

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

November 20, 2003

Chairman Eileen Sieger called the meeting to order at 7:34 p.m., with a quorum present for both the planning commission and the Board of Zoning Appeals.

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

Sieger asked for corrections or additions to the Record of Proceedings for the October 23, 2003, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Avery made a motion to accept the Record of Proceedings as written and Ediger seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Sieger asked if anyone had any questions about the agenda, or any Off Agenda items, but no one had any items to address.

Item 4: An application for Timothy Ross, requesting a Conditional Use Permit (CUP) for an automotive body and paint shop in Peabody Township. This application was published in the October 29, 2003 issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Members are acting as the planning commission for this application. Tim Ross was present to speak about the application. Members viewed photos of the property, and a written plan. We want to operate our business on this property, and have a body shop to fix and repair vehicles, Ross explained. He said there are wastewater concerns. He said he wants a drain trap in the floor to trap solids when he washes down vehicles. He said the purpose will not be for degreasing vehicles, or running antifreeze down the drain, those are not his intentions. He has had a business before in Halstead for 13 years and understands the possibilities and concerns for ground contamination. He said Brazil could test the water in the drain trap, periodically, and if it continues to test okay, fine, but if not he could go ahead and put a septic system in. Basically, it's a one-man operation, so there are no concerns with other employee's habits about not disposing of things correctly. He will recycle antifreeze, when possible. An injection well needs a state permit, Brazil told Ross. An easy solution is a plastic-lined lagoon, Brazil said. If you put a floor trap in, it has to go somewhere, and even though you are conscious about the use, it doesn't guarantee it will always be used correctly, Brazil said. I don't want to have problems down the road, so if that's what has to be done, that's what has to be done, Ross said. Will you just paint, or do body work, too?, Sieger asked. All of it, Ross said. As far as air contaminants, KDHE says it's not a problem, Ross said. Sieger asked and Ross said he would build a paint booth inside the building. How many vehicles do you anticipate on the property at one time?, Mueller asked. Working vehicles in progress, probably not more than three, Ross said. I plan to store vehicles inside, Ross said. Sieger asked if he has 40 acres, total, and Ross said yes. Sieger

questioned a limitation on the number of vehicles permitted to park outside. At Halstead, I operated with a salvage license and was able to have 10 vehicles outside, Ross said. Sieger asked what if Ross has several to repair at one time? I'm actually leaning more toward the restoration part, Ross said. Sieger asked about leaking fluids, and Ross said he catches fluids with a drain pan. I keep the oil in separate containers, as it can be used for heating, and as far as paint thinners, etc., I will have a hazardous waste company come and pick that up, Ross said. Ensz asked about Ross' closest neighbor. Close to a half-mile, or maybe even a quarter mile, away, on the Wilson Ranch, Ross said. Sieger asked for properties to be highlighted on aerial map copies, which are sent to members in their meeting packets. The rest of the property is what?, Sieger asked. East is in CRP, and west is all pasture, Ross said. Sieger asked about signage. The pattern we've established is one, non-illuminated 4x8, or smaller, sign, Brazil said. Which is what I have from my old business, Ross said. We do not have sign regulations in our zoning regs, yet, Brazil said. Sieger asked if anyone from the public wished to speak. Sieger said that one letter was submitted from someone who was not able to attend tonight's meeting. The letter was especially concerned about potential spills of hazardous material, especially as it might contaminate ground water and they wanted to be sure that was addressed, Sieger said. Sieger asked Ross if he knows the depth of his well? About 15 to 20 feet, Ross said. Usually, drinking water is from a much deeper aquifer, Brazil said. Sieger asked Ross if in Halstead he had hazardous waste picked up? They were not concerned about most of it and allowed me to wash it down the drain, Ross said. Is there anything else?, Sieger asked. Sieger closed the public hearing for this application and opened the floor for discussion and determination.

