

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

May 24, 2001

Chairman Eileen Sieger called the meeting to order at 7:30 p.m.

Roll Call was answered by Sieger, Marquette Eilerts, Herb Bartel, Dean Fincham, Eldon Pankratz, Elora Robinson, Terry Eberhard and Bob Unruh. Glen Unrau was absent. Zoning Administrator David Brazil was present.

Sieger asked if anyone had questions about the agenda or additions to off agenda items. Sieger said off agenda items need to include discussing status on the comprehensive plan and a court case. Brazil said members need to schedule another work session and he has a personnel issue. Sieger asked if there was anything else, but there was not.

Sieger asked for corrections to the Record of Proceedings of the April 26, 2001, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Unruh questioned the 900 in reference to the number of cows at a dairy, which was at the top of page two. Members agreed not to change the number. There were no other corrections. Fincham made a motion to approve the Record of Proceedings as written and Robinson seconded the motion. In favor: 7; Opposed: 0; Abstained: 1; Motion carried. Unruh abstained.

Item 4: Continuation of an application for Bob and Trudy Partridge requesting a variance from required agricultural acreage lot requirement of 40 acres to 33.91 acres for property located in Liberty Township. Brazil said he has researched all the deeds and the history of this property. He said the property actually has 6/10 of an acre added to it, for a total of 34.5 acres. The property splits occurred in 1995 and 1996. The home site was split before zoning with a 32-foot wide strip attached to 33 acres. Bartel asked Brazil for a brief summary. Originally there was a whole 80 acres. The home site was split off before 1992. Changes since 1992 all happened around 1995 and 1996. So how many parcels are there?, Bartel asked and Brazil said three. Bartel asked about sizes, and Brazil said 32 acres, 27 acres, 13 acres and four. Marlene Fast, realtor, was present to represent potential buyers for part of the property. She said Brazil talked about getting a conservation easement, but that was not accomplished. We still would be left with the 13 acres, Sieger said. She'll sell it, but it is priced very high, Fast said. Jennie Marsh is present and owns the 13 acres. The problem we're caught under is these splits have been done without approval, so no permits can be issued, Sieger explained. It doesn't matter why they happened, they are what they are, Sieger said. Comments or ideas or discussion?, Sieger asked members. Sieger asked Marsh to speak. Marsh read a statement she had prepared and gave members a copy. She said she was born and raised on this land and inherited 13 acres when her father died. She and her husband moved back to Kansas after retiring. She wants to build a home on the 13 acres. She asked members if they grant a variance to build a house on the pasture, then she asked if they would allow her to do the same. She asked members to either turn both down or allow both to build. If we

decide to, she added. Sieger asked Marsh where they live, now, and was told North Newton. Eberhard asked how the land got divided up, and was told a quarter went to two individuals and a half to another, of 80 acres. Sieger explained the concerns with use of the land and how many home sites would be on 80 acres. And to confirm when splits occurred because we did not want to approve something that was not in compliance, Bartel added. The court divided the property into non-compliant pieces, Eberhard said. We do not seem to be getting the word out about zoning, Unruh said. There isn't a statute that forces lenders to provide zoning information, so if the landowner doesn't ask..., Brazil said. Most mortgage companies don't want more than 10 acres, Unruh said. They're interested in the value of the home, he added. Any further information we need?, Sieger asked. Anyone wish to add anything?, Sieger asked. Sieger closed the public hearing for this application. Sieger reminded members they are acting as the Board of Zoning Appeals. For a variance on acreage requirement, Bartel added. This is only a request for the downsize of acreage requirement, Sieger said.

