

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

November 17, 2005

Chairman Eileen Sieger called the meeting to order at 7:32 p.m., with a quorum and all members present.

Roll Call was answered by Sieger, Bob Maxwell, Marquette Eilerts, Willis Ensz, Ervin Ediger, Glen Unrau, Mary Avery, and David Mueller. Zoning Administrator David Brazil was present.

Sieger pointed out that under Item 3 on the agenda, members would also need to address minutes from the open work session with the mayors. Sieger asked if anyone has off agenda items. Maxwell and Brazil both have off agenda items.

Sieger asked for corrections, or additions, to the Record of Proceedings of the October 20, 2005, open work session with the mayors. Ediger had a correction where Schreve was misspelled in the minutes. Ediger made a motion to approve the minutes with the one correction and Maxwell seconded the motion. In favor: 8; Opposed: 0; Motion carried.

Sieger asked for corrections, or additions, to the Record of Proceedings of the October 27, 2005, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Sieger had a spelling correction on page five. Maxwell had a change of wording on page seven. Ediger had an acre change on page two. Eilerts had a spelling correction on page three. Ensz made a motion to approve the Record of Proceedings with four corrections. Eilerts seconded the motion. In favor: 8; Opposed: 0; Motion carried.

Item 4: An application for Jeanne Morris, requesting a lot split for property located in Fairplay Township. This application was published in the October 27, 2005, issue of the *Hillsboro Free Press and Free Press Extra*. Sieger asked that a copy of the plat map for each property be included with application information. Sieger said there is a house, barn and shed on this property, and there is access to the property from 130<sup>th</sup>. The LESA (Land Evaluation and Site Assessment System) was moderate?, Sieger asked and Brazil said yes. The land evaluation actually was in the high category, he added. Sieger asked and Brazil said all three are quarter sections. There's no big change in use, he added. Ediger asked about wastewater. Most of these lot splits I don't inspect, but I looked pretty extensively at the lateral field and I could not find anywhere that it's not functioning, Brazil said. Sieger asked about the condition of the home. It's still inhabitable, but needs some work, Brazil said. Eilerts made a motion to approve a short form lot split of 5.76 acres for Jeanne Morris, application number ZPO5.086, in the "A" Agricultural Zone District as presented, and require the plat and 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. Ensz seconded the motion. In favor: 8; Opposed: 0; Motion carried.

Item 5: An application for Gilbert Loewen, requesting a lot split for five acres for property located in Peabody Township. This application was published in the October 27, 2005, issue of the *Hillsboro Free Press and Free Press Extra*. Brazil explained this property has new owners and they are seeking some different configurations. This is the property with the stone house on highway 50, just west of Peabody. Brazil explained there were two previous lot splits; one with the house and a dogleg to the east and the other separated off an ag building. Brazil said both were approved, but then never completed, and at auction they sold as one. The new owner wants to split off five acres with a lot split, Brazil said. If the other had been completed, it would not be possible for him to do this, Brazil explained. He's going to sell off 40 acres also, to the west, Brazil said. That's where the ag building was and there's going to be a home there, Eilerts said. There's no problem with this, Brazil said. He has met the separation distance with the new lagoon, he said. We are always trying to cater to the seller or buyer, and we went to the trouble to create the dogleg and what we originally suggested is what he wants to do, Brazil said. I'd like to see the house restored and this application works well, he added. It's a matter of trying to space between the lagoon and the barn, and if I remember right there's a draw there, too, Brazil said. This won't be in the wetland area?, Sieger asked and Brazil said no. There's no one living there, now?, Ediger asked and Brazil said no. This is where they had the fire, Brazil said. Members questioned how much damage the fire caused. I noticed today they're trenching from the barn toward highway 50, so they must be serious about what they're doing, Unrau said. The barn is not part of this property, Unrau said. Sieger asked and Brazil said he thinks someone is interested in remodeling the house, but not interested in the extra acreage, but they still plan on using the ag building and there will be a house with it on 40 acres. Sieger reminded members they are acting as the planning commission. Eilerts made a motion to approve a short form lot split of five acres for Gilbert Loewen, application number ZPO5.085, in the "A" Agricultural Zone District as presented, and require the plat and 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. Avery seconded the motion. In favor: 8; Opposed: 0; Motion carried.

