

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

May 23, 2002

Meeting was called to order by Chairman Eileen Sieger at 7:31 p.m., with a quorum present.

Roll Call was answered by Sieger, Ervin Ediger, Oliver Unruh, David Mueller, Mary Avery, and Bob Unruh. Elora Robinson arrived a few minutes late. Glen Unrau and Marquette Eilerts were absent. Zoning Administrator David Brazil was present. Sieger said she has visited with Unrau, who is concerned about missing several meetings. Sieger said Unrau has had important conflicts, but that she appreciates him being concerned.

Sieger asked for corrections or additions to the Record of Proceedings for the April 25, 2002, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Mueller made a motion to accept the Record of Proceedings as written and Bob Unruh seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Item 4: An application for John and Paula Flaming, requesting a rezone from agricultural to rural residential, and a variance from required 10 acres, to six acres. This property is located in Menno Township. This application is two parts, the first part is the rezone request and all members will participate. The second part is the variance request, and only Board of Zoning Appeals members participate. This application was published in the May 1 issue of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette*. Robinson arrived at this point. Sieger asked if the applicant is present? John and Paula Flaming were present to speak about the application. Paula Flaming explained they are requesting a 10-acre rezone out of an 80-acre parcel, which they own. She said the 10 acres would be cutting the 80-acre field in half and they have a different boundary written up, other than what members received in their packets. Sieger asked and Flamings showed members a sketch on a map of their new proposed boundary. John Flaming explained they changed the boundary in order to have access to the hay field. Sieger asked what buildings are on the 10 acres? The 10 acres includes all buildings, the lagoon and a 50-foot setback from the house on the west side, John Flaming said. Is it basically a rectangular shape?, Sieger asked and Paula Flaming said almost. We changed it so we don't have to drive through tilled ground to the hay field, she explained. Are you currently living here?, Sieger asked. We just moved out, Paula Flaming said. So, would there be access to all farming?, Sieger asked. We hope to work with the buyer to use the driveway, but we could go through the pasture or request a culvert for access, if we can't use the driveway, John Flaming said. Are you talking about a verbal agreement, or an access easement?, Brazil asked and Flamings said they are not sure. Brazil explained it could be part of the deed. Oliver Unruh said you might be better off just to request a culvert. Bob Unruh asked Flamings to clarify the boundary. John Flaming said they have not had it surveyed, yet. Bob Unruh went by the property, yesterday. Bob Unruh questioned if there is a dividing line between the fields? It's all one, John Flaming said. I think the county can give you a culvert at taxpayer's expense, Bob Unruh told Flamings. They have certain criteria, Brazil said. I should retract that and say check with the county, Bob Unruh said. Bob Unruh questioned the request for six acres. We want to keep as much for haying, as possible,

Paula Flaming said. So, part of your request is still for a variance?, Sieger asked. Well, yes, Paula Flaming said. Sieger explained that farm boundaries could remain the same, if property owners agree. Is there rural water, or well water?, Sieger asked. Rural water, Paula Flaming said. There is a well on the property, too, John Flaming added. There are three other properties in the section, as far as rural residential, Sieger said. Do you have people interested in the six acres?, Sieger asked and Paula Flaming said yes. Does the new boundary split the property in two?, Sieger asked and Paula Flaming said no. Do you think there might be an option to continue haying the four acres?, Sieger asked. With the current buyer we could, but if they sell the property again, we might not be able to, John Flaming said. Six acres includes all the out buildings and the lagoon, John Flaming said. Sieger asked if anyone from the public wished to speak. Glendene Flaming said she would like to speak in favor of it. She said it is an existing farm and we want to keep as many tillable acres as possible and I don't think the buyer really wants any more acres. Pete Flaming said he is the closest neighbor, and family, and has no objection. He said he sees it as an opportunity to keep as much tillable ground, and six acres makes a nice rectangular piece of ground. John Flaming said there are a 50x60 machine shed, two old barns, and an old chicken house on the property. He added that the grain bins would be moved, as he is moving his farming operation to his parent's farmstead and will live in his parent's house. Sieger asked if there was anything further. Sieger closed the public hearing for this application.

Sieger referred members to zoning regulations and the staff report. An existing farmstead is consistent with other applications and zoning in the area, she said. Do we do it in two parts, then?, Robinson asked and Sieger said yes. Bob Unruh made a motion to recommend a rezone for 10 acres from agriculture to rural residential for John and Paula Flaming's request as presented, adding that the change in zoning applies to numbers one, two, five and eight of zoning regulations, to support this application. Robinson seconded the motion.

