

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

May 25, 2006

Chairman Eileen Sieger called the meeting to order at 7:33 p.m., with a quorum present for both the planning commission and the Board of Zoning Appeals.

Roll Call was answered by Sieger, Bob Maxwell, Marquette Eilerts, Mary Avery, Glen Unrau, Willis Ensz and David Mueller. Ervin Ediger was absent. A new zoning administrator has not been hired.

Sieger asked if anyone had any questions about the agenda. Sieger asked if anyone had any off agenda items to address. Sieger said she will reopen discussion regarding the planning commission considering scheduling a public hearing for changes to the comprehensive plan. Maxwell said he had off agenda items.

Sieger asked for corrections, or additions, to the Record of Proceedings from the April 27, 2006, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Maxwell had two corrections. One on page four where inductive should read "conductive," and one on page five where adjoin should read "adjourn." Mueller made a motion to approve the Record of Proceedings with two corrections, and Ensz seconded the motion.

In favor: 6; Opposed; 0; Abstain: 1; Motion carried. Maxwell abstained as he was not present at the April meeting.

Item 4: An application for Jim and Tina Novak, requesting a variance from required double frontage set back of 50 feet to one foot and from required backyard set back of 20 feet to three feet, for property located in Centre South Township. This application is for Kingfisher Steakhouse and Lounge, at Marion County Park and Lake. Members are acting as the Board of Zoning Appeals for all applications at this meeting. Members explained that the by laws state there are to be nine members on the planning commission, but only seven of the nine on the Board of Zoning Appeals. It was explained that the Board of Zoning Appeals has a different role to play with different procedures, according to state statute. The Board of Zoning Appeals makes final decisions that do not go on to the county commission for final approval. There is an appeal procedure for decisions made by the Board of Zoning Appeals. One of the Board of Zoning Appeals members is not present at this meeting, and the by laws allow appointing an alternate. Maxwell is not on the Board of Zoning Appeals unless appointed, and members have appointed him at previous meetings. Mueller made a motion to

appoint Maxwell to fill the vacancy on the Board of Zoning Appeals for this meeting, and Unrau seconded the motion.

In favor: 6; Opposed: 0; Abstained: 1; Motion carried. Maxwell abstained from voting for himself. Avery read a statement she had written, stating she was notified about this application as she owns property within the notification area. This property is not a permanent residence for Avery, and it does not adjoin the application property. Avery said she feels she may participate in this application without prejudice. Members agreed. Sieger thanked Avery and said this is a legal way to operate. Sieger said this application was published in the May 3, 2006 issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Maxwell excused himself from participating in this application, because of something that occurred recently between him and Jim Novak. Since there is currently no staff, Sieger may make contact with legal counsel, Jim Kaup, via phone if needed. Sieger asked if anyone else on the Board of Zoning Appeals has had outside contact with anyone regarding this application, and if so to please explain who they spoke with and why. No one else had any outside contact regarding this application. Jim and Tina Novak were present to speak about their application. They explained they own Kingfisher Steakhouse and Lounge and have visualized building an outdoor patio so diners could be able to sit outside and enjoy the beautiful view of the lake. We don't want to take away from (the view), or have an eyesore, or (do something) in bad taste, Jim said. We discussed it with Ralph Kreutziger of Hett Construction and have multiple drawings and came up with a pattern that matches and blends in with the building, Jim said. We would, number one, keep the beauty of it, and number two, keep persons with alcoholic beverages controlled, Jim said. The fence would control people from being able to climb the fence and it would meet all standards of Kansas Law and Statutes, Jim said. He passed a drawing to members to view. This drawing also showed the fencing and lighting plans. The light would be very subdued and on dimmers, making a casual, enjoyable setting for dining, not something with floodlights or Christmas lights, Jim said. It's something we have really thought out, Jim added. I have had conversations with several people, Jim said. I have 290 signatures from people in support of an outdoor dining area, Jim said. Sieger asked if all the signatures were from Marion County residents, and Jim said yes. Sieger asked if the signatures were all from Marion County Park and Lake residents, and Jim said no. I just wanted to show that people do support the idea, Jim said. Sieger asked if he had addresses with the names, and he said no. I did not do it for a specific reason, I just wanted to show there is support, Jim said. We are aware of our neighbors, he said. We have really tried to keep the neighbors happy, he added. We have had some parking issues, but we try to get them moved as soon as possible, Jim said. This would be a benefit not only to our restaurant, but to Marion County, he said. Sieger referred to the five conditions for variance requests, and said economic reasons is not in the factors. She said she is not taking issue with it; she is just pointing this out. Mueller asked if there is another existing fence on the back. There is an existing