We need to address the five acres, vehicles stored outside, and maybe tools, or parts, Sieger said. There is the ability for storage with a structure of this size, Mueller said. And we want to be sure it conforms with KDHE, and the sign, which we discussed, and off-site parking, which is in the plan, Sieger said. I always advocate businesses being in town, but I do think this is doable with the roads going out there, the lot, flow of traffic, etc., Brazil said. What roads lead up there?, Unruh asked. It's gravel, Brazil said. A quarter mile south on gravel and a quarter mile east on gravel, Ross said. Is there rural water?, Unruh asked. Eventually, I will have rural water, Ross said. It's easier for me to recommend a business when it's strongly associated with agriculture, rather than just a retail business, Brazil said. If the business would cease, the CUP would also cease after six months?, Avery asked and Sieger said yes. The waste and water conditions, sounds like he's addressed, the inoperative vehicles outside, and again he has addressed it, and his previous business experience helps, Mueller said. Mueller made a motion to approve a recommendation for a conditional use permit (CUP) on five acres for an automobile body and paint repair shop, as presented in the development plan, with seven conditions: 1) that no more than three automobiles be stored outside the shop building; 2) that no parts or tools be stored outside of the outbuilding; 3) any necessary wastewater system permits be obtained and maintained; 4) all State of Kansas operational permits be obtained and maintained; 5) one four feet by eight feet, non-illuminated sign be allowed on site; 6) all parking be provided for off street; and 7) all shop wastes, including hazardous wastes, be disposed of off-site at a State of Kansas permitted disposal facility.

Ensz seconded the motion. Avery asked if she has a conflict of interest, as she lives in the area, but Sieger said that is not a problem. In favor: 7; Opposed: 0; Motion carried. Sieger explained this would go to the county commission for final approval.

Item 5: An application for Yvonne and Dewey Pennington, requesting a variance from required acreage of 40 to 35.22 acres, for property located in Logan Township. This application was published in the October 29, 2003 issues of the *Marion County Record, Hillsboro Star Journal and Peabody Gazette Bulletin*. Members are acting as the Board of Zoning Appeals for this application. Yvonne Pennington spoke about the application. We want a screened-in back porch, she told members. She explained they purchased this property in October of 1995, and did not realize it was short of 40 acres. The whole quarter is short sometimes, but not in this case, Brazil said. Sieger asked and Brazil said the setbacks are okay. The screened-in porch will be in the back?, Ediger asked and Pennington said yes. So, this is a non-conforming ag property, Sieger said. Are there still any cattle pens on the property, or not? Unruh asked. No, they're still there, Pennington said. Was there some reason this was parceled off?, Sieger asked. When we bought the property, he (her husband) walked it and said we want from tree line to tree line, and we didn't realize it was short, Pennington said. They wanted to just sell the house, but we wanted some acreage, she added. So, they're natural boundaries?, Sieger asked and Pennington said yes. Historically, we've stayed with 40 acres consistently, except for short quarters and for ag purposes, Brazil said. You can grant a variance, or rezone the home site, Brazil said. So, my recommendation went with the pattern of ag purposes, but in limiting ag purposes, you are limiting uses, Brazil said. So, if a variance is granted, you recommend limiting it to ag purposes, only?, Sieger asked and Brazil said yes. Is there anything further?, Sieger asked. Does anyone from the public wish to speak?, Sieger asked. Do you have anything to add?, Sieger asked Pennington. How big is the deck?, Sieger asked and Brazil said 16x24. It will have a roof over it and be closed-in and attached to the house?, Sieger asked and Pennington said yes. Sieger closed the public hearing for this application and opened the floor for discussion.

Unruh made a motion to approve a lot area variance of no more than four and seven eighths (4.78) acres, with the condition that all new construction comply with defined agricultural zone uses from section 2-101 of the Marion County Zoning Regulations, and no other use shall be granted under the current designation. Unruh seconded the motion. In favor: 6; Opposed: 0; Motion carried. Sieger explained this is a final action.

