MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

May 26, 2005

Chairman Eileen Sieger called the meeting to order at 7:30 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, Glen Unrau, Mary Avery, Willis Ensz, Ervin Ediger, and David Mueller. Marquetta Eilerts was absent. Zoning Administrator David Brazil was present.

Sieger told members they received a copy of the new amended bylaws in their monthly packet in the mail. She asked them to replace the old bylaws with the new copy, so their information is current in their notebook. Sieger asked if anyone had any questions about the agenda, or any off agenda items. For off agenda, Sieger said members might wish to discuss meeting with the county commission on Monday, just in general.

Sieger asked for corrections, or additions, to the Record of Proceedings of the April 28, 2005, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Sieger had one correction on page one where the word "for" should be deleted. Avery had a correction on page four to clarify her comments about Brazil; she asked that "with his professionalism" be inserted. There were no other corrections. Avery made a motion to approve the Record of Proceedings with two corrections, and Maxwell seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 4: An application for Michael King, requesting a short form lot split for property located in Peabody Township. Members are acting as the planning commission for this application. This application was published in the May 4, 2005, issues of the Hillsboro Free Press and Free Press Extra. Lyle Leppke was present to speak about this application, representing Michael King. It will be a short quarter, Leppke said. This is the rock residence that had the fire, Leppke told members. West of it used to be a hog breeding operation, Leppke said. He intends to sell the entire quarter at an auction, Leppke said. Leppke thanked Brazil for helping make deadlines and make this happen. Sieger said the Land Evaluation and Site Assessment System (LESA) Application Score is not applicable to the first lot split, but is applicable to the second lot split. Members were shown diagrams, and how the two tracts line up. The drive is to the west of the county road, and not the highway, Brazil said. Leppke showed members on the diagram where the low-lying area is. It will probably include another 10 acres of creek, because there's no use selling the residential area and the creek area with the ag land, Leppke said. The additional 10 acres will just remain ag, because you can't put a home there due to flooding, Leppke added. Leppke explained moving the boundary line for one tract far enough south to accommodate the 50-foot setback. Sieger asked and Leppke said there is a long building on the property. Mueller said it is 63x100. The original building was not as long, as it now has a lean-to, Leppke said. It's quite a ways, like a half-mile, from the

home, Leppke said. I don't know if it even had access from the highway, but it did have access from the back because of the former purebred hog business, Leppke said. Maxwell asked if they plan to sell the entire tract of the whole 160 acres?, and Leppke said yes. With approval, they could sell the whole thing with two home sites, Brazil said. It's 77.8 acres from the center of the highway, Maxwell said. They won't have 40 acres, so is this a problem?, Maxwell asked. They would have to encroach to get the 37.8 acres up to 40 acres, Maxwell said. For each 40 acres, it would be compliant, Brazil said. The intention is to protect the ag land at the back, Brazil said. Where they have a short quarter for each 40, we have granted variances for short quarters and allowed for that, Brazil said. It was out of their control, because the highway took some, Sieger said. But, I'm going to the center of the highway and I'm looking at the future, especially if they sell off the whole thing, Maxwell said. You're talking about how they've configured those lots, Sieger said. You're still allowing for two lot splits, Brazil said. Leppke questioned what Maxwell meant and Maxwell showed him on a sketch of the property he had made. They weren't ready to out guess what if and think beyond this here, Leppke said. I guess they were ready to let the new owner figure that out, Leppke added. On one hand I like to look forward, as that's possible, but this one was pretty tough, Brazil said. Sieger asked when the auction is, and Leppke said they are working around getting approval and it will probably be held in late summer. Sieger asked if anyone from the public wished to speak. Sieger closed the public hearing for this application.