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

Now members of the Board of Zoning Appeals discuss the variance request from 10 to six acres. Sieger reminded members to look at a different set of conditions, in order to grant this. Sieger reminded members that precedents are set when you do something different and we have worked hard over 10 years to keep 10 acres with existing farmsteads. We have only granted a few of these applications, she said. There are ways it can be accommodated, she added. Mueller questioned Brazil's recommendation for 10 acres and to deny the variance. I didn't see any unique conditions, plus the precedent we've set over 10 years where a variance has been granted, usually there have been specific conditions and situations, Brazil said. We could be placing land in more of a subjective position, as I only see the property meeting numbers two and four, Bob Unruh said. He added that he questioned if this application can meet numbers one, three or five. We could be putting the four acres in a position that may, or may not, be kept in farmland and may, or may not, be taken as good of care of, Bob Unruh said. Eventually, we may be looking at some zoning regulations, which may change things, but we have to look at what we currently have to go by, Sieger said. Sieger questioned the setback for the lagoon, asking Brazil. John Flaming said he did not know he needed 50 feet from the lagoon, and the pasture is actually behind the lagoon. Brazil explained the separating distance is 50 feet from the property line. We could extend it, I guess, to a little more than six acres, John Flaming said. The real purpose is to have a buffer zone between residential and ag operations, and the more distance you put between

there, the less chances for headaches you'll have in the future, Brazil said. One example is when farmers put hay bales around on property lines and leave them there to rot away and it is also a fire hazard, so there again if you have a little more space you have a little more control, and spraying is another issue, Sieger said. Those are viable examples, but I don't think this applies in this case, Mueller said. You can't apply it to the people, because zoning stays with the land, Sieger said. Sieger reminded members the first part is a recommendation that goes to the county commission for final approval, and the variance is a final action. The setback for the lagoon is an issue, Sieger said. I imagine you could add 1/10 acre and that would do it, Mueller said. Just go back to the north?, Sieger asked. That would be the easiest solution, Brazil said. Bob Unruh referred members to the five conditions, which must be met to grant a variance. On number one I'm not sure this property has uniqueness to it, Bob Unruh said. Number two is okay, he said. On number three it is a little difficult to surmise the creation of a hardship, he said. Number four is okay, he said. On number five, it does not meet numbers one or three very well, he said. As much as I'd like to help these folks out, I don't know that I can justify the variance and it doesn't really seem to fit, Bob Unruh said. Our issue is land use, Sieger said. If we're looking at land use, I could argue it would be better to grant the variance and keep the land in production, Bob Unruh said. We have to work with what we have, Sieger said. I would agree with a lot of what you said, Mueller said. Mueller questioned an example of a unique situation. We have granted very few from 10 acres, Sieger said. Brazil said most were short acreages, one with a gully with a 15 foot drop, and to put additional acres in there would have thrown the whole piece off. The property does get extremely rough, behind the house, Mueller said. I commend the applicant with coming up with an alternate plan, he added. You do have to consider precedents, because if the next one says they want to go down to three, or four, what do you do?, Sieger asked. Do we have numerous properties that are less than 10?, Bob Unruh asked. Two, or three, are less than 10 acres, or one, for sure, Brazil replied. Glendene Flaming, in the audience, said there is even room for the 50 feet, for the buffer zone. A buffer zone is different than a setback, Sieger explained. A buffer zone allows for room between a rural residence and an ag operation, she said. Pete Flaming began to speak from the audience, but Sieger apologized, explaining the public hearing has been closed for this application. If you stretch it to the limit, it is still possible to create this without doing something unusual, and I just don't see it, Bob Unruh said. Bob Unruh made a motion to deny the request for a variance. There was no second to the motion. The motion died for lack of a second. Mueller made a motion to approve a variance of 3.5 acres, due to the unique condition of the property to the north. Robinson seconded the motion. I strongly recommend not approving this, Brazil said. I know we all understand where they are coming from, but this will open up the door with a lot of applications coming to you, he said. Sieger explained that in the process of adjusting the zoning regulations, things might be more flexible, but not yet. How long?, Robinson asked. A year?, she added. I'm guessing a year and a half, Brazil said. We also need to mention that other people who have been denied may come back to us, because there have been a number of people who went to 10 acres, even though it wasn't their first preference, because they knew we have a 10 acre requirement, Sieger said. We did have work-study on this, and it has been an on-going issue, she added. I feel we do have some degree of uniqueness, due to the topography, the hay and natural fence lines, Mueller said. I don't feel it's without any merit at all, he said. I do feel there is some uniqueness, he added. If the boundaries were moved back, is there a fence there?, Sieger asked. Maybe a tree line, Mueller said. It's a wooded area and we don't hay it, Flamings said. I don't want to split the 80

