

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING
APPEALS

RECORD OF PROCEEDINGS

November 15, 2001

Chairman Eileen Sieger called the meeting to order at 7:30 p.m., with a quorum.

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

Sieger asked if there were questions about the agenda, or additions to off agenda items.

Sieger asked for additions or corrections to the Record of Proceedings for the September 27, 2001, meeting of the Marion County Planning Commission/Board of Zoning Appeals. There were no corrections. Unruh made a motion to accept the Record of Proceedings as presented, and Eberhard seconded the motion. In favor: 8; Opposed: 0; Motion carried.

Item 4: An application for Richard Klenda, requesting a variance from required side yard setback of 50 feet to 30 feet. This property is located in Clark Township. This application was published in the October 24, 2001, issue of the *Marion County Record*. For this application, members are acting as the Board of Zoning Appeals. Ed Klenda was present to speak about the application. Members were given photos showing what the property looked like prior to a hay shed on the north side of the yard getting blown away last spring. They started rebuilding, with poles in place, and decided to check if they needed a permit. They were planning on making the building a little bigger. So, I guess we're in trouble, Klenda said. We were just trying to replace what Mother Nature took away, he said. There are 160 acres, zoned ag, on this property. Members were also shown a large aerial photo of the property. So, actually, rather than the required 50 foot setback, it will be 30 feet?, Sieger asked and Klenda said yes. We might make a note there was one written public comment from an adjacent landowner in favor of this and no problem with it, Sieger said. The letter is from Doug Sharp, representing Scully, saying it is fine with him, she said. Does anyone from the public wish to speak?, Sieger asked. No one did. Is there anything else?, Sieger

asked. There was nothing more. Sieger closed the public hearing for this application and opened the floor for discussion and determination.

It's a little bit over 30 feet, Brazil said. They've got posts out there marking it, but you can't be exact without surveying it, he said. I don't see a problem, Eberhard said. Bartel made a motion, acting as the Board of Zoning Appeals, to grant a variance of no more than 20 feet, as this use is such it will not impact the adjacent landowner, as the same people operate both properties. Eberhard seconded the motion.

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

Sieger explained this is a final action and does not go to the county commission.

Item 5: An application for C.F. Dannenfesler, requesting a variance from required backyard setback of 20 feet to 10 feet. Members will again be acting as the Board of Zoning Appeals. This property is located in Centre Township. This application was published in the October 24, 2001, issue of the *Marion County Record*. C.F. Dannenfesler was present to speak about this application. He said he is interested in building a garage on the backside of his property, which is bordered by roads on three sides and water on the fourth. This property is at Marion County Park and Lake. He said his family just recently moved fulltime to their lake property. He said he has visited extensively with his neighbors, and he does not plan to obstruct anyone's view. You actually have two lots?, Sieger asked and Dannenfesler said yes. Members were shown photos of the property. Two letters were received from neighbors in support of this proposal. Letters were from Lubbers and Jolleys. You do plan to take the carport down?, Sieger asked and Dannenfesler said yes. Many times at the county lake we've had to do some adjusting due to how it was laid out before zoning, Sieger said. I very much favor the zoning and favor the standards, Dannenfesler said. Does anyone from the public wish to speak?, Sieger asked. Are there any other questions?, Sieger asked. This is also acting as the Board of Zoning Appeals, Sieger reminded members. This is a backyard setback, which is normally a 20-foot setback, so it's a variance of 10 feet for a 10-foot setback, Sieger explained. Sieger closed the public hearing for this application and opened the floor for discussion.

We do have a staff recommendation to approve a backyard variance of no more than 10 feet, Sieger said. Unruh made a motion acting as the Board of Zoning Appeals to approve the application for a 10-foot setback on the backside of Lots 1 & 2, Schlotthauer Subdivision, SE/4 9-20-4. Robinson seconded the motion. In favor: 8; Opposed: 0; Motion carried. Sieger explained this is a final action.