Sieger reminded members this is not a rezone and the land stays ag, it's just a splitting of property. Avery made a motion to approve two short form lot splits of 8.8 and 8.58 in the "A" Agricultural Zone District as presented by the applicant, with the requirement that that the short form lot split plat and the agricultural disclaimer be recorded by the Register of Deeds with the deed transfer, and that certification of such actions be filed in the office of the planning commission. Mueller seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 5: An application for Patrick Martin, requesting a Conditional Use Permit (CUP) for a commercial dog breeding kennel on property located in Lehigh Township. Members are acting as the planning commission for this application. This application was published in the May 4, 2005, issues of the Hillsboro Free Press and Free Press Extra. Jennifer Martin was present to speak about the application. She is a veterinarian. She presented copies of a diagram showing U.S. 56 and the road leading into Lehigh, as well as a poster board showing the property in question. She said they plan to construct a 10'x 24' building, which would house 32 pens. She said there is well water nearby. She said a second building, measuring 10' x 10', would be located to east of the first building. She said the Kansas Department of Health and Environment (KDHE) recommends using a grass filtration system for the fecal matter to be drained to the pasture. Sieger asked how many feet of pipe would be involved. Martin said she is not sure, but it would run to the pasture. Sieger asked and Martin said yes, they would wash down the inside of the buildings and run it out the pipe. Sieger asked how many dogs they are planning on. Martin said 32 cages, and if they are small breed dogs they could have more than one dog in each cage. Sieger asked if the buildings will be constructed and Martin said yes, they would be new buildings. Martin showed members a photo of what the buildings will look

like and said the outside will be metal and the inside will be a washable material. Sieger asked if the dogs will be on wire, and Martin said it is a coated wire. Brazil asked if he can put the photo of the buildings in his file and Martin said yes. Maxwell asked where their license would come from. Brazil said the Kansas Department of Animal Health (KDAH) and the United State Department of Agriculture (USDA). Maxwell asked Martin if she has done this before, and she said no, but I'm a vet. Maxwell asked Martin if the state will check on her operation, and she said yes, they would visit unannounced. Brazil said this operation will use about 2,500 gallons of water per day, and the state looks at larger wash-downs. Brazil said at the local level such operations need a closed waste system in order to issue a permit, and that an open line is not in the norm of what he's used to. Sieger said in the past the board has required a separate special waste pickup for previous applications similar to this one. I'm willing to look at their options, whether it's the state doing it, or it's a local permit, Brazil said. Mueller said it probably depends on the size of the operation. Sieger asked and Brazil said KDHE permits the wastewater system and KDAH permits the operation. By being a vet, you will be able to handle their shots and care and all, Sieger told Martin. Avery asked and Martin said she works at the Hillsboro Animal Health Clinic. Sieger asked if anyone from the public wished to speak, or if there are any other comments, or information? Martin showed an aerial photo of the property. Sieger asked and Martin showed members on the photo where the nearest residence is located. Unrau asked, and Martin said the waste would go to the south of the buildings. Martin showed members on the aerial photo where the waste would drain. Sieger asked if there was anything further? Sieger closed the public hearing for this application.

Avery asked Brazil about his staff recommendation of not allowing more than 100 dogs, and Brazil said yes, a total of 100. Adult dogs?, Avery asked. On other similar applications we have put a limit on the number of dogs, Brazil said. One issue was to limit noise, he added. And, the waste, too, Sieger added. I would just recommend some kind of total on the number of dogs, Brazil said. They can always request to expand, Sieger said. Is waste the responsibility of this board?, Avery asked. There are other tools I have to make sure waste is handled correctly, Brazil said. If I have over four breeding females, or more, I have to have a USDA permit, Martin said. Maxwell asked if KDHE handles feedlot permits, and Brazil said yes. Typically, KDHE does the permitting on livestock or animals, and they ask me to deal with the others, Brazil said. Sieger asked if the CUP is applicable to only part of the acreage? Yes, less than 10 acres, which covers what she is planning, Brazil said. Avery asked Martin if she has any issues with the 100 dogs limit? I guess I'm a little concerned, but probably not too concerned unless all the dogs have large litters at the same time, Martin said. Sieger reminded members of how sometimes this is figured in animal units. It all plays in with the waste issue, so it might change how you want to deal with the waste, Avery said. Mueller made a motion to approve a recommendation for a Conditional Use Permit (CUP) on less than 10 acres for a breeding dog kennel as presented by the applicant, and included in his motion four recommendations, first that not more than 120 dogs be handled on-site at any time, second that all waste from dogs be handled as special separate waste, as required by KDHE and the county permit, third that the owner maintain all necessary USDA, KDAH and Kansas State Licenses for a boarding and breeding kennel, and fourth that the pens or

open kennels be located at least 50 feet from the front lot line and at least 30 feet from any side or rear lot line. Avery seconded the motion.