Sieger opened the floor for discussion and determination. We continued it so we could get verification, Bartel said. The 34-acre parcel was created after zoning was adopted, Bartel said. It's complicated by in addition to the home site two other parcels are not in compliance, he said. When we act on the first, we are quite committed to the other two, Bartel said. Remember, this is an existing home site on four acres, Sieger said. It seems we have exhausted every option, Eilerts said. Is someone prepared to make a motion, or have further comment?, Sieger asked. I think there could be some economic value to giving this some consideration, but I doubt very seriously that we want to go down that road, Unruh said. Sieger asked members to look at the list of considerations, and she read them to members. The other important given is, when we act as the Board of Zoning Appeals or the planning commission, we have a responsibility to ensure compliance with the regulations and we're looking at a piece that was created out of compliance that would set a precedent, Bartel said. Staff recommended not approving the variance, Sieger said. Which is part of the consideration, too, she added. We'll have more of these down the road, Eberhard said. Everyone else will want to do the same thing, Robinson said. Acting as the Board of Zoning Appeals, I move we deny the request for a variance for reasons; #1: the parcel was improperly created and is not in compliance; #2: staff recommended to deny this request; and #3: it would set a precedent that would have significant long-term effects, Bartel said. Eberhard seconded the motion. In favor: 7; Opposed: 1; Motion carried.

Item 5: An application for Charles M. Holub/Ditch Diggers, Inc., requesting a Conditional Use Permit (CUP) for a mud run located approximately four miles south of Lincolnville on approximately 10 acres in an agricultural zone located in Clear Creek West Township. This application was published in the May 2, 2001, issue of the *Marion County Record*. Members are acting as the planning commission for this application. Present to speak about the request were; Dan Hess, Charles Holub and Gene Chizek. Brazil gave members a copy of a letter from the public, which did not go out with monthly packets of information. This letter was from the Houdyshell's, who are neighbors to the property and who have no problem with this request. Sieger said members should disregard the letterhead Judy Houdyshell used from her job at the

courthouse, as this letter should have been written on personal stationery. It was explained this proposed mud run would be sanctioned by the Central Mud Bidders Association (CMBA). This organization schedules 25 or so races per year. It's getting to be a pretty popular thing, Holub said. It's not a big money maker, it's more of a hobby, he added. Fincham asked what is a mud run?, and it was explained. We have dug the pit, Holub said. Do you backfill it with the dirt you dug out?, Eberhard asked. You want the dirt to be pretty loose, so we're using pond dirt, Holub said. Can anybody enter with any kind of vehicle?, Fincham asked. There are nine different classes, Holub said. How deep is the mud?, Fincham asked and Holub said three feet. Do you hose off the vehicles, afterward?, Sieger asked. Some people load their trucks onto trailers, others wash them down, Holub said. I need help locating this parcel on the aerial photo, Bartel said, and Hess showed him. This property is located on the west side of U.S. 77. Unruh asked who the closest neighbor is, and was told Houdyshell. Antelope is about one mile away. And everyone within a mile should have been notified, Sieger said and Brazil agreed. The other letter we received was from the people to the north, Brazil said. When asked Holub said this property is farmland, but the state has been parking equipment and using it for storage for years. But it's not on state property?, Eilerts asked and Holub said no. None of the 10 acres is in CRP?, Sieger asked and was told no. The Ditch Diggers company owns the land. Can you estimate how many mud runs you want to have per year?, Sieger asked. This year we just plan on one, Holub said. We could go to two a year, but no more than that, he added. When asked about the crowd, Holub said some runs have 15,000 people while others have only 100 people, it just depends on how it's promoted. Our run is scheduled for June 9. Florence has a run scheduled for Labor Day weekend and Durham has one toward the end of the year and they already had one a month or so ago, Holub said. Bartel asked about parking. What have you already done on this property?, Bartel asked. We dug the pit. Sieger pointed out that this needs county commission approval, too, and the timeframe is not such that they would have this before them by June 9. Brazil explained commissioners receive the minutes on the second Monday of the month and resolutions are signed on the third Monday. There is a required 14-day waiting period between when we make our recommendation and final approval of the county commission, so in any event it cannot be acted on by June 9, Bartel said. The purpose is for anyone who has received notice of this request to have time to file a formal protest, if they so desire, Bartel explained. Was your run already scheduled when you met with David?, Eilerts asked. Tentatively, Holub said. The schedule was finalized in mid-March, Hess said. Initially, we were looking at using a different piece of property, Hess said. How long has Ditch Diggers owned this property?, Sieger asked. Since 1998, Holub said. Unruh questioned the rule that if a CUP is inactive for six months, it lapses. We can address it in the resolution, Brazil said. Brazil gave the example of the corn maze, which ran over the summer months, but it was more than six months before it came around again. Sieger asked if there were further questions or if anyone wished to add anything? If legally there is no way to do this, we don't have much to talk about, Hess said. Do you want the CUP for more than a one time event?, Brazil asked. If they let us have another event, Holub said. No other county has to get approval, he added, and if I cancel this one I may never get to have another. We would like you to consider this application for a future date, Hess said. Sieger closed the public hearing for this application.