privacy fence, but our plan is we want to extend the privacy fence to ensure the Hannaford's have some privacy, Jim said. Sieger asked if the fence is on the Kingfisher property, but no one is sure. Hannaford's consider it a common fence. Sieger asked about a big spreading Mulberry tree, and if it is staying. Since it's a very fruitful Mulberry, we would have to replace it, Jim said. Mueller asked if there is an issue with the neighbor's, could a privacy fence be a compromise. We want to extend it, Jim said. He explained that questions about the property line were settled about a month ago. Sieger asked about lighting, and Jim said their plans show a general idea. Sieger asked about hours of operation, and Tina said they can stay open until 2 a.m., if they have business. At 11 p.m. there is a lake noise ordinance that we are very aware of, Jim said. First, we do not feel noise will be an issue, he said. People could use the patio to escape some of the noise inside, he explained. We are considering small speakers with piped-in music, but we intend not to have live bands, Jim said. We just want an area to carry on a conversation and not have to yell, Jim said. Eilerts asked if the fence will create a blind corner. The pickets would be a half inch in diameter with five to six inches in between each one, Jim said. Jim showed members on the diagram where the road is located and said a person would have a hard time seeing the fence from the road. Sieger said the speed limit is 25 MPH. Ensz asked about a gate and Jim said it would be a one-way gate, as they want people to come in through the front door. Mueller asked about the possible issue of needing a guardrail, and asked Jim to fill members in about it. I question the guardrail from the sense of you never know when a driver could be driving by and slam into the fence, but there are several porches much closer than the fence would be, Jim said. It's a public place, Eilerts said. Granted, but I do not feel this is an issue, Jim said. Sieger asked Jim if he had talked to any traffic safety people about the guardrail. The Sheriff's Office did not think it would be an issue at all, Tina said. There are a couple of things that were pointed out to us, Tina said. Our restaurant sits on county property, she said. I spoke with one of the deputies and he said the curve of the road would naturally cause a person to go the opposite way, Jim said. Sieger asked about the 11 p.m. curfew and also about parking across the road from the restaurant. Jim said the 11 p.m. rule is for noise control, it's not a curfew. Jim said he does not think the parking across the road is in question. Sieger asked if there is anything else at this point. Sieger opened it up to the public to speak. Sieger asked how many people wished to speak about this application. Sieger told people they are welcome to speak. About eight people said they wish to speak, so Sieger said she will limit them to no more than five minutes, each. Dan Crumrine, President of Marion County Improvement District #2, said this application has nothing to do with any easements. Crumrine said there was a septic tank on this property, which was filled by Dave Hett when the sewer came in and it's full of concrete, and also the Improvement District has put approximately \$20,000 of sewer in to upgrade the restaurant. Lavonne Hannaford, who owns property next door, asked how much this will extend from where her porch is. Kreutziger said both properties are on the curve. Ours is on