In favor: 7; Opposed: 0; Motion carried. Brazil explained the timeline to Martin.

Item 6: An application for Ralph Popp, requesting a variance from required side yard set back of 50 feet to 20 feet and from agricultural acreage requirement, and requesting a Conditional Use Permit (CUP) for storage and retail sales business for property located in Centre South Township. There are two parts to this application. The Board of Zoning Appeals will address the variance requests and the planning commission will address the CUP request. This property is located on the northwest edge of the City of Marion. This application was published in the May 4, 2005, issues of the Hillsboro Free Press and Free Press Extra. Dennis Maggard was present to represent Popp. Maxwell asked if this application should be addressed as two, or three issues? Brazil said he recommends considering the CUP, first. Maggard explained that he and Marion Ogden want to expand their business on Popp's property, in the old alfalfa mill. We mainly want it for storage, as we will take some people out there for some sales, but not on a regular basis, Maggard said. This property in the past has been vandalized, but since we've been out there it has not been vandalized, Maggard said. So, keeping the property up should help the vandalism problem, he added. Maggard gave members copies of a diagram of the property. On the diagram were buildings marked "A" "B" and "C." Popp owns "B" and "C," and Mike Slattery owns "A," and Popp owns the land, Maggard explained. Mike Slattery has agreed to sell his building and Ralph Popp has agreed to sell his building, Maggard said. As for set backs, there's no way to do it, because Ralph doesn't want to sell the entire property, Maggard said. Sieger asked if most of the old equipment on the property is Slattery's?, and Maggard said yes. Avery asked what they would do with all the old equipment? Slattery will haul it off, Maggard said. Slattery's property lease goes 140 feet out from the building, Maggard said. Slattery leases the land and owns the building, Maggard explained. Ralph said if he ever decides to sell he would give us first option, Maggard said. Sieger asked and Maggard said there is a circle drive through the property. Ediger asked Maggard if they are going to use all three buildings? No, just two, as Ralph uses the other, Maggard said. Sieger asked if this property is in the city limits? I think it's about 180 feet south of the city limits, Maggard said. So, if you purchase this it will be surrounded by county land, not city?, Sieger asked and Maggard said yes. Does it have electricity?, Sieger asked and Maggard said yes. Water, or sewer?, Sieger asked and Maggard said no. We will fence and gate the property, Maggard told members. One building is very tall, and dangerous, he said. We have repaired a lot of glass in one building, he added. It sits right on the railroad right of way, behind it, Maggard said. Mueller asked about the acreage, and Maggard was not sure. Sieger reminded members this is not a rezone request, just a CUP. We try to keep things looking nice, Maggard said. We lay tin down and mow in between, he explained. It's 1.09 to 1.1 acres, Brazil said. It would stay ag, Sieger said. With a CUP on top, Brazil said. It is unique, as it's on the edge of town, yet it's some how removed, Brazil said. Maxwell asked if the CUP would be in Popp's or Maggard's name? It would be in their name, if they purchase that part, Popp said. Does anyone from the public with to speak, or is there any other information?, Sieger asked. Sieger closed the public hearing for this application.