There is a whole list of requirements they would follow under the CMBA and spectator requirements, too, and keep in mind requirements for the CUP, Sieger said. Their outline covers everything you requested them to address, Eberhard said. Something we didn't talk about is alcohol on the property, Sieger said. Did you plan to have alcohol?, Sieger asked. That's something that's pretty hard to control, Holub said. We can control the people participating in the event, but spectators are pretty hard to control, Holub said. You didn't plan to serve alcohol, Brazil said and Holub said no. Eilerts made a motion to recommend approving a CUP on 10 acres, with the applicant following the guidelines listed in the staff recommendation and fulfilling all CMBA requirements, use of a 32 foot sign on the property for advertisement of the event, liability insurance for each event, adequate restrooms, and no more than two runs per calendar year. Do you want to restrict access to 250<sup>th</sup>?, Bartel asked and Eilerts agreed. Brazil added that the motion refers to current CMBA safety regulations and specific requirements as to what is in the file. Robinson seconded the motion.

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

Unruh questioned what if they only have one per year? I assume the pit stays open all the time?, Sieger asked. No, we close it up. No more than two times per calendar year and no less than one. Members reviewed regulations for a CUP. This is an event for a particular day, it is not an on going every day activity, Bartel said. That could be highly debated, Unruh told Bartel. Especially if they close the pit, Unruh added. Sieger made a motion to incorporate into the resolution recommending the CUP would continue to exist so long as at least one event is held per year and it is in compliance with the requirements included in the recommendation for approval. Eberhard seconded the motion.

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

The guardrail will always be there, Holub said.

Item 6: An application for Donna Walker requesting a rezone from agricultural to rural residential in Clear Creek West Township. This application was published in the May 2, 2001, issue of the *Marion County Record*. Members questioned the legal description. Two 80's run lengthwise east and west. This property belonged to Walker's great-grandparents and then to her grandparents. The house is from the early 1900's. It is located just off U.S. 77. This property used to flood, but in 1921 or 1922 they moved the house up the hill. An uncle took over the property until he died in 1999. Walker is interested in fixing up the house. She said all improvements are located on the east end of the west 80. Three people are involved in the ownership from an inheritance. They did not want to take 40 acres out and agreed to try for a 10-acre rezone. There is farm ground and pasture on both 40's, Walker said. She is talking about using the quarter section line west of the house, but if you need to shift that I don't think it's much of a problem, Brazil said. So which configuration has he measured off?, Sieger asked. Did you direct him?, Sieger asked about the surveyor. I figured he knew more about such things as taking setbacks into considerations, etc., Walker said. There are improvements on the west end up next to the highway, Walker said. I think what he did was go SW/4 of SW/4 of SE/4 of section 23, Brazil said. I don't think that legal description is right, Unruh said. It's 650 foot square, but the norths and souths don't flow you into a square, Unruh said. It's the half-mile line, Brazil said. Is it your intent to sell this, or live there?, Sieger asked. No, I would live there, Walker said. The out buildings are in better shape than the house, she

said. If it costs too much, I may be out of the game, anyway, Walker said. Unruh still questions the legal description. He's coming off the southeast corner 660 feet, Brazil said. It's not in the flood plane?, Bartel asked and Brazil said no. U.S. 77 goes through the property at the half-mile line, Brazil said. What if we approve the 10 acres and then you decide the house cannot be fixed up?, Sieger asked. We discussed if we should just tear it down, but basically it's a structurally sound house and if it's not in my budget perhaps someone else would take it on, Walker said. I think it's a long ways from being torn down, Brazil said. We don't want to see it vacant and being vandalized, Walker said. The septic is not compliant and would need to be updated, Sieger said. We discussed putting in a lagoon, but haven't figured out exactly where to locate it, Walker said. The water well has been tested and is okay, Walker said. Sieger asked if there was anything else? Sieger closed the public hearing for this application and opened the floor for discussion.