the straight, Lavonne said. Currently, they have two temporary tables, will it extend more than that?, Lavonne asked. Yes, Jim said. When asked about the actual distance from the wall of the restaurant to the front edge, Jim said he thinks it is 22 feet. I wouldn't want it to extend out any farther than our porch, Lavonne said. We look to the east as much as west, she added. It was a nice presentation, and we'll be good neighbors, Lavonne said. It was explained that there are white flags marking where the patio would come to and orange flags for the property line. Bud Hannaford said there is no one more excited than we were when Kingfisher opened, but we are concerned about people drinking until 2 a.m. with us next door. We are not against what you are doing, but I question the hours, Bud said. Sandra Winslow, who lives just west of Kingfisher, said they have a no parking sign due to issues with parking. We get up at 4 a.m. for work, so I question the hours, Winslow said. I also question the idea of alcohol and quiet and music and bright light because we are right next door, she said. It's nothing personal, we like Jim and Tina, Winslow said. I love the letter your daughter wrote to the newspaper about Tina's dream, Winslow said. This (living at the lake) was my dream, she added. We get trash in our yard and we are concerned about having overflow parking to help our parking issue, she said. Attorney John Klenda was present to represent the Alan Coxen family, who own property to the north and adjacent to Kingfisher. Klenda said Coxen's are concerned about the lighting and about a glow coming over to their property. We will use dimmers, Jim said. Klenda said there is also concern about the music level and they request the speakers be directed in and away from the neighborhood. Klenda said they also question the hours of operation for the outdoor patio and request the outdoor action cease at 11 p.m., the same as the lake hours. Klenda also questioned how many people will be on the deck area and what the capacity of the deck area will be, for the noise issue. We are not opposed to this, we just want conditions, Klenda said. Gordon Pendergraft, who lives down the road, said he is glad the restaurant is back, but he moved to the lake for peace and quiet. I live down the lane, but I still get traffic and extra parking, he said. It was great when the restaurant closed at 9 p.m., Pendergraft said. What's to stop the next owner from having live bands?, he asked. There is also a trash concern and it comes with traffic, he said. The county has never accepted those roads out there and we owners maintain them privately, so the more traffic we get on a less than ideal road is an issue, Pendergraft said. Realtor Charles Kannady said he sold the property to the Novak's. Kannady said the Novak's had a layout of the property plans and were told by David Brazil there was no problem. Kannady said Dan Holub was also contacted so there would be no questions or headaches. Kannady said there was 12 1/2 feet (of property) purchased by the previous owner, and Central National Bank declared the 12 1/2 feet between Kingfisher and Hannaford's, because Sprowls (the previous owners) went bankrupt. Brazil said there was no problem before they purchased the property, but we could not get anything in writing from Brazil, Kannady said. Dan Holub also said no problem with the property, Kannady

added. This property is not located on lake property, he said. The county gave permission for the extra parking and there were no conditions on the lot from the county, Kannady said. We are not trying to cause problems with the neighbors, Kannady said. In fairness to Dan Holub, no issues about changing from a 50 foot to a one foot set back were brought up, Bud said. Crumrine asked to speak as a full-time lake resident since 1992. Camper parties is the only thing 11 p.m. is for and you can't be on the lake or fishing unless you have a camping permit or fishing permit, Crumrine said. Parties still go on after 11 p.m., Crumrine said. The only way to solve it is to call 911 if there is a loud party, he said. We will tolerate maybe one or two a month, but not every night, Winslow said. Paul Morse said he bought his first property at the lake in 1964, and built on it in 1965. After the reservoir came in, that's what started the camping, Morse said. I've owned four places out there and sold the last one in 2000, Morse said. I just bought a place out there, because I missed it, he added. There was a question raised by Bud Hannaford if we were aware of the set backs and we were aware of the set backs and yes we did check them, Holub said. Klenda spoke for the Coxen's, saying regulations were in place since 1992. This board is the only board that has the authority to decide such issues, Klenda said. Again, we are not opposed to a variance, but just concerned about conditions, Klenda said. A lot of people do not realize that in 1940 when the lake was laid out it was all 50x100 lots, Crumrine said. It's very hard for the zoning board to come in and say we have set backs, but they do not fit the lots, Crumrine said. Kannady said 50 foot set backs are only for housing and rural residences. They are basically for homes out in the county and not in clusters, Kannady said. Sandy Uhrig, lake resident, said she had a page of things to say but most have been said, already. She said she is concerned about the variance issue because of the behavior of customers after they leave the establishment. She said there is a trail road to her house and she can't get through to go home sometimes, and it is also a fire and medical issue. During the daytime we tend to go out through the west drive, Unrig said, and I have some grandchildren on weekends and I am not comfortable with the kids playing because of the traffic. It's not anything they can control, but it is a concern, she said. Tina Novak said she can stay open until 2 a.m., but it 's not an every night thing. The patio is part of the restaurant and I feel it should have the same hours, she said. We do respect the neighbors, Jim Novak said. We are going to be three feet from the Hannaford's property line and the last thing I want to do is upset them, he said. So, we are going to be addressing the noise issue, he added. There will not be live bands, and if we put speakers out there it would be minimal, Jim said. We could turn the speakers off at 11 p.m., but if people want to be out there and be quiet we have both kinds of people and not all are loud, Jim said. Those who have been loud and obnoxious have been banned from the restaurant because we want this to be a respectable place to go, Jim said. Alcohol does not leave our restaurant, he added. We don't mean they don't throw trash, Tina said. We have picked up brands in our parking lot that we don't sell, Jim said. Sieger asked and was told