Sieger suggested dealing with the CUP, first, as the planning commission. She explained it will go on to the county commission for final approval, and the variance is the second part, which is handled by the Board of Zoning Appeals, and it is a final action. Maxwell asked if the City of Marion has been involved? Has anyone spoken with Mr. Mayfield to see if he is comfortable with the application?, Maxwell asked. The city would have received notice, Sieger said. Since the intended use is not what I call full commercial, as it's by appointment, that's not an issue at this time, Mueller said. It would come back before you at that time, Brazil said. We could put a condition that if they become more full-time, it would need to be reviewed, Avery suggested. We don't want to hinder their plans, Mueller said. Mueller asked and Maggard said they are not looking at using this full-time. We get bigger items we need a place for, Maggard said. We have a store downtown, he added. I understand, but I'm looking down the road, Avery said. If Popp does sell it in the future, we'd come back in and look at it, then, Mueller said. And, the CUP does stay with the property, so you do have to safe guard the property for the future, Sieger said. Mueller made a motion to approve a recommendation of a storage and retail sales CUP as presented by the applicant, with two conditions, first that the CUP parcel be surveyed to ensure an accurate property description, and second that the CUP's primary use be for storage and if the retail sales become full-time the CUP be reviewed. Ediger seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Sieger asked members to now consider a variance of 30 feet from the building. The side set back was published, Brazil said. Maggard explained that one building is longer than the other. Sieger said she needed to back up and appoint Maxwell to be the alternate on the Board of Zoning Appeals, as Eilerts is absent. I would go back and republish this, Brazil said. Avery said members should explain to the public why publication is an important issue. If we don't properly notify, the decisions you make are not legal, Brazil said. And, they are open to challenge, Sieger said. Absolutely, Brazil said. I wish I had seen this when I was out there, but it's too close, Brazil said. I hate to put it on hold, but..., he added. That's a change and we have to go with what's legal, Sieger said. So, what do we need to do?, Maggard asked. We'll add this to your application and republish. Brazil said. Can we act on this part?, Sieger asked. We could, but I'd probably wait and do it all at once, Brazil said. Sieger opened the floor for discussion. Brazil showed they had one diagram for their application and a new diagram, tonight. We didn't realize it was that close, either, until we refigured it, Maggard said. It's a fairly complicated piece of property, Maggard said. The issue will be addressed, it's just when we do it, we'll do it right, Mueller said. When do you meet, again?, Maggard asked. Not until July, Sieger said. Avery asked about a special meeting next month, so they don't have to wait. Sieger explained that even if things were running on time, the county commission would still not address this until the third week of June. I think you can allow the CUP to go forward, and come back to the variance, later, Brazil said. The only problem would be if someone would complain, which I can't imagine as the only reason we are changing this is to split the difference between the two buildings, Brazil said. If we don't act upon this, we would need to vote for a continuation, Sieger said. I would vote a continuation and come back to it, Brazil recommended. I have the same feeling Mary does, and I can come in June, Unrau said. Would it open it to other applications, or would it set a precedent?, Sieger

asked. We need to state it's a special meeting for this purpose, only, Sieger said. Mueller suggested going with the regular meeting date. We could be in the field at that time, Sieger said. We would need four members for a quorum, Maxwell said. Members discussed meeting on June 23, but possibly at a different time of day. That would only delay things a few days, compared to the way it would have been, Sieger said. It was decided to meet at 9 a.m. on June 23. Mueller made a motion to continue the application for a variance request by Ralph Popp, and that members schedule a special meeting of the Board of Zoning Appeals for the purpose of this application on June 23 at 9 a.m. Ensz seconded the motion. In favor: 7; Opposed; 0; Motion carried.

Item 7: An application for Scully Partners/Western Wireless, requesting a Conditional Use Permit (CUP) for a wireless communications facility (a 220 foot support tower) to be located in Risley Township. Members are acting as the planning commission for this application. This application was published in the May 4, 2005, issues of the Hillsboro Free Press and Free Press Extra. Michael McCrery was present to represent Western Wireless. He told members he has been in the zoning business for wireless towers about 10 years, now. He said years ago it took him 20 minutes to explain his request, but now people are more knowledgeable that towers can't be too far apart or too close together, or they will drop signals. In this case, there's a lack of coverage in the Hillsboro area, he said. He said they would lease 1.27 acres and build a 10x 20 shelter in a fenced area. He said it would be located 305 feet from the highway right of way. We are always looking to locate on an existing structure, but the only other tower is an Alltel tower, which is 145 feet, he said. It would accommodate our tower, but it would be so low it would require more towers be put up, he explained. We are proposing a 220-foot tower, with a total of 229 feet to the top of the lightening rod, he said. He said they have contacted the Hillsboro Airport. He said it would have a dual motion light, which flashes in the day, and will switch over to red at night. Now we aim lights at the horizon, so if the red light causes any glare it will be cast downward, he explained. Sieger asked and McCrery explained that it's like a car where you can still see the light in the day, but it's not like it's coming at you. It would hold a total of three carriers, McCrery said. You mean other wireless carriers?, Maxwell asked and McCrery said yes. So, it could have other carriers?, Sieger asked and McCrery said yes. Sieger asked and McCrery said the tower is 370 feet from the center of the highway. Sieger said she remembered on previous tower applications there were concerns about it falling over. No, it wouldn't fall on the highway, McCrery said. I believe the county ordinance is half the height of the tower for the set back, he said. I think it's the same as the height of the tower, Brazil said. Some towers are designed to fall in on themselves, McCrery said. They're designed for an 80 to 90 mile per hour wind, Brazil said. If the structure starts to fall, it will change the angle of the platform, which reduces the wind, and then they have to come in and replace it, Brazil said. Sieger asked and was told this property has been in the Scully Partnership for over 100 years, and there is no grazing or ag use in the lease area. McCrery said this would have minimal impact on surrounding property uses. He said they had a Kansas registered biologist check this site, because they were concerned with migrating bird patterns. McCrery said the findings indicate there would be no impact on migrating birds, or endangered species. He said the report was just finished this week. McCrery added the property also does not involve any Native American, or historic sites. Brazil asked