Item 6: Consider zoning regulation changes. Brazil presented a copy of letters from the City of Marion and the Hillsboro Planning Commission. He said both cities are not interested in changing the net density in their areas of urban influence. He said Hillsboro mentioned extra territorial zone. Brazil said he expects to receive something from Goessel in the next week, or so. There is some confusion out there, he said. The areas of urban influence are only around three cities, he said. We recognize the stake in those areas and have given them a voice and also a two-vote procedure, he said. Brazil referred members to Article 2. If we take existing lots down to three acres and make it an administrative review, the applications tonight could have been handled in house, he said. Number five addressed new home sites and number six existing home sites, he said. Brazil said he has moved the revision date up to November 2005, and has made changes. Number seven addresses growth areas. Wherever there are designated growth areas, we would count the house in the section and if there were less than 16 we would just issue a permit, he said. The comprehensive plan is pretty specific about net density, so in most of the county the net density would still be one per 40, he said. We would change the net

density in the growth areas, he added. If we want to change countywide we would need to go back to the comprehensive plan, he said. Maxwell asked and Brazil said Goessel is the only town that has been in contact with him about growth areas. I think we have gone as far as we can with Kaup's proposal, and I recommend we take this to a public hearing, after which we take a vote and send it to the county commission, Brazil said. Maxwell asked if Goessel would have to annex an area? You're probably talking about a mile where you're going to have increased rural residences that are not on city water and sewer, Brazil said. And not in city limits, Sieger added. We're still talking about individual creation of lots, not a subdivision, that's a whole other ballgame, Brazil said. This is just for individual lot development in the area, he said. The drawback is if there's a couple on the outskirts of town, it can prevent development, he said. Marion and Hillsboro do not want it and the 40-acre rule does preserve the ground for those cities, he said. There's an area that Goessel has reserved for a future subdivision, so they're not as cautious, Brazil said. There's no reason for us to do something that Marion and Hillsboro don't want, Sieger said. I've received nothing from Peabody, but the mayor said the evening of the meeting that he agreed with smart growth, Brazil said. Maybe they don't realize that a letter would be helpful to know for sure, Sieger said. Maxwell said at the meeting Steve Garrett talked about road maintenance. The City of Hillsboro, from the very beginning, was interested in having an extra territorial zone, Brazil said. I've been an advocate of annexation, which is sometimes not popular, he said. It's still our jurisdiction, and we don't want to write a city a blank check, he said. We want to support them, but we have a stake and I think control should be put in the county commission's hands, Brazil said. For the most part, we're not like an urban county, so basically we're an ag county and that's our mainstay, Sieger said. Not to say it may change but right now that's how it is, Sieger added. From a city's perspective, that's what makes them nervous is that maybe they think we give ag ground more value over their development, Brazil said. They have a voice, so it's not like they have no say, Sieger said. I know there are folks that prefer the cities to have an extra territorial zone, Brazil said. It's not always a smooth process, especially when they don't always play well together, he said. Brazil noted in Article 2 there is one change in the zoning regulations. Brazil referred members to Article 4. Here is the second change in zoning, he said. It allows for one-acre lots in areas of urban influence, without public water and sewer, he said. As long as the adjacent city consents to this, there will not be public water and sewer there, he said. So, the one acres are not going to be a problem and it's not going to prevent development, it could be but we've built in a mechanism for the city so they must consent to it, Brazil said. And the one acres would have to have either a lagoon or septic and well on one acre?, Sieger asked. Is that possible?, Ensz asked. Article 4 is your suburban residential district, Brazil said. There are some at the county lake and some next to the City of Hillsboro, he said. Sieger asked what the basic change is? Public water and public sewer, Mueller said. If it's an area where they have proposed growth, they are either going to want public water or they're not going to want it at all, Brazil said. If a city okayed it and they did eventually run public water out there, could there be a requirement to hook on?, Avery asked. Could we put a covenant on as a condition?, she added. Yes, it's possible, Brazil said. Things change so much and I want to make sure we're not closing the door, Avery said. Cities can always annex, Brazil said. It's much better public policy to bring them into the city when they run water out, or else people think those folks are getting a free