the kitchen closes at 10 p.m. There is not a blanket thing that everyone has to leave the lake at 11 p.m., Jim said. It was explained to me that at 11 p.m. it's a let's tone it down quiet time, he said. If private citizens can have a party on their patio, why not us?, Jim asked. If it's a problem, okay, but if not I don't think an assumption should be made that there is a noise issue, he said. Avery asked Novak's when they were made aware that they needed to make an application. Hett Construction told us, they said. I went into this with the understanding there was no problem, Jim said. Were you told prior to purchasing the property?, Avery asked and Tina said no. Mueller said one proposal was to limit the patio hours to 11 p.m. What if the patio was open until 12 a.m.?, Mueller asked. I just want the same hours as the restaurant, Tina said. Verlyn Uhrig asked if people could move inside?, and Tina said yes. Do you hear noise from the restaurant, now?, Tina asked and Verlyn said yes. We need you open and to make it, but it can also become a failure if there is a drunk driver, Verlyn said. Tim Spicer, lake resident, said most issues involve trash, parking and the patio issue. I cannot control the parking lot, but I can control the patio, to a degree, Tina said. Klenda asked again about the number of people that will be on the patio and was told approximately 24 people, or it could be less. Sieger asked and Jim said the occupancy in the restaurant is 108 people. This is going to be a very expensive process and we will probably slowly add tables, Jim said. Margie Schwartz, lake resident, said she is concerned about trash, speed and noise. There were two cars that sped around the corner and both went into the lake and had to be pulled out and it's simple to say that's what happens when they sell liquor at Kingfisher but this happened before they came and this has been going on, Schwartz said. Linda Johnson, who lives in Marion, said she moved to the lake in 1986 with three boys and had lots of calls about the boys being too loud. Johnson said she hopes they are allowed to lower the fence to three feet so you can see out. Sieger asked if there was anything else. Jim thanked everyone. Sieger closed the public hearing for this application. Sieger read the five conditions from the zoning regulations that must be met to grant a variance. Sieger also pointed out that members have a copy of the staff recommendation from Brazil for this application. Mueller said there seem to be five different issues: 1) the front yard variance; 2) the back yard variance; 3) the hours and noise issue; 4) the guardrail issue; 5) the fence. The last three are conditions, Mueller said. We can put some conditions in, but they have already stated they would not play loud music, Sieger said. Mueller began with the first issue: the front yard down to one foot. There is no problem with the one foot set back, Mueller said. Currently, the existing building has only a two foot set back, and this is okay with one neighbor as long as it does not block their view, Mueller said. Sieger said they are asking for a back yard set back to three feet, and this particular area is Village One as far as set back requirements. Then there is the hours and possible noise factor, Sieger said. Whatever is established at this point would carry-over, Eilerts said. Yes, it stays with the property and not the owner, Sieger agreed. One owner may be very conscientious, and one may not, Eilerts

said. Avery asked Novak's if they could live with an 11 p.m. curfew. In the interest of good neighbors we can try to regulate it, Jim said. Sieger asked what members thought about the fence issue. It's a good balance on the fence, Mueller said. With a three foot fence people can get over it, so they've already addressed this issue, Mueller said. Sieger asked about the guardrail. It's true the road does curve so traffic would seem to go the opposite direction, she said. I think the guardrail issue should be a county issue rather than a property issue, Unrau said. I don't think property owners should be held responsible, Unrau said. This is a totally different issue, he said. Unrau referred to the number four condition for variances. If we start putting down each little item, that's not the answer, I think we could help it more by not putting too many constraints, Unrau said. I have heard about good things coming out of this, Unrau said. By including it all into a motion we put too many restrictions on the property owner and we could vote on amendments to the motion, Unrau said. Depending how the motion reads, he added. I agree with you I think we ought to craft the motion as best we can and if we have to amend the motion, we can, Mueller said. I will remind you that as much as we all want economic development, this is not one of our factors, Sieger said. That is my concern, Unrau said. But that is not one of our factors, Sieger said. No, Unrau agreed. Rather than a condition requiring a guardrail, possibly a letter from the county engineer might work, Mueller said. Because there could be a liability issue, but if the county engineer signs off on it, it is addressed, Mueller said. I think that is a good way to address it, Avery said. Marquette had asked if it creates a blind corner and that could be addressed by the same expert, Avery said. I don't think it's an issue, but that way it is addressed, Avery added. Sieger asked about the hours. I have a little struggle with this because I hear the concerns of the neighbors but with the track record of the people running it....., Mueller said. There is the issue of possible future owners, he added. I'm satisfied they will run a very quiet establishment, Avery said. But the question does arise as it goes with the property, she added. It should only be for these owners and if it sells we visit this again, Unrau said. Sieger tried to call attorney Jim Kaup but had to leave a message. Avery suggested trying to call Kaup again in 30 minutes. Members decided to go on to item five and come back to this application after trying to call Kaup again.