Item 6: An application for William Shirley, requesting a rezone from agricultural to rural residential, for property located in Catlin Township. This application was published in the October 24, 2001, issue of the *Marion County Record*. Members are acting as the planning commission for this application, and will make a recommendation, which goes on to the county commission for final approval. William Shirley was present to speak about this application. He said there are a couple of reasons for his request. One thing is, the pasture is in a flood zone and he wants to get the house out of it for insurance purposes. Also, if he ever decides to sell the house, he wants to keep the pasture. There is a total of 37.53 acres on this property. The flood insurance is determined by the flood map, not by what we decide zoning to be for the property, so whatever we'd make it, it wouldn't determine their decision, Bartel said. So, you're not going to fix your flood insurance problem, Bartel said. Okay, so I guess the reason is, in case I ever sell the house I could keep the pasture, Shirley said. A certified mortgage company might look at this as a more viable application if it's zoned rural residential, Unruh said. The survey company did state the house was not in the flood zone, Shirley said. How long have you been living there?, Sieger asked. A year and a half, Shirley said. Did you build the home?, Sieger asked. No, my brother in law did, it's a manufactured home, Shirley said. It was in 1993, so it should have been approved since it was in the flood zone, Sieger said. Does anyone from the public wish to speak?, Sieger asked. How did it get to be 37 ½ acres?, Bartel asked. Shirley was not sure. He said it was when his brother in law, Dan Harper, bought it. Looking back at the building permit and the fact that it's less than 40 acres, it was an existing building site, Brazil said. What waste water system is there, now?, Eberhard asked. The wastewater lagoon needs to be fenced and vegetation removed, so it'll function properly, Brazil said. Do we know if any of the 10 acres is in the flood zone?, Bartel asked. I can't answer that without the flood hazard map, Brazil said. Can you verify later that none of the 10 acres is in the flood zone?, Bartel asked. Sieger asked for verification on a diagram drawing of the property and the property's rezoned area. Sieger questioned the setback for the lagoon. A 50-foot setback is required, Brazil said. I haven't been out there to view property, he said. Has there been a survey done?, Unruh asked and Shirley said yes. In regards to a mortgage point of view, if they can show the capital improvements do not sit in the flood zone you should be okay, Unruh said. Sieger questioned the boundary lines. So, the barn closest to Catlin Creek is a pole barn?, Bartel asked. It's an old hog barn, Shirley said. The shed is right on the property line, Sieger said. So, would that need to be torn down?, Shirley asked. Either that or the property line moved, Sieger said. Eberhard asked why not straighten the

line for the property line? That's a fence line, Shirley said. About how much distance from the creek is the line?, Sieger asked. About 30 feet, Shirley said. Is the property line in the middle of the creek?, Sieger asked and Shirley said yes. Is there anything further?, Sieger asked. Or other information that we need?, she asked. Unruh suggested extending the property line so as not to leave a little piece of land left out. How much additional acreage would be added on if you extended the line to the middle of the creek?, Sieger asked. About one and a half, to two acres, Shirley said. Have you looked at what this is going to do to your tax, dividing it like this?, Eberhard asked and Shirley said no. That's something we don't know, either, Sieger said. Do you use the pasture?, Sieger asked and Shirley said no. Is there anything else?, Sieger asked. There's a spring to the back through the pasture, so when you're proposing to move the line it's going toward the spring, Shirley said. Anything else?, Sieger asked. Sieger closed the public hearing for this application and opened the floor for discussion and determination.

Show me the line you're talking about, Bartel asked and Unruh showed him. At least take it north to the creek, Unruh said. Yes, I agree, Sieger said. What do the rest of you feel about the boundaries?, Sieger asked. Members agreed to run the line to the creek. The east boundary was discussed. You're going to be getting close to 20 acres, Brazil said. Sieger asked what if they brought the boundary down, but then brought it back across to avoid the spring? Unruh proposed leaving an 'L' shape area, and members agreed. You could square it off to make 10 acres, Eberhard said. You're going to have to give him a little room to work with, Brazil said. So a minimum of 10 acres, Sieger said. You'd only be changing the ag, you wouldn't be changing the flood zone, Bartel said. You're not making the flood zone rural residential, Bartel said. By extending to the creek you're not making it rural residential to the center of Catlin Creek, because we didn't publish it that way, Bartel said. As long as members don't feel the rural residential line is the center of Catlin Creek, Bartel said. When you want to change a flood zone you have to publish to change it, he said. The reason we have millions of dollars of flood damage is because districts have been changed, so be sure to understand you're making rural residential that part which is ag and the flood zone remains the same, Bartel said. I hate to delay this, but wonder if it wouldn't be to your advantage to get a property line drawn out and some elevations drawn up to compare with the flood zone, Unruh told Shirley. We don't usually require a formal survey before a recommendation is made, Sieger said. Are you feeling you need this to happen, soon?, Sieger asked Shirley. We don't meet again until January, she explained. I'll pay the flood insurance, I just want to keep the pasture if I sell the home, Shirley said. If the applicant accepts the boundaries the

commission has discussed, there'd be no reason to continue it, Bartel said. Unruh made a motion to recommend approving a change of zoning from agricultural to rural residential on the property for no less than 10 acres and that boundary lines be squared off with the southwest corner beginning somewhere north of the southwest corner of the entire property, then proceeding east to a point east of the lagoon and then proceeding north to Catlin Creek in a straight line. Ediger seconded the motion.

