

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

October 26, 2006

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

Roll Call was answered by Sieger, Bob Maxwell, Mary Avery, Glen Unrau, Ervin Ediger, Willis Ensz, David Mueller and Marquetta Eilerts. Zoning Administrator Bobbi Strait was present. Consultant Dave Yearout was present. County Commissioners Randy Dallke, Bob Hein and Dan Holub were present.

Item 3: Record of Proceedings from September 28, 2006. Sieger asked if there were additions or corrections. Mueller made a motion to accept the Record of Proceedings as written and Maxwell seconded the motion. In favor: 8; Opposed: 0; Motion carried.

Item 4: Off agenda items. Sieger asked if anyone had any off agenda items, and there were none. Mueller asked about the next meeting, which normally would be scheduled for November 16, 2006. Sieger asked if there were any applications for the November meeting. Strait explained there was an error at the newspaper and they did not get a notice printed for an application that could have been on an agenda for November 16, 2006. Sieger asked if members wished to decide to meet in November, or not schedule a meeting. Mueller asked if members could wait and decide after the work session, and members agreed.

Item 5: Adjourn to work session with county commissioners. Ediger made a motion to adjourn the regular meeting, and Ensz seconded the motion. In favor: 8; Opposed: 0; Motion carried and the regular meeting adjourned at 7:37 p.m.

Sieger reconvened the meeting with the work session. Sieger asked for ideas on how to begin. Ediger referred to the minutes from the September work session, and quoted from page two concerning Dallke's comment about three issues which included: small acreages, density and potential future splits. Dallke suggested beginning by talking about properties less than 40 acres. First, let's address those that are out there under 40 acres, Dallke said. Mueller asked Dallke if he means before zoning, and all agreed to begin by discussing properties less than 40 acres before zoning. Can there not be something to address those properties?, Dallke asked. Those should be grandfathered-in, Mueller said. The smaller lots now fall into the non-conforming lot sizes, Yearout

said. You have to decide what to do, Yearout said. Where do we find equity and fairness?, Yearout asked. The second issue is the mortgage issue, Yearout said. When you try to come through it straight thought the regs, everyone gets frustrated, Yearout said. What are you looking for as a final product?, Yearout asked. What are you looking for in lot sizes?, Yearout asked. What are you looking for in types of homes?, Yearout asked. We don't want to encourage single-wides, they are not consistent to what people want to see, Yearout said. Don't worry about the regs, Yearout said. Figure out what you want and then figure out how to make it work in the regs, Yearout said. We need a vision of what we want for Marion County for the next 25 years, Avery said. The challenge to this is the people who own land around the county, particularly if they are engaged in farming, some will say their family will continue farming, others want to cash out at as high a value as they can get, Yearout said. If they can carve their land into smaller tracts, they can see more money, Yearout said. The desire of the landowner can work against what you see as your vision, Yearout said. The property rights card is the first card to be played, Yearout said. What I've been taught is it isn't a property right to divide land up however you want to, Yearout said. The easy part is when you want direct growth, Yearout said. The hard part is if you have a landowner who wants to cash out, Yearout said. I would like to hear an answer to David Mueller's question about grandfathered-in properties, Maxwell said. I thought we decided that a long time ago, Holub said. There are grandfathered properties, but the issue is still to determine what we will allow on it, Sieger said. If they have 38 acres, can they build a house on it?, Holub asked. I'm talking about whenever you come up to less than 40 acres, Dallke said. This wasn't a huge issue, yet it has become one, Avery said. We just wrote a letter, and it was approved, Avery said about her property. There are two issues, one before zoning and one after zoning, Maxwell said. Prior to zoning there was no restriction, Yearout said. Forty, or larger, were zoned ag, Yearout said. Ten acres, up to 40, were zoned Rural Residential, Yearout said. Less than 10 acres, but more than one acre, were zoned Suburban Residential, Yearout said. Did all the zoning remain in effect when zoning was done?, Yearout asked. Was there a zoning map created where all the county was zoned ag?, Yearout asked. No, Sieger said. If those zoning districts still remain, those properties are still zoned the same, Yearout said. We need to get out the zoning maps, Mueller said. The thing to do is sit down and go to the computer and do some sorts based on acreages and do an inventory and find out when the last time properties were split, Yearout said. We may be able to solve a lot of problems by taking some time and doing this and this may be more valuable for my time and this may solve it, Yearout said. Avery asked out of which office this information would come, and was told the appraiser's office and mapping department. People are busy keeping day to day mapping up to date, Yearout said. If someone has say seven acres, if they take five acres out what happens with the other two acres?, Sieger asked. And, it could be a configuration in an "L" shape, or something, Sieger said. This has always