Item 6: An application for Bonnie Hastings, requesting a rezone from agricultural to rural residential, and a variance from required acreage of 10 to 7.5 acres, for property located in Clear Creek West Township. Sieger reminded members there are two parts to this application. Members are acting as the planning commission for the first part of the application, and as the Board of Zoning Appeals for the second half. This application was published in the October 29, 2003 issues of the *Marion County Record, Hillsboro Star Journal and Peabody Gazette Bulletin*. Realtor Roger Perkins was present to represent Hastings. Members viewed photos of the property. Perkins explained that Hastings purchased this property in 1995, and never went through the rezoning process, but now

she wants to sell. It needs a new lagoon, Perkins said. The existing wastewater is a septic on the property and an open line drains on a field, Brazil said. There is an agreement for this to go on for 10 years, and the time is not up but this needs correcting, Brazil said, as it's a failing system and should be updated. She plans to put a lagoon on the property?, Sieger asked and Perkins said yes. It's a Catch 22, as we've got a limitation for soils and an acreage limitation, and either way you go..., Brazil said. This is a location where a lagoon can be installed with appropriate setbacks?, Mueller asked and Brazil said yes. We're waiting on the comprehensive plan to update sanitary codes, Brazil said. Do you happen to know the history of why this was parceled off?, Sieger asked. They broke it off and that's when they drew the property lines, and didn't worry about zoning, Perkins said. Sieger asked and Perkins said there is pasture on the south, farm ground on the east, and the lagoon would be on the west side of the house, in a grassy area. Since this is a private well and the wastewater was not compliant, do you need to test the well?, Avery asked. For the real estate inspection, we tested the well two times, Brazil said. The well needed a new cap, and shocked, Brazil said. Members discussed property owners bringing non-compliant properties to the board, only when they want to sell. I have more issues with the more recent non-compliant properties, Brazil said. Members discussed new regulations. Avery asked when the new regulations would be in place, and Brazil said it could be as quick as five months. Sieger asked if there was anything further, or any other information. Sieger asked if anyone from the public wished to speak. Sieger closed the public hearing for this application, and opened the floor for discussion.

The first issue is the rezone, so we should look at it by itself as the planning commission, Sieger reminded members. Sieger also reminded everyone that a rezone is still a recommendation and must go to the county commission for final approval. I think the seller wants to bring it to compliance and bring the property up to better standards, Mueller said. Mueller made a motion to approve a recommendation to rezone the proposed property from agricultural to rural residential, with the recommendation that a compliant wastewater system be constructed. Unruh seconded the motion.

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

Members addressed the variance next, acting as the Board of Zoning Appeals. Avery made a motion to approve an acreage variance of two and five tenths (2.5) acres, and Unruh seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Item 7: An application for John Yoder, requesting a variance from required rear setback of 20 feet, to six feet, for property located in Centre South Township. This property is located at the Marion County Lake. This application was published in the October 29, 2003 issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Members are acting as the Board of Zoning Appeals for this application. John and Grace Yoder were present to speak about their application. Yoder's passed out a list of eight points to support their request, and Grace read the list to members. Yoder's plans include removing two older storage buildings in their back yard, and constructing a new garage shop building. Is there any reason it can't be moved up, more?, Sieger asked. Could you bring it up even four more feet?, she asked. It gives us more back yard that way, John Yoder said. If you move up four feet, would it be where the old shop building is, now?, Sieger asked. It might even be a couple feet further back, John Yoder said. We

have rear-to-rear properties with Smalley's, John Yoder said. Avery asked about the sewer line, and John Yoder said it's in the front. Members viewed photos and it was explained how the property is situated. Unruh asked and was told plans are for a 14x22 building of basic wood structure and a gable roof, with the same kind of siding as their house. Mueller asked and John Yoder said there would still be 10 feet on the side for water to run down. None of the utilities is on any easement?, Brazil asked and John Yoder said no, the gas line easement is on Smalley's property. Sieger asked Brazil about sticking with 10 feet, and he said he is staying with the precedent. You're looking at pretty close to the same space as the existing sheds, Brazil said. Sieger asked if anyone from the public wished to speak. Sieger asked if there was anything further, or any other information. There's not a drain problem at the back?, Unruh asked. From the rear to the front of the lot, it runs down hill pretty good, John Yoder said. Will any drain on the adjacent property?, Brazil asked. I don't believe it would, as buildings are already there, John Yoder said. Would you be willing to move it to make it 10 feet at the back?, Sieger asked. Sieger asked if six feet is enough at the rear for maintenance, and John Yoder said yes. Patterns are so important, Brazil said. You have to draw the line, somewhere, Brazil said. Sieger closed the public hearing and opened the floor for discussion.