Where do you live, now?, Robinson asked. I presently reside in Alaska, Walker said. As it was divided up from the estate, my aunt got half and my sister and I each got a quarter. In actuality, I own a quarter of two 80's, but it was a funny configuration, Walker said. I move to recommend approving this request for a rezone from agricultural to rural residential based on the legal description provided, Unruh said. Eberhard seconded the motion. The wastewater needs to be in compliance, so Unruh agreed to amend his motion and Eberhard agreed with his second.

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

Sieger and Brazil explained the timeframe. Bartel suggested Brazil send Walker the resolution. If you're not comfortable with the 10 acres..., Brazil asked Walker. I just wish I knew how he laid it out, Walker said. As long as the setback requirements for the buildings are met..., Sieger said. Bartel brought up the fact that the flags should still be out there, Brazil said. I did state in my motion approval for the legal description, Unruh said. What if she radically wants to change it?, Sieger asked. If it stays in there, that is what I have to go by, Brazil said. Is there a need for more flexibility?, Unruh asked. Is this going to provide enough room for the lagoon?, Unruh asked. I haven't been back out to see if the lagoon can go to the west of the house, which is the least expensive way to go, Brazil said. Unruh amended his motion to 10 acres in the 80 acres as long as setbacks and the lagoon are within compliance, and the house is on the 10 acres. Fincham seconded the motion.

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

Off agenda items: Our next meeting is July 26, Sieger reminded members. Members discuss the comprehensive plan. All changes are to the consultant. Brazil has taken a set of aerial photos and possibly another set will be put in, as well. Brazil said he would like to schedule one more work session. There are issues we have not agreed on, such as the five-acre issue and the cluster issue..., Sieger said. We really want to look at a clean copy, Bartel said. We'll get another copy before our work session, Brazil said. I want to go over again the soil situation, Bartel said. When you look at a map that only shows groups, you don't have enough to look at, Bartel said. That means the soil type vs. the soil classification, he said. Bartel showed members a map with classes, and that's all you get, he said. And here are maps with the soil types, Bartel said as he showed members the difference. I'll bring it up to him, again, Brazil said. We need to set a date for the first

part of July. A meeting was set for July 12 at 7:30 p.m. This should be our last work session, Sieger said. How do you want the pictures put in, and do you want us to choose the pictures or do you want to choose the pictures?, Brazil asked. Members agreed Brazil's judgment would be fine. We can put one page of just pictures in, too, Bartel said. The thing that amazed me is all the ponds, Brazil said. Sieger updated members on a ruling in the court case of MSW, Inc. vs. Board of Zoning Appeals. The ruling was upheld. Sieger shared her experience with a serious over-spray that damaged her garden and trees and told members, remember, it can happen to someone you know. An aerial application on a hot, windy day caused the damage to Sieger's property. Her neighbor to the west also has a lot of damage. Pankratz verbally submitted his resignation from the planning commission. He will submit a written resignation and apologized for not doing it sooner. Sieger told Pankratz she appreciated him serving and that she understands. He said he is also getting out of some other things. I have another year left and so I decided to resign, he said. I'll be traveling quite a bit, he added. I appreciate you letting us know, Sieger said. Brazil announced that Angela submitted her resignation yesterday as she has been offered a job with the City of Marion. Why didn't you just give her a raise?, Eberhard asked. If we could find a way to keep her, we would, Brazil said. Her last day will be June 15. We'll miss her, he said. I've relied on her a lot, he added. It's a bigger job than you know, Bartel said. Eberhard made a motion to adjourn and Fincham seconded it.

In favor: 8; Opposed: 0; Motion carried and the meeting adjourned at 10:01 p.m.

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Eileen Sieger,  
Chairman