ride, he said. What's to prevent something becoming a subdivision, and what happens to the drainage system and the road system in the area?, Maxwell asked. It's hard to talk about those issues when it's involving an individual, Avery said. If we go to public hearing and get public comment, we still can modify it, Sieger said and Mueller agreed. I think issues like the roads and the drainage have been passed off and people are going to be hollering for ditches and roads, Maxwell said. Eilerts asked and was told Canada should be in an improvement district. If cities don't want it, what do we have to do with it?, Ediger asked. There is such a wide array of what cities want, Brazil said. Suburban Residential requires public water, Brazil said. Areas of urban influence allow for development without public water and with the city's okay, he said. Why do we want to throw out public water and sewer?, Sieger asked. I would think mortgage loans would take care of that when they ask what services they have, Maxwell said. Some areas cannot get public water and they may say they cannot develop there without that, Avery said. It would not be wise to take the northwest corner of Hillsboro and put in one-acre lots, Brazil said. Individuals there wouldn't want it, but there are areas where it would work, he added. It's a tricky line to walk, Sieger said. If it's in the comprehensive plan, and it's an area that's been looked at, it makes sense, Brazil said. We want smart growth and if one lot prevents future growth of the city it's easy to say no, but if there's an area like south of Peabody where they already have these lots, it would be okay, he said. What if a subdivision develops without any subdivision planning, at all?, Sieger asked. I wonder if the cities would really want to do that?, she added. That comes back to my question, could we put a caveat in should services become available, Avery said. I'm trying to find a mid ground compromise and consensus, Brazil said. The controls are still there, so it's not a red flag for me, because you can still control growth, he said. Why not have a public hearing and see what goes on?, Maxwell asked. I think the county commission will be unhappy with the planning commission if we don't move forward with this proposal, Eilerts said. After the public hearing you will have a voice to vote whether or not you approve this, Sieger told members. We are trying to see if we can create some changes and I think we have something that accomplishes what the commission wants without compromising the comprehensive plan, Brazil said. Brazil referred members to Article 6. He said the 100-year flood zone is addressed here, and on the second page it talks about road assessment. Brazil showed members under Article 1, changes he made. This is me, this isn't Jim Kaup or the county commission, I put this together, he told members. The case with the guesthouse in the past, south of Hillsboro, got me to looking at the definition of a guesthouse, Brazil said. I don't believe one case should drive change, but there are several servant's quarters cases in the county, he said. I think it's good public policy to allow a second house as a guesthouse, not as something to be sold off, he said. I think multi generational families are a good value, he said. I'd like to propose these two be added, he told members. For a guesthouse the total square footage has to be less than the total square footage of the house, he said. Kaup said we could put a percentage on it, he said. The drawback is people are going to ask about splitting guesthouses up, and no we don't allow them to be split off, Brazil said. We would make sure it's a guesthouse and not a rental house, he said. Not having separate metered utilities will help it not be a rental, he added. Sieger asked about a kitchen, as the previous definition included not allowing a kitchen. Could the deed have a restrictive covenant stating this is a guesthouse, so we're covered for the future, so it's very clear