in two, Bob Unruh said. Any further discussion?, Sieger asked. There is a motion and a second on the table to approve a variance down from 10 to 3.5 acres.
In favor: 3; Opposed: 2; Motion carried.

Item 5: An application for Kenneth and Lois Frey, requesting a rezone from agricultural to rural residential for property located in West Branch Township. This is another two-part application. This application was published in the May 1, 2002, issue of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette*. Kenneth Frey spoke about the application, explaining the reason for the 9.1 variance request is to maintain 40 acres. The total property is 50 acres?, Sieger asked. There will be 40.69 left after taking 9.1 acres out, Frey said. So, a little over 40?, Sieger asked. The back line is a hedgerow, Frey said. Frey showed members the outline of the 9.1 acres on a map, and where the farmstead is. Frey showed members a copy of the survey, which was not in their packets. Sieger asked if there are photos to view, and photos were passed around for members to see. Bob Unruh asked if Frey acquired this property in 1999? That's when we traded, Frey said. In 1999 we straightened up some of the boundaries, but we've owned this property for years, Frey explained. So, why can't we add the 9/10?, Sieger asked. Because it belongs to other property owners, Bob Unruh said. And that's where you traded around?, Sieger asked. So, if you add a little on, to make the 10, you'd take it down to less than 40?, Sieger asked and Frey said yes. Do you live on this property?, Sieger asked and Frey said yes. Yes, we've lived there 30 some years, he added. Sieger asked and Frey said the property has a new lagoon. 60 feet from the east boundary and 70 feet from south of the configuration, Frey said. Sieger asked and Brazil said yes, he has checked the lagoon and there are just some final things to do. Are you planning to sell?, Sieger asked. Yes, we plan to sell at this point, Frey said. We figure it's better to make the move to town while our health is still good, he said. Other questions, or more information?, Sieger asked. Sieger looked at the zoning map and said there are several other rural residences in the area. Did this used to be a little village?, Bob Unruh asked and Frey said yes. Does anyone from the public with to speak?, Sieger asked. Is this pasture grazed, at all?, Bob Unruh asked. The west side has places you don't walk through, but the east side may have some possibilities, Frey said. Is it mostly hedge trees?, Bob Unruh asked. Hedge and walnut trees, Frey said. Anything else?, Sieger asked and Frey said no. Sieger closed the public hearing for this application and opened the floor for discussion.

The first part will be on the rezone request from ag to rural residential and all participate, Sieger reminded members. I did have someone going to buy it and when the rezone came up, I guess it took too long for them as they wanted it right away, Frey said. Hopefully you won't have a problem, Sieger said. I have someone else looking, Frey said. There are other similar properties in the area, Sieger said. Is this a two part thing, too?, Robinson asked and Sieger said yes. Several of these properties appeared to me, yesterday, to be less than 10 acres, Bob Unruh said. But, right now we're not yet discussing that issue, Sieger said. Mueller made a motion to recommend approving a rezone as provided in Kenneth Frey's application, due to factors two, four, five, six and eight. Avery seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Members are now acting as the Board of Zoning Appeals to address a variance request from 10 to 9.1 acres. There are some issues here with keeping the rest of the property together, Sieger said. Was this like this for years, and you decided to change it?, Sieger asked. Before something happened to us, or the neighbors, Frey said. I do appreciate him trying to keep the 40 intact,

Sieger said. There are other small acreage lots in the area, Mueller said. Sieger asked what Brazil was figuring on his calculator. Just trying to check how you could make it 10, Brazil said. If you make it 10, you make a noncompliant tract around it, Bob Unruh said. In my opinion, it seems to better meet the five conditions, Bob Unruh said. Bob Unruh made a motion to approve a variance of .9 acres for Kenneth Frey and submit this based on it does meet the five factors. Oliver Unruh seconded the motion. In favor: 5; Opposed: 0; Motion carried.