They are going to improve the property, and I struggle with concerns about penalizing them when they already have existing structures close to their property line and they want to rebuild, Unruh said. You also want to help it along, as it does change, Sieger said. I'd like to create an environment where property owners are encouraged to build new and I hesitate to penalize them when they want to increase the value of the property by building new, Unruh said. But, when you put in something new you have a chance to change, Sieger said. I see both points of view, Unruh said. I see Bob's point, but I also see Eileen's point and the opportunity to get closer to the guidelines, Unruh said. The majority of the variances we have approved are the 20, the three and the 10 and as staff I'm going to hold the line, Brazil said. Unruh asked how strongly the applicant feels about going to 10 feet. I may just take the smaller old building down and add onto the other old building, John Yoder said. If you change the footprint of the structure, you nullify the grandfather, Brazil said. That goes back to Bob's comment, is this really an improvement?, Mueller asked. Could we split the difference and go to eight?, Avery asked. Members discussed footprints. Could you connect to the old shop building?, Unruh asked. If the footprint gets larger or smaller, or shifts left or right, if you put two buildings together you are talking about a new footprint, Brazil said. If it were me, I'd want to get rid of the old storage building, and I'm thinking if I really wanted a new building would I go 10 feet back?, Unruh asked. It seems to me I wouldn't have too much trouble moving it to 10 feet because I would take away from my yard, Unruh said. Sieger asked if there is room for utility problems with the gas line. We need to come up with a standard we can all live with, Avery said. I am concerned with the gas line because they need room to get in there, if needed, Avery said. The majority of our applications come from the county lake and this is an indicator we need to address this, Brazil told members. He reminded members of the action taken for property at Marion Reservoir, and how the number of applications from that area has since declined. There is a lot less conformity at the county lake, Unruh said. Members agreed, but said the county lake property is older. I always think in terms of a dream someone has for their property, but if

I knew the zoning commission was trying to establish standards, I would try to adjust in my mind to try and go along with the regulations as much as possible, Unrau said. I would want to feel good that I tried to make it work and help bring conformity to the zoning regs, he said. But, I want to be compassionate about their property, he added. 20 feet is the rear setback, Sieger said. Last month I said I wanted property to be atypical to the neighborhood, Unruh said. So, if you put in a new building and you're not typical to your neighborhood..., Unruh said. Sieger referred members to the five conditions to be considered in order to grant a variance. I don't see where we're violating any of those, and a new building sounds much better, Ediger said. I'm not sure this is listed as a consideration, Sieger said. I think we all agree the 20-foot set back is not acceptable, Avery said. The problem lies in trying to give some continuity to the regulations and we're trying to acknowledge and support those, and in this case 10 feet is possible where in other cases it has not been, she said. So, where can we find a compromise?, Avery asked. So, I was serious saying can we split the difference?, she said. What we were trying to do last month was improve the safety issue, so in the spirit of things can we find something that everyone can live with, and the acknowledgment that we're trying to have greater setbacks, but also accommodate the applicant?, Avery asked. Mueller asked the applicants if they could live with eight feet? I would personally feel very good if we could all compromise, Unrau said. I agree, in principle, but the compassion comes out in me, Unrau said. I appreciate the way you are stating these issues, tonight, Mueller said. I'd really like to see these improvements done, Mueller told Unrau, and I think Mary hits it on the head if we can all compromise, he added. Avery made a motion to approve a back yard setback variance of no more than 12 feet, and Mueller seconded the motion. In favor: 4; Opposed; 2; Motion carried.