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

Sieger and Brazil explained they will need a survey before the second Friday of December as on the third Monday of December a resolution for this application will be presented to the county commission.

Eilerts made a motion that the waste water system be brought into compliance with the county code before final action comes before the county commission. Bartel seconded the motion. In favor: 8; Opposed: 0; Motion carried.

Item 7: An application for Cottonwood Valley Development, L.L.C., requesting a Conditional Use Permit (CUP) for recreational cabins. The second part of this application requests a zone change from agricultural to rural residential. This application was published in the October 24, 2001, issue of the *Marion County Record*. Members are acting as the planning commission for both parts of this application. Stan Brodhagen was present to speak about this application. He said he acquired the property about 20 years ago from Leon Suderman. There is a three-bedroom house on three acres and two cabins on 14 acres. He said his grandfather used to lease the cabin and they have had the cabin property in their family for four generations, now. He said he called Brazil several months ago and asked what it would take to get a building permit to add on. He said Brazil viewed the property and the waste water system and said you can't build onto them and why not have the property rezoned. He said Brazil asked him about future plans for the property. He said he didn't know future plans, but could guess they might add two cabins to the property. Brodhagen said he asked about a CUP for recreational use, and that the process be explained to him. Essentially the property is non-conforming use and Brodhagen said he will accept whatever decision is made. Unruh said he has a conflict of interest and withdraws from discussion for this application. Do you lease this out, or are these just for family use?, Sieger asked. We've never rented them out, but we have let church groups use it, Brodhagen said. It's not winterized, he added. What's the rest of the 80 acres?, Bartel asked. It was sold off in April of this year, Brodhagen said. A total of 80?, Bartel asked. About 14 acres with a cabin and 10 acres with a house, Brodhagen said. It is zoned ag, Brazil said. Will the cabins be in the flood zone?, Sieger

asked. If they were in the flood zone, I wouldn't build them there, Brodhagen said. You sold off what was originally the quarter, Bartel said. I think we're here because he created a situation where there's a non-conforming use, Bartel said. Does anyone live there?, Sieger asked. Yes, a young vet here in Marion, Brodhagen said. Are you still trying to sell it?, Chuck Seifert asked from the audience. I was worried about you leasing it out to hunters, Ron Kissack said from the audience. John Watson said he owns the land on the other side. I'd like to state on the record if they're against it, I want to withdraw, Brodhagen said. Brodhagen read restrictive covenants, which he attached and filed with his deed. This is the end of the world, and the intent was that it would stay that way, Brodhagen said. So, we just drop the issue, then?, Eberhard asked. I guess it's how you do things in your county, if you want things to be in compliance, or not in compliance, I'm okay, Brodhagen said. Brodhagen spoke of his various development projects in the Newton area. Gloria Seifert said I still don't understand what he wants. Are you wanting to tear down the cabins that are there and rebuild?, she asked and Brodhagen said no. Does anyone else from the public wish to speak about this application?, Sieger asked. Mick Summervill said he farms across the river and questions who's coming in there after Brodhagen is gone. I'm worried about the irrigation system noise, etc., Summervill said. What about your other neighbor?, Brodhagen asked and Summervill looked at Seifert. Yeah, but I'm not worried about him. He makes noise, too, Summervill said. Members discussed looking toward the future when making decisions. Then you'd never do any rezoning, Brodhagen said. I don't follow that, Sieger said. I'm with Mick, if you sell off the house, I'm concerned, Seifert said. We can't issue a permit on this property as it stands, Bartel said. Will you give me that in writing?, Brodhagen asked Bartel. I'm a volunteer, Bartel said. This is your problem, this is not my problem, Bartel said. Would you like me to withdraw this?, Brodhagen asked. Sieger closed the public hearing for this application and opened the floor for discussion.