McCrery for the name of the biologist, but he did not have the name with his information. Sieger asked if the county will receive a report on this, in the future, and asked McCrery if he could get a copy of the report for the file and he said yes. We would have no objection to making this one of the conditions, McCrery said. Ediger said the access road is right along an inside pasture fence, and since there is already a fence inside the driveway, he wondered if they could share the same fence? It's not in the best of shape, is it?, McCrery asked. Ron Bartel, landowner, said no. They use pretty light vehicles, and I would think if farm equipment rutted it up and they needed to get in there and fix something, they couldn't get in there, McCrery said. I don't have any problem with you making an access driveway, Bartel told McCrery. I wouldn't mind working with you with any access needs, or whatever, Bartel said. I'm planning on putting in a new fence, anyway, he added. If you're thinking of putting a gate in there, I'd like to know where you want to gate it, Bartel told McCrery. I understand you do not want any heavy equipment in the driveway, Bartel said. Are you also farming the land, yourself?, Sieger asked and Bartel said yes. McCrery showed Bartel the diagram of the plan. Bartel asked McCrery if the gate would be accessible to Western Wireless, only. Would it be a padlocked gate?, Bartel asked and McCrery said yes. I want it to be a decent fence, tied to the gates, Bartel said. It looks fine, Bartel said of the plan. Sieger asked and Bartel said from what he saw on the plan, the cattle will have access. My questions are answered, Bartel said. Sieger asked Ediger if he had more questions. No, that's up to them, I just wondered if more than one road is needed, Ediger said. Sieger encouraged Bartel and McCrery to continue to work out details after the meeting. Maxwell asked, and McCrery said the Federal Aviation Administration (FAA) approval is still pending. It takes the FAA quite a while, McCrery said. There is a 99 percent chance of approval at this point, he said. Official approval comes at a later date, he added. Western Wireless would never start stacking steel until we have approval, McCrery said. Final approval?, Sieger asked and McCrery said yes. We would never do anything until we got it, so if you want to make that a condition, we're all for it, McCrery said. Maxwell asked why there was no drawing of the tower in all the diagrams given to members for review. The tower sits on a spread foot foundation, McCrery said. Avery asked when the proposed tower by Peabody is going to happen. That will most likely be on your July agenda, McCrery said. Is there anything else?, Sieger asked. Does anyone else wish to speak?, she asked. I would like to see you get this up as soon as possible, because it's a step toward progress, said Marion County Commissioner Randy Dallke. Sieger closed the public hearing and opened the floor for discussion and determination.