and it's easier to track if we do it with the disclaimer so there's no possible misunderstanding?, Avery asked. And, if a person wants to change it to a garage or storage shed they would need to go before the planning commission, Maxwell said. Maxwell asked about manufactured homes. Singlewides will still come before you because the regs require a different kind of structure, Brazil said. We allow guesthouses in ag and rural residential districts, servant's quarters are wide open and are not even defined, so we need to go back and balance things out, Brazil said. Avery asked about servant's quarters and Brazil said Kaup suggested it be for employees. We would have to change it throughout, Brazil said. Avery said she thinks they need to look at the building code for foundations. To the general public it's going to seem unfair for one to be allowed something different than another, she said. It's hard to discuss this when you have an applicant here, she added. We don't formally have building codes, Brazil said. I've always operated under the assumption that we want permanent homes, he added. I think there should be a time element involved in the regs and then you're not in a big hassle every time, Maxwell said. If it's a temporary home, why would we force them to make it a permanent structure?, Brazil asked. Sieger reminded members they couldn't decide something because of what the people are involved. It's land use that makes our decision, she said. What about a category for temporary situations and you go with a certain period of time and you go with those guidelines?, Maxwell asked. It's come up twice this year and I think it's an area we need to look at and I think it's important we are seen as being fair and equal, Avery said. And to get rid of the confusion, Maxwell added. Avery asked and Brazil said you could do it with everything else, or we could do it separately. Ideally, you don't want your regulations to change very often, he added. We can schedule a public hearing for one little change at our regular meeting and advertise it as such, Sieger said. State statute requires we review this annually, Brazil said. Maxwell asked about livestock headcounts, and if it can be clarified? The short answer is no, Brazil said. Most jurisdictions don't regulate it because of the strong law in Kansas, he said. It's tough to regulate in terms of local zoning, he added. Include a maximum number of head and no more than allowed by KDHE (Kansas Department of Health and Environment), and you're covered, Mueller said. KDHE has the teeth, Brazil said. Sieger challenged members to go back and look at the comprehensive plan. On pages 45 and 50 it talks about protecting ag land, so ag is singled out somewhat in this county, she said. And ag is probably given some special allowances, she added. Brazil said Maxwell pointed out some typing errors that need correcting. The county commission would like to see changes happen, so I would like to see us go to a public hearing and see what the public thinks, Brazil told members. Maybe a date in January for a public hearing, Sieger suggested and members agreed. We can open up modular and mobile homes, Brazil said. Why not make two classifications?, Maxwell asked. Or just use the definition of transitional, Mueller said. We can address is after a public hearing, Mueller said. Or in January when we review the regs, Brazil said. The regular January meeting is January 26, 2006, and I'm not saying we need it the same night because we could have several applications, Sieger said. Brazil presented a memo from County Commissioner Dan Holub requesting a special meeting in December to review a lot split application for Mr. Diepenbrock. His application was received October 24, 2005 and the deadline for applications is October 17, 2005. It cannot be administratively reviewed at this point, Brazil said. We might as well forget our months off, as we had to meet in June, too,

Sieger said. It looks like it will meet requirements, but I haven't put the numbers together, yet, Brazil said. Unrau asked if it could be done by phone? Sieger said members need to review the by laws. Some could call in if they want, but we would have to have a public meeting, Brazil said. If someone wants deadline info, it is available, Brazil said. What is critical about this application?, Unrau asked. I was told he is planning some construction and wants to close on it well before January, Brazil said. How many extra meetings would they be calling for if they paid us?, Ediger asked. This came in seven days after the deadline, Sieger said. Can we authorize David to administer this?, Eilerts asked. Ediger made a motion to discontinue discussion on the grounds that December is a hard time to get together and we already had several meetings this year. Maxwell seconded the motion. In favor: 8; Opposed: 0; Motion carried. Members went back to discussing a date for a public hearing. So far, there is one application for January, Brazil said. But we will have more, Sieger said. Avery suggested meeting in January, reviewing the public hearing information and then have the public hearing in February. Weather is also a factor in January, and maybe it would be better in February, she said. I prefer to have it in early January, Mueller said. Mueller made a motion to present the zoning regs changes as presented in the draft by the zoning administrator for public hearing on January 19, 2006, at 7:30 p.m. in the courtroom. Unrau seconded the motion. In favor: 8; Opposed: 0; Motion carried. Sieger reminded members the regular meeting is January 26, 2006. Mueller commended Brazil on all his work on putting the proposal together with a lot of input from a lot of different directions. Brazil credited Jim Kaup. Members discussed a time limit for the public to speak.

Off agenda items: Brazil said he is done. Maxwell showed photos from his recent trip where there were wind turbines. He said he visited with a lady for two hours, and she was very knowledgeable about wind turbines. Maxwell said the towers were made in Minnesota and the blades in North Dakota. He said they used to be made overseas. He said the area is mostly ag and they were hurting and this generated about 50 jobs, so it has helped. He said it's all buried underground, as far as the transmission lines. He said a couple farmers financed their own project and sell the power, but corporations don't necessarily like that. He said 26 farmers owned wind generation units. Avery asked if there has been any interest in a wind farm here? We could have if developers believe it would be worth pursuing, Brazil said. Eilerts asked if one owner could lease up all the area land and then sell it to the utility company? Usually developers buy up leases, Brazil said. Sieger showed members an article from McPherson which mainly makes comments against them being in the prairie. I think the best benefit for the individual family farmer is to develop coops, Brazil said. Mueller made a motion to adjourn and Eilerts seconded the motion.

In favor: 8; Opposed: 0; Motion carried and the meeting adjourned at 10:06 p.m.

#### MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

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Eileen Sieger,  
Chairman