Item 5: An application for Dennis Franz requesting a variance from required side yard set back of eight feet to four feet and from required back yard set back of 10 feet to four feet for property located in Centre South Township. Sieger said this application was published in the May 3, 2006 issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Sieger asked if any member had any outside conversations with anyone about this application or if anyone had a conflict of interest for this application. Paul Morse said he purchased this property and wants to put a garage in to store antique cars. Morse said he missed living at the lake, and years ago you didn't have to have permits. He said there is a water well in the back yard and to try and dodge it he

does not think he can make a turn to get into the garage. He said it is clear back by the fence so it is not bothering anybody. Members viewed photos of the property. Morse would like to put in a double garage but needs to move over to avoid the well. Sieger asked if this property is now in Morse's name and he said yes. Maxwell said on the sketch he sees five feet is requested and four feet is on the application. Yes, it's four feet, Morse said. Is his garage sitting right on his property line?, Maxwell asked. It's about a foot off the property line, Morse said. It's pretty crowded territory and that's why I wondered, Maxwell said. Sieger asked if the garage is a 20x20 and Morse said yes. Morse asked if he needs a building permit and Sieger said yes. We are seeking ways to deal with it (permits) because currently there is no staff, Sieger said. We are trying to find a way to deal with it, Sieger said. Sieger asked if anyone from the public wished to speak about this application. Bob Hoch said he owns lots one, two, three and four and Morse has lot five. So, it would be east of your property, Sieger said. Bud Hannaford explained this is a different subdivision. There is Schlotthauer One, and One-A, Hannaford explained. Sieger explained the notification procedure. Crumrine spoke, representing the improvement district, saying there is no water or sewer line or anything that would bother. Crumrine said his only concern is the amount of distance between the garage and the neighbor's garage. Sieger asked how far apart they would need to be. At least four feet with a two foot overhang, Crumrine said. Sieger asked if anyone else had any comments. Maxwell asked Morse about considering rotating the garage 90 degrees and putting the opening on the east side so he could drive into it. It thought about that, but only if I was to put it clear over to the east side, Morse said. Unless I can put the garage at an angle and put it closer than four feet from the fence, Morse added. I can't see what you mean, Maxwell said. Morse showed Maxwell on the sketch. Maxwell said the idea is to get better access to the garage and farther away from the neighbor. I could put a gutter on there, Morse said. Is there anything further?, Sieger asked. Does anyone else wish to speak?, Sieger asked. Alan Kruse, who lives in Marion, said he owns property in the area but was not notified on this application, or the Kingfisher application. It was determined that Kruse's father, the main owner listed for the family property nearby, was the owner on the notification list, not Alan. Sieger asked if there was anything else. Sieger closed the public hearing for this application and opened the floor for discussion.

Avery asked if notification was a problem. Maxwell asked why the application was in Dennis Franz's name and not Paul Morse's name. Morse said he does have a deed, so his name is on there, Sieger said. Sieger said she thinks this application had to be published that way. Mueller made a motion to approve the application by Dennis Frantz and Paul Morse, as presented, and approve a side yard variance of no more than four feet and approve a back yard variance of no more than six feet, and that it meets factors four and five. Maxwell seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Members explained to Morse he got what he wanted and explained the difference between set backs and variance numbers.

Since Sieger still has not heard from Kaup, members went on to item six.

