerably, and would make the area safer and my neighbors would be glad to hear this, too, Ediger said. Eilerts questioned the tires. Mackey's said it's 40 years worth and they inherited most of them. Mackey's said people have been known to go ride motorcycles on the property, even when no one was there. If you build out there, you better take every track out, or you'll probably have company, Sieger said. I will immediately put liability insurance on the property and will post it, Hanschu said. Is there anything else?, Sieger asked. Those are permanent boundaries around the property?, Oliver Unruh asked and Hanschu said yes. Sieger explained that Hanschu could purchase more acreage, but allow the ag use to remain the same. Bob Unruh asked where they planned to place the home, and Hanschu showed him on a map. Does anyone else from the public wish to speak?, Sieger asked. Dallas Jost and his wife were present and he said they live a half mile to the north of this property and they are in support of Hanschu's plans. Mackey explained how the property was surveyed, and said you actually have a little more ground than where the fence line is. A precedent that has been set of not recommending non existing home sites out in the county, and I'm concerned with this because when you set a precedent you have to be prepared to defend all the past applications and all those in the future, so would it be a possibility to purchase more acreage?, Sieger asked. The reason I asked that question is because it looks like the property is a separate parcel, in itself, Oliver Unruh said. Sometimes you need to make allowances for less than 40 acres, in order to avoid taking farmland out of production, Mackey said. We are bound by the regulations we have now, Sieger said. There are possibilities of changes in regulations down the line, but they are not in place yet, and we are bound by what we have now, she said. I would not have approached you if I didn't think we had a case, Hanschu said. We feel this is a unique piece of property, he added. We appreciate your very detailed and extensive presentation, but we have to make decisions on land use and not what nice people you are and what a good presentation you made, Sieger said. Hanschu asked about exceptions that had been made. I can't think of anywhere there was no existing home site, Sieger said. Could we rephrase the question, as has there ever been a situation similar to this?, Mueller asked. We have approved at least one site, Bob Unruh said. Yes, I remember, it was originally denied and came back, you're right, Bob, Sieger said. Shawn Edwards asked to speak from the audience. He asked that members look at the best interest of the land, countywide, and I think most people here would agree a racetrack is not the best use, he said. Paula Jost said she would be thrilled to have them as neighbors and get rid of the racetrack, because we cannot take bike rides with our children due to the traffic. Sieger asked about access. Although the road to the east turns to dirt, a paved road is one mile to

the south. Sieger closed the public hearing for this application and opened the floor for discussion and determination.

You could make a good argument for a zoning change to eliminate the non-conforming use, Brazil said. But do you want to change the precedent?, he added. But how compatible is a non-conforming use verses how compatible is the surrounding area to a residence?, Brazil asked. It is zoned ag, technically, Sieger said. At one time there was a 40-acre parcel, Brazil said. The non-conforming use is going back to use as a racetrack and if a home were built, there would be no need for the non-conforming use, right?, Mueller asked and Brazil said yes. We need to look at the factors, whatever we do, as we are bound by the factors, Sieger said. Sieger questioned if it is a suitable residential site when she viewed it, but he has answered a lot of the questions, she said. Public opinion supports it, the acreage supports it, the area is not up to the traffic loads, the roads are not up to the traffic loads....., Bob Unruh said. Make sure to state what makes it unique, Sieger said. The existing use of the property, as the current use definitely is not ag, it's unique because the potential user has access and ability to make it a residence and we're eliminating a hazard and the final thing is it is an existing tract, which has not been carved out, Mueller said. Do we need to include removal of tires?, Sieger asked. We have more latitude to do that with a CUP than with a rezone, Brazil said. Do we want to rezone the entire acreage, or just a portion?, Bob Unruh asked. If you choose to go that route I would recommend rural residential for use as defined in Article 3 of the zoning regs, Brazil said. Sieger looked at Article 3. Brazil said members also need to look at the supplemental piece with Article 20. Eilerts questioned page 18, under definitions, #180 of rural residential. What other ideas, or discussion?, Sieger asked. Bob Unruh made a motion to recommend approving the request for a rezone on property located pt. of E/2 of 13-20-1, owned by the Mackey's of 18 acres from agricultural to rural residential, as this application complies with numbers 6, 8 and 12 of the factors to be considered in a change of zoning classification, with the condition that the new owners be diligent to clean the property so it is environmentally safe. Mueller questioned if should add some of the reasons this application is unique? I would restate that we need to be sure that we feel this property is unique, Sieger said. Eilerts asked if Bob Unruh cared to add more to his motion, such as eliminating the racetrack? Bob Unruh suggested calling for a second to his motion and then if members want to amend the motion, they may. Mueller seconded the motion. Eilerts amended the motion, stating this is a unique property as the existing property is not consistent with agriculture, this will eliminate a hazard, and the 18-acre tract is not carved out of other farmland. Mueller seconded the amendment.

In favor: 7; Opposed: 1; Motion carried to amend the original motion.

Eilerts asked Bob Unruh if he would state why he opposed the amendment. I don't think it's necessary and I take opposition to the fact that we don't want property carved out, Bob Unruh said. We probably won't have another one for a year, he added. What we have found before is when we make exceptions, realtors and others have come back and asked why, Eilerts said. Members will now vote on the previous motion, as amended.

In favor: 8; Opposed: 0; Motion carried.

Brazil explained the timeframe for this application to go before the county commission.

Off agenda items: Sieger asked if anyone has anything for off agenda? Ediger said he has a question. Ediger wanted to know a little more about members receiving phone calls. As members, when should we stop talking to them, if they have questions?, Ediger asked. My concern is, if they are trying to sway you one way, or another, if they are talking about a particular application, Sieger said. Or if you feel if they talk to you any time at all, to please state this in our meetings, because I think the preference is for them to present it here, because it should be in an open meeting, Sieger said. They'll ask for an opinion, but never give them one, Oliver Unruh said. I'm one person, I'm not all nine, and I can't speak for the others, Ediger said. I agree with Oliver, it gets sticky, Ediger added. We are very similar to a jury, and you have to be objective, Sieger said. One thing I have a problem with is we're bound and even though it's unique in itself, I'm sure the other places are just as unique, Oliver Unruh said. Public welfare and safety was a biggie, here, Sieger said. Eilerts asked if replacing numbers with regulations would be a good idea in the Record of Proceedings. We usually do not write all that out, as you can refer to the regulations. Eilerts suggested possibly attaching the regulations referred to, when giving the county commissioners a copy of the Record of Proceedings. I don't want the county commission to go through the same procedure you do, Brazil said. Perhaps we could give them one copy and they can refer to it each time, as needed, Brazil said. We could ask them how they would prefer it, Eilerts said. Whatever precedent you set, you can't keep going out and out and out, Brazil said. Bob Unruh questioned the status of the comprehensive plan. The county commission has decided to table it until they have a couple irons out of the fire, Brazil said. Sieger reminded members the next meeting is on April 25. Ediger made a motion to adjourn and Mueller seconded the motion. In favor: 8; Opposed: 0; Motion carried and the meeting adjourned at 9:33 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



Eileen Sieger,
Chairman