Brazil thanked Maxwell, saying he asked him to come in his office and help him go through these plans and he was very helpful. I'm also thankful we have an Article on towers, Brazil said. In the new regulations, Sieger reminded members. I like the idea of shared use, Sieger said. Mueller made a motion to approve a recommendation for a wireless communications facility Conditional Use Permit (CUP) as presented in the development plan by Western Wireless, with five recommendations, first that the tower lighting is constructed to be red at night and white during daylight hours, second that all state and federal permits be obtained and maintained, third that all antennae and support structures meet or exceed regulations of the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) and should such standards or

regulations be amended then devices and structures shall be brought into compliance as mandated by the controlling agency, fourth that the support tower be constructed to accommodate a total of three users, and fifth that a copy of all reports be filed with the county. Avery seconded the motion. Maxwell asked why put a limit on the number of users? It's the physical load on the tower, McCrery said.

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

Sieger explained the time frame for the application and that it will go to the county commission for final approval.

Item 8: Sieger reminded members the next meeting would be a 9 a.m. on June 23, and will be a special meeting of the Board of Zoning Appeals. Sieger said the next regular meeting is on July 28. Avery said she would not be at the meeting in July. Unrau and Ediger said they might not be at the July meeting, either. Members discussed attending the county commission meeting earlier this week, on Monday. Those attending that meeting were Avery, Unrau, Maxwell and Sieger. Brazil said the attorney will give several options to choose from, with what the county commissioners are interested in seeing changed. I came away with not a clear feeling of what the commission was wanting, Avery said. I think there's room for compromise, if everyone gives a little, she said. But, in watching and listening, there appears to be misinformation and I wondered if we should all sit down again and try to be clear on the information, Avery said. The commission said they want to work with the planning board and I think this can be positive, she said. Before we have someone make up different options for us, I'd like to be more clear on what the issue is, Avery said. Unrau said he appreciated the attorney sharing some of his experiences, and one thing I heard was we need to get people in here to fill our schools, but the problem is what to do when there is a turnover. But, what I see in Goessel is there have been areas purchased in Goessel with interest of development and nothing has been happening, Unrau said. People become disenchanted with the community, he said. People will bring their children within the district boundary, but that gets old, so things change very quickly and I was so glad he brought that out and I was hoping everyone picked up on it, Unrau said. Sieger gave a history of working with this attorney, Jim Kaup, through many past issues. He has a great combination of a legal and planning and zoning background, Sieger said. So, his expertise in this area is super, she added. I think the fact that since December we have a whole new format to look at, let's look at it in a year from now and not be in too big a hurry, Unrau said. Let's be cautious, he added. Come up with something that would be a balance, Brazil said. I think within a few weeks he'll have some packets for review, Brazil said about Kaup. Maxwell said he is concerned that Kaup has not heard from the current planning commission. He's pretty familiar with our regs and all that has occurred, Brazil said. Does he know that several of us have expressed the fact that it would be our preference to work with what we have for at least a year?, Sieger asked. I think this is going to smooth out, Brazil said. They are hearing from people who have an agenda, Maxwell said. Just look at the meeting, and how some people were clear on their facts and others were clear out in left field, Maxwell said. But, these folks are willing to listen and I think it will all smooth out, he added. He will make sure that whatever happens satisfies statutes, Sieger said about Kaup. We have to follow those statutes, so we want to be sure we follow it to the letter, she added. Brazil asked members if they want to meet with the attorney, again, or wait for information to

come? The issue seems to be the acreage, but I think we need to find out for sure what is the issue, Avery said. If the majority of the planning commission wants to finish out the year using this plan, that needs to be discussed and you have to have a clear view before you bring in a consultant, Avery said. It's hard to work toward something when you're not sure what you're working toward, Avery said. The options may help them decide where they want to go, Brazil said. Maxwell said Kaup pointed out that sometimes people are just trading property and you're not actually getting new residents coming in. All counties around our county are losing population, Maxwell said. I won't say it's impossible, but it's not working, Maxwell said. We need jobs, Ediger said. Maxwell reported on attending a meeting in Topeka last week with Westar Energy. He said they opened it up to the public to ask questions. A question was asked about wind farms, and Westar had constructed two wind generators as a trial, Maxwell said. Maxwell mentioned coal-fired, oil, nuclear and wind-powered energy. They are still constructing a wind farm in southeast Butler County, Sieger said. Unrau made a motion to adjourn and Ensz seconded the motion. In favor: 7; Opposed: 0; Motion carried and the meeting was adjourned at 10:37 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

Eileen Sieger,

Chairman