Item 6: An application for Morning Star Church requesting a variance from required front yard set back of 75 feet to 45 feet, for property located in Durham Township. Sieger said this application was published in the May 3, 2006 issues of the *Marion County Record, Hillsboro Star Journal and Peabody Gazette Bulletin*. Sieger asked if any members have had ex parte communication with anyone about this application, or have a conflict of interest with this application. Larry Koehn was present to speak about the application. Koehn said he is representing the school on the property, which is owned by Morning Star Church. Koehn said they supply teachers with housing on the school yard and the teacher's cars are left outside, so they want a garage. Koehn said the only place to go with no variance is right in front and it makes sense having it by the road, so that is why they are asking for a variance. Koehn explained the school and housing are on the same property. Members viewed photos of the property. Sieger asked if the carport would be where the car is parked in the photo. Koehn said yes and they are thinking about closing the carport on the north and west sides. It would be for three teacher's cars. Sieger asked about the size of the proposal. Approximately 28'x32', Koehn said. From where it would be located it would be 45 feet back from the front of the property, Sieger said. Sieger asked if anyone from the public wished to speak about this application. The size of the carport of 28x32 will fit with the variance asked for?, Maxwell asked. We allowed extra room, Koehn said. Is there anything else?, Sieger asked. Sieger closed the public hearing for this application. Mueller said he sees no problem with this application. Mueller made a motion to approve the application for Morning Star Church requesting a front yard set back variance from 75 feet to 45 feet which is a 30 foot variance as requested. Avery seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 7: An application for Robert Spachek, requesting a variance from required side yard set back of 15 feet to eight feet and 10 feet, and from required back yard set back of 20 feet to 15 feet, for property located in Centre South Township. Members are again acting as the Board of Zoning Appeals for this application. Sieger said this application was published in the May 3, 2006 issues of the *Marion County Record, Hillsboro Star Journal and Peabody Gazette Bulletin*. Sieger asked if any members had any ex parte communication with anyone concerning this application, or if anyone had a conflict of interest for this application. Robert Spachek was present to speak about his application. Spachek said he wants to build a house as presented in his plans. Members have drawings of the plans. Sieger asked Spachek if he wants a residence as well as a metal building in back, and he said yes. So, on both sides you need a variance

and on the back, Sieger said. It's an R-1 on the zoning map and according to David Brazil this is the only R-1 around Marion County Lake, Spachek said. Maxwell asked if the side set back request is for eight feet on the garage or metal building and eight feet on the house? It's 13 feet to the edge of the house or eight feet to the deck, Spachek said. Set back variances can apply to multiple structures, Mueller said. Are there other questions of the applicant?, Sieger asked. Does anyone from the public wish to speak about this application?, Sieger asked. Keith and Carla Hursh questioned the location of this property. The corner of Rock and Lakeshore, Spachek said. Lee Leiker, who lives next to this property, said the address is 107 Lakeshore Drive, according to the applicant, but it was submitted with an address of 4 Rock Road. The variance on Rock Road is 30 feet, Leiker said. I think the drawing is a misrepresentation, if the house sits on Rock Road, Leiker said. We have property adjacent to the north, so instead of asking for a variance of 15 feet to eight feet, ours is 20 feet, Leiker said. We've taken care of a severe erosion problem on our property and we are concerned about erosion on our property from this, Leiker said. Sieger asked and Spachek said the property was sold as 4 Rock Road. The front of the house is to the east, the back of the house is to the west and the side of the house is on Rock Road, Spachek said. Leiker has put rock on our property, Spachek said. It is currently two feet over on their property, to stop erosion, Leiker said. The purpose of an R-1 District is for single families and urban character, so R-1 does not address the availability of the metal building, Leiker said. Dangerous water may be sweeping onto other lands and we have had erosion and it continues to be a concern, Leiker said. The danger to our property is real, he added. It goes from his to ours and the draw is on his property, Leiker said. Leiker referred to the conditions for granting a variance. I'm concerned with the 30x50 building there because of run-off water, not to mention the housing again in R-1 says it's for a single family dwelling, Leiker said.