These are not non-conforming lots if you create them after 1992, Bartel said. A non-conforming lot exists at the time of zoning and at the time of zoning this was a 160-acre tract, Bartel said. I'm convinced if I want to take this issue to court I would win, but it's not that important to me, Brodhagen said. What people better hope is I keep the property and pass it on to my family and we keep it up, Brodhagen said. I want to support David because how can he operate on the basis that anyone can sell off whatever they want, but that doesn't mean I support this, Bartel said. Let's look at the CUP for cabins and make a determination, Sieger said. Is there any reason to issue a CUP as he says he doesn't plan to build here

and if he did it would be in the flood zone, Sieger said. It's very clear it has to be a lot that existed at the time of zoning, Bartel said. It's a self-imposed hardship, totally, on both parts of the application, Bartel said. We can ask him to withdraw, or we can approve it, but in that case I vote no, Bartel said. I sense some concern here from the neighbors, Eilerts said. And as Herb has said, he created this himself, Sieger said. And he said he was well aware of what he was doing when he did it, Eilerts said. I'd like to know when he sold the property off, Brazil said. In April. Has this been registered?, Brazil asked. Doug Brose bought it. We could continue this to January and during that time ask the applicant if he would consider withdrawing the application, Bartel said. I don't want to make a motion to approve, or deny it, Bartel said. Bartel made a motion to give the applicant the option to withdraw the application and Eberhard seconded the motion. In favor: 7; Opposed: 0; Abstained: 1; Motion carried.

Item 8: A continuation of the public hearing from last week. Sieger told members she was embarrassed that only three of nine planning commission members were present at the meeting. I felt this was important, she said. We instructed David to go to the county commission and ask them if they want to give to the cities the jurisdiction and they stated at that time they did not want to relinquish this to the cities, Sieger said. What we need to do now with continuation of the public hearing is to ask David if we have received any written comments, Sieger said. Brazil said no written comments have been received. Sieger closed the public hearing for the Comprehensive Plan and opened the floor for discussion. We also need to address the maps if we do approve it, Sieger said. It apparently takes the majority of the full planning commission, from what we've read, she said. The final copy of the plan should have a September date on it. What we need to do is make good final copies, Brazil said. That would make it January, if we did that, is that what you want to do?, Bartel asked. Eilerts asked for a summary of the changes. We need to decide what we want and then the county commission can decide what they want, Sieger said. This isn't an actual change to regulations, this is the document that provides the overall guidelines, Bartel said. But, there are going to have to be changes, he said. We have the responsibility to review this and I'm ready to pass this on to the county commission with our recommendation, Bartel said. We need to make a recommendation for what we believe it should be, Sieger said. This is so infinitely superior to the previous document, I think it's most important to pass it on and then we can have a discussion about what changes we want to make to the regulations and we can have a discussion about keeping it up to date, Bartel said. I agree with Herb to approve this and send it on, Eberhard said. Let's hope it's not going to set on a shelf like the last one did,

Sieger said. So, what are your wishes, to approve it as is, or delay it to January?, Sieger asked. Brazil would take it to the county commission in December. One thing Scott Michie said the other night is this is pro urban growth and pro ag, which can work hand in hand, Brazil said. So what are your wishes?, Sieger asked. The issue of cities wanting jurisdiction for a mile, or mile and a half, is this an issue for us?, Ediger asked. Brazil asked the county commission if they wish to relinquish this and they said no, Sieger said. We're recommending areas of urban influence and the joint meetings, Brazil said. We'll be given one official copy and we can buy additional glossy copies, or make our own additional copies, Brazil said in response to a question from Eilerts. Does the motion need to address annual reviews?, Eberhard asked. It will automatically be reviewed with the by laws, Sieger said. Eberhard made a motion to recommend this plan for adoption by the county commission for the county of Marion and Eilerts seconded the motion.

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

Brazil has prepared a resolution. A couple of things before adjourning. The next meeting is January 24, 2002. Three member's terms expire. Fincham, Eberhard and Bartel need to make a decision and let their commissioner know what they decided, Sieger said. I'm going to take my full retirement, Eberhard said. It's nothing to take lightly and I don't think people in our county realize how important it is, he said. Unruh made a motion to adjourn and Eberhard seconded the motion. In favor: 8; Opposed: 0; Motion carried and the meeting adjourned at 10 p.m.

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Eileen Sieger,
Chairman