Item 8: An application for Wayne Handle, requesting a variance from required acreage of 10 to 3.53 acres, and from required front setback of 75 feet to 50 feet, for property located in Milton Township. This property is near Burns. This application was published in the October 29, 2003 issues of the *Marion County Record*, *Hillsboro Star Journal* and *Peabody Gazette Bulletin*. Members are acting as the Board of Zoning Appeals for this application. Handle was present to talk about his application. He said this was his dad's property since 1953, and when zoning came along it was grand fathered in. So, since the state acquired some of this property, it is no longer compliant, and I'm left with the remaining property to sell and need a variance to keep it rural residential so if someone wants to add on, or add buildings on the property, they may do so, Handle told members. The right of way is less than 75 feet from the front of the house?, Sieger asked and Handle said probably 50 feet away. It looked like just a little over 50 feet, Brazil said. Did the state address the road being so close to the property?, Sieger asked. No, and the appraiser condemned it, Handle said. This property is on a triangle, so there's nowhere else to go, Handle explained. As far as moving back the house, or anything?, Sieger asked. You might as well start over, Handle said. If it weren't for the windrow, I would be really uncomfortable with the 50 feet, Brazil said. You won't lose any of the trees?, Sieger asked. May lose one tree, Handle said. Will the driveway still come out on the highway?, Sieger asked and Handle said yes. We recently had a similar application, Brazil said. Wider, safer highways are good for everybody, and I want to be as accommodating as possible, he said. If we are not accommodating, is this to your

advantage, in the long run?, Brazil asked Handle. Does the state need a variance to acquire the property?, Handle asked and Unruh said no. So, you're wanting to sell this property?, Sieger asked. Yes, my mother passed away two years ago, Handle said. Sieger asked if there is rural water on the property, and Handle said there is a well. Unruh asked and Brazil showed him on an aerial map where the property is located. This property lends itself to some remodeling and out buildings, but if a buyer is going to add on to the house, and other possibilities, but without that possibility, I think the house is pretty well done, Handle said. As it is today, how close is the home to the highway?, Unruh asked and Handle said probably 300 feet. How close is the home to the cemetery?, Unruh asked and Handle said probably 400 to 500 feet. How close is the home to the north property line?, Unruh asked and Handle said probably 100 to 150 feet. Unruh asked about the row of trees, and Handle said they say they will leave the row of trees. This is an older kind of A-frame home?, Unruh asked. Unruh was shown photos of the home. I don't see any gray areas, this time, Sieger said. Are there any other questions, comments, or information?, Sieger asked. The state just won't buy you out?, Unruh asked. No, they don't want to deal with the house, Handle said. Everybody wants safer highways, but they need to deal fairly, and you go hire an attorney to deal with them, so you have that expense, Handle said. Sieger closed the public hearing for this application.

Sieger reminded members there are two issues, the acreage variance and the setback variance. Can it be under one motion?, Mueller asked and Sieger said yes. This is the most clear-cut application we've had, Mueller said. I express as much sympathy to the applicant, as possible, Mueller added. Mueller made a motion to approve an acreage variance of no more than six and forty-seven tenths (6.47) acres, and a front yard variance of no more than 25 feet, for Wayne Handle. Unruh seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Sieger reminded members there is no December meeting. The next scheduled meeting is on January 22, 2004. Sieger reminded members that as customary, in January the review of the By-Laws is on the agenda. Sieger and Brazil reminded members that the deadline for turning in mileage for the year is December 18, 2003. There is \$100.00 maximum per member budgeted for mileage, for the year. Brazil will send members forms for mileage. Sieger reminded members they might include mileage to view application properties. Sieger asked if there was anything else. Brazil said he would meet with the consultant in the next couple of weeks, so we should have a starting point and then will set up a work session after the first of the year. Unruh asked if elections to the Board of Zoning Appeals occurs in January, and Sieger said yes. Sieger reminded members that Sieger, Unruh and Eilerts have terms up for renewal. Unruh made a motion to adjourn and Mueller seconded the motion.

In favor: 7; Opposed: 0; Motion carried and the meeting was adjourned at 10:03 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

  
Eileen Sieger, Chairman