Members took a recess at this point to answer a call from Kaup. Members resumed discussing the Spachek application. Leiker referred to zoning regulations. A lot of variances are because there is already an existing home there, Leiker said. This is an empty lot with nothing on it, he added. Leiker referred to the fourth condition that must be met to grant a variance. I'm not sure how you make a hardship on something you haven't built, yet, Leiker said. I think the spirit of the regulations is to preserve space and prevent erosion, Leiker said. Special exceptions can be made if the Board of Zoning Appeals finds such exceptions would not adversely affect adjacent properties, Leiker said. A 30x50 is clearly larger than what is specified for a single family dwelling, Leiker said. I respect the decision of the board, but as an adjacent property owner and since I looked at the regulations prior to purchasing our property we would appreciate your consideration, Leiker said. Sieger asked if anyone else wished to speak about this application. John Laurin, who also lives adjacent to this property to the east, said his concern is an erosion problem as well. The water comes from

my property and goes to his property and at times it is severe through there, not just from my place but all through there and the road concentrates it because there is an erosion problem on the corner of my property, Laurin said. When the county put millings down a while back they did this spot first because they considered this the worse part of the area, Laurin said. If it continues to erode my property will continue to erode, Laurin said. Spachek said he has a problem with Leiker and Laurin. Leiker had the same opportunity to buy this property, Spachek said. Leiker knew when he bought the property there was an erosion problem, Spachek said. I'm not aware there is an erosion problem, Spachek said. My first thought when I saw it was this is nothing but a disaster waiting to happen, Maxwell said. Diane Leiker said the main issue for us is when we bought our property two years ago we checked on the zoning regulations for our property as well as this property. We are asking for them not to build closer than the specified set backs, Diane said. This penalizes us and we bought our property first, she said. They have not built yet and what constitutes the front of the property if the address is Rock Road, how can he say it is Lakeshore Drive?, Diane asked. How do we clarify that?, she asked. I don't think that will have anything to do with it, Maxwell said. I don't see how we can grant something we are unsure of, Diane said. Sieger explained that members have to address it the way it was applied for. Sieger asked if anyone else from the public wished to speak. Sieger asked Spachek if he had any other comments. When I first inquired about buying this property I talked to David Brazil and he told me there was no problem and I took him at his word, Spachek said. Mueller asked if the width of the home would be 47x54 and Spachek said yes, about that. That's what was in the file, Mueller said. Sieger asked about a retaining wall. David Brazil said if it's six feet off the property line you can do what you want and I intend to do that, Spachek said. Isn't there a state law about running water on another person's property?, Maxwell asked. I know when you do something on your property that directly affects another property there are guidelines but I can't speak to the actual statute, Sieger said. If he were to build it's up to him to take care of water that's coming from his property, Maxwell said. Leiker asked to make a clarification. He referred to the set backs and who decides what the front is, saying there has to be something that constitutes the front. Where again, we are the back which is 20 feet not 15 feet and that makes a huge difference to us, Leiker said. We looked at that when we bought our property, and again the erosion is a concern, but there isn't a structure there so why not modify the structure not the regulations?, Leiker said. Sieger closed the public hearing for this application and opened it for discussion.

Lakeshore has been determined to be the front, Mueller said. Most of the lots around the lake are long and narrow and if they go with Lakeshore as the front the house can only be 20 feet wide, Mueller said. Maxwell asked Kannady about addresses or lots at the lake, but Kannady had no clue. Maxwell suggested moving the house back where the proposed metal building will be. Wouldn't that

be a worse erosion problem?, Mueller asked. Yes, he'd have to divert water around it, Maxwell said. Looking at the application as a whole, and the lay of the land with the gully coming through here, is this the logic place to put the house?, Mueller asked. It meets requirements using Lakeshore as the front, Mueller said. Sieger read the R-1 description. So, the size would interfere but otherwise it would be allowed as an exception, Mueller said. Do you think erosion is the major factor?, Sieger asked and Maxwell said yes. Do you think that can be addressed to work?, Sieger asked. I don't think we can deal with an erosion problem, Maxwell said. We have dealt with water run-off, which obviously causes erosion and we have addressed structures and roads which cause run-off, Sieger said. We wouldn't know whether or not a retaining wall would take care of it, Sieger said. Could we refer them to an expert?, Avery asked. If approved it could be contingent on an expert?, Avery asked. Who?, Maxwell asked and Avery said she did not know. What about with the stipulation that it would have to satisfy all the neighbors?, Unrau asked. If I am stipulated and I have to have an engineer to do this I can go to my neighbors and require the same, Spachek said. I don't think you can, Maxwell said. The ravine is a "Y" and they are going to have to determine whether or not the water coming from my property is causing the problem, Spachek said. What about John Laurin and others?, Spachek asked. They are going to have to determine what part of the water is my responsibility, Spachek said. You're going to have to address it, Maxwell said. I intend to, Spachek said. It may be years down the road but you may have more problems than you even anticipate, Maxwell said. A number of years ago an owner did some work on his property and it caused water problems and it became a legal issue and the county required him to take down everything he had done, Eilerts said. Avery asked if this would be a question for an attorney. It has been suggested to stay with the set backs, Sieger said. It could be bigger, longer and narrower and be within the set backs, Mueller said. Leiker asked to respond. Sieger asked if the board wished to reopen public comments for something not already said. I would like the board to address the right to green space, which has not been addressed, Leiker said. Sieger asked about the issue of the size of the building. Unrau asked what the metal building would be used for and was told for woodworking, and boat storage. Sieger asked if all conditions for approving a variance can be met. Unrau made a motion to approve application number ZPO6.028 to allow variances of no more than seven feet and approve a back yard variance of no more than five feet. Mueller seconded the motion. Maxwell questioned the conditions. In favor: 7; Opposed: 0; Motion carried.