Sieger explained the first part of this application will go to the county commission for final approval, and Brazil explained the timeline. Frey gave Brazil a copy of the survey and asked if there is anything else he needed to supply, and Brazil said no.

Item 6: An application for James and Peggy Unruh, requesting a variance from required rear setback of 50 feet, to 12 feet. Sieger reminded members this is only a variance request. This property is located in Peabody Township. This application was published in the May 1, 2002, issue of the *Marion County Record, Hillsboro Star Journal and Peabody Gazette*. James Unruh explained the plan is to expand an existing barn to a workshop area. He plans to use 26 feet of 38 feet that the barn is from the property line. He said they asked their neighbor's opinion and she would like a barn there, as it would act as a windbreak in the wintertime. Members looked at the property on a map. There would be 12 feet between the new addition and the property line, Sieger said. This property is on rural water from Harvey County, Brazil said. Is the sewer compliant?, Bob Unruh asked and Brazil said yes. Brazil pointed out how the photos show the lay of the property. So, just a home and this building are on the property?, Sieger asked. And a chicken house that needs to be torn down, James Unruh said. And a tree house, he added. Have you lived there, long?, Sieger asked and James Unruh said since 1989. We need a garage workshop and storage area to get the stuff out of the way so we can remodel the house, James Unruh said. We want to get the property on city sewer, James Unruh said. There are two problems with the city and extending the sewer out, and that is they already have rural water and second there's a creek there, Brazil said. Any other questions, or information?, Sieger asked. Is the building that's there a metal building?, Sieger asked. It's a wood frame that was built in the 1870's and it's just too small, James Unruh said. But, you're going to leave that intact?, Sieger asked and James Unruh said yes. And the new part will be metal?, Sieger asked and James Unruh said yes. We feel like this addition will enhance the property and I always wanted to finish the barn, but it needed to be larger, he said. Sieger closed the public hearing for this application and opened the floor for discussion.

Bob Unruh said he is in favor of this. We do have buildings that are right up to the boundary and not that we should do this, but this is already the situation there, in some instances, Sieger said. The variance is 38, Sieger said. That's a large variance, but it really is a small property, compared to 10 acres and we're still keeping a few feet between neighbors, Brazil said. I think Suburban Residential would have been better, but that requires rural water, he added. In light of this application meeting all five factors, I move to approve a variance of no more than 38 feet, Mueller said. Bob Unruh seconded the motion. In favor: 5; Opposed: 0; Motion carried. Brazil explained the timetable.

Sieger asked Brazil for his Off Agenda items. Brazil reported on a seminar he attended and said there will be a planning commissioners workshop either late in August, or early September, at a cost of \$25 each, while most training sessions are about \$200, so all could go, if you want. I

don't know the exact date, yet, he said. Where?, Bob Unruh asked. Probably Hutchinson, but I don't know, yet, Brazil said. Sieger encouraged members to go, if it works with their schedules. Sieger reminded members the next meeting is July 25, as we do not meet in June. Brazil is going to propose to get mileage for commissioners with his new budget. But, he said, mileage adds up quickly, so I need to know how many would be wanting to drive to sites each month. Every 20 miles at nine members, you're looking at \$2,000 to \$2,500 per year, he said. Are we talking about just mileage to sites, or to meetings, too?, Bob Unruh asked. We could look at it, if we knew the mileage to meetings for everyone, Brazil said. It would be nice to go out and look at applications, but when would we do it?, Mueller asked. At your convenience, Brazil explained. And probably all of us every time wouldn't get to every application, Sieger said. Maybe we can even have a mileage limit per year, per member, Brazil suggested. We could get, say \$100, for the year, Avery said. You'd chew that up pretty fast, Brazil said. But what you're talking about is a token gesture, and could be a starting point, Avery said. And all I can do is make a recommendation for the budget, Brazil said. We could use a mileage log, Brazil said. We could set a limit not to exceed X amount of dollars per member, Sieger said. I hate to see it come out of your budget, Mueller told Brazil. I would just add a line item for it, Brazil said. I know they're going to want to hold the line on our budget, Brazil said. I certainly appreciate the goodwill, Avery said. If you have any ideas, give me a call, Brazil said. Anything else?, Sieger asked. Sieger again reminded members the next meeting is July 25. Ediger made a motion to adjourn and Robinson seconded it. In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 9:38 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



Eileen Sieger,
Chairman