Back to item four. We can set a timeframe about conditions for allowing decisions to stay with the property, Sieger said. Kaup said you can do a timeframe. If we do a timeline of say 10 years, do they have to come back?, Avery asked and Sieger said yes. Also, on the issue of noise, this can be addressed with some kind of nuisance case if that would come about, Sieger said. Someone could file a nuisance claim so they would have a way of

addressing it if it were to become a problem, she said. Again, look at the five factors that all need to be met, Sieger asked members. Remember the idea about referring the guardrail and blind corner issues to the county, Sieger said. That would be for their benefit as well as everybody, Avery said. Is that the owner's responsibility or the county's responsibility?, Jim asked. Wouldn't that be a road and bridge responsibility to build a guardrail?, Mueller asked. Maxwell remembered he cannot comment on this application. The guardrail would be a condition, Mueller said. Mueller made a motion that the Board of Zoning Appeals approve the application for Jim and Tina Novak and approve a front yard variance of no more than 49 feet for the dining patio and approve a back yard variance of no more than 17 feet for the dining patio with the following conditions: first, the applicant have the county engineer determine whether a guardrail is necessary, and if so be installed at county expense, and have the county engineer determine the fence does not create a blind corner; and second, that the back yard fencing be constructed as proposed. Unrau seconded the motion. In favor: 7; Opposed: 0; Motion carried. Jim asked if economic development could be factored into zoning. Sieger explained it's by state statute.

About the problem of someone to issue building permits until new staff is hired, Kaup said certain factors make it problematic if a board member temporarily took this over, Sieger said. You would have to excuse yourself from anything that comes along with the property, he said, and he also questions if liability covers any of us, Sieger said. The other issue is lot splits, she said. There is no way to deal with lot splits without an administrator, she said. Maxwell said he read some comments about possibly referring some of the building permits to the planning commission, but he's not sure how that would work. The other issue, Sieger said, that she was present at the county commission meeting when Kaup was on the phone discussing setting a public hearing, and which way to go. There may be an outside chance of getting someone (hired) in 30 to 60 days, she said. But, it could be six months and that's probably too long to wait, she said. We could get some help from Kaup if we go ahead and set a public hearing, Sieger said. So, I want to revisit the idea, she told members. I have dates from Kaup when he cannot do it (the public hearing) in July, Sieger said. So, do you want to go ahead?, Sieger asked members. Even if we get new staff I think we'd all feel better if we had Kaup, Holub said. Members said yes to proceeding with the public hearing with Kaup. It was decided to try for Thursday, July 6, 2006, at 7:30 p.m. at the Marion Senior Center. Carol Maggard will work with Kaup on the notification. I hope we have a good cross section of the public, Avery said. We've had two hearing with not very good turnouts and I would hope for a better crowd, Avery said. Eilerts suggested inviting elected officials. Avery asked about inviting the different planning and zoning boards in each community in the county. The next regular meeting is schedule for July 27, 2006. That last application, that is probably about the poorest I've seen about where it was

located, Maxwell said. And, another thing, my copy of the map (for that application) was so bad you could hardly make it out, Maxwell added. Mueller will not be at the July meeting, and Avery is questionable about attending the July meeting. Unrau made a motion to adjourn and Ensz seconded it. In favor: 7; Opposed: 0; Motion carried and the meeting adjourned at 11:49 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

Eileen Sieger

Eileen Sieger,
Chairman