bothered me, Sieger said. You can go in and insist your property be divided for tax purposes and they have to do it, Yearout said. There's nothing illegal about it and the county is required to do it, Yearout said. Most counties across the state accommodate this, Yearout said. So, do we want to do this process before we try to solve things?, Sieger asked. It could solve a lot, Yearout said. If a split creates a lot less than 40 acres, it has to be rezoned and platted, Yearout said. As of 2005 they kicked that down to five acres, Dallke said. There can be a covenant between the landowner and the county, Yearout said. In exchange for not having to rezone and plat, the county is allowing you to split, a one time split, if you agree not to split again, Yearout said. I think about the only Suburban Residential was at the county lake, Sieger said. Margo Yates asked if she could ask a question, and was told yes. Yates asked about density coming into play with small acreages. Yates questioned the idea of a blanket-type solution, saying it would seem you need to look at properties on an individual basis to ensure availability of water, etc. Maxwell asked which way to go to get information and maps. A lot will be at no fault of the landowner, Holub said. How about we see if we can identify how many less than 40 properties there are?, Holub asked. Part of the problem of one per 40 is determining what 40 looks like, Yearout said. What if 40 are facing a state highway, will the same apply?, Yearout asked. What if they are totally landlocked?, Yearout asked. Some places they can buy development rights, Yearout said. There are all kinds of ways this can be done, Yearout said. The one time split, I like it because it's simple, but it won't work every where, Holub said. Your intention is of one per 40, but what does your 40 look like?, Yearout asked. Is it landlocked?, Yearout asked. There are some mini lot dimensions that are specified, Sieger said. One split of five acres, now to do more they would need to rezone, Holub said. Can we make some decision at this point when density is controlled by a one time split?, Holub asked. The path of least resistance is where people will go, Yearout said. I don't see a lot of people wanting subdivisions, Yearout said. I see people wanting to put a house here, and one here, Yearout said. It's all single home sites at a time, Yearout said. There may be some people who think they just want to split it off, but they don't realize you have to do a little more, Sieger said. Developers are now competing because they're all on a level playing field, as they all have the same requirements, Yearout said. In a generation we are all going to be back here talking again after everyone has their one split, Avery said. Sedgwick County has had the rule since 1968, Yearout said. How property was configured in '68, property owners are allowed to create a new lot for a one time split, Yearout said. After a one time split, a formal plat is required, Yearout said. After 38 years they have gone through a generation, and yes there have been some complications, but at the end of the day because the county won't change the rules, they will go ahead and have it platted, Yearout said. So, can we figure out what general direction everyone wants to go?, Sieger asked. A little more control, look at future splits, but not interfere with family members coming back and wanting to build, Holub said. Approximately, what is the cost of re-

plating?, Mueller asked. The cost of the surveyor, Yearout said. Mueller asked and Sieger said yes, applicants have been required to have property surveyed to rezone. What does it cost in your area?, Avery asked. It varies, Yearout said. One example, there was a half acre lot inside Wichita city limits, which was their parent's home that they inherited, Yearout said. They wanted to split it off, as one of the siblings wanted to build, Yearout said. The cost was \$6,000 to \$8,000, Yearout said. The filing fee alone is about \$1,000, just to file the plat, Yearout said. That's a nice money maker for the county, Mueller said. They structure fees as much as possible to offset operating costs, Yearout said. I'm still not hearing a consensus, Sieger said. Elderly people want their kids to come back, Dallke said. The original landowner could be allowed to split, and then you could put in mechanisms to make it less easy, Holub said. Who would do the inventory?, Ediger asked. Unless they tell me no, I would do it with Bobbi and the appraiser's office and let you see the impact and this may solve it, or it might create new problems, Yearout said. I like the one time split, Unrau said. Looking at my family, it would work very well, Unrau said. And, anything else would require more, Sieger said, and Unrau agreed. Would there be a time limit on this?, Ediger asked. In so many years they could do it, again?, Ediger asked. Why would you want a time limit?, Unrau asked. Ownership changes, Holub said. You could make it reviewable after so many years, Dallke suggested. I can see some advantages to that, Avery said. The face of ag is changing, Avery added. Sieger asked about language from other counties that might help. I have seen it done in two ways, Yearout said. I have seen it tied to a 40 acre tract, and I've also seen it tied to the parent tract of record, Yearout said. The downside of tying it to the parent tract of record is if there are several kids in the family, Yearout said. If someone wants to spend \$8,000, or whatever, they are pretty desperate, Dallke said. If the family could allow it, that would help, Holub said. Personal relationships can't play in, Yearout said. Avery asked for information ahead of meetings, to be able to review it. I can give you options, Yearout said. I think we need that, Sieger said. Yearout asked about the size of the lot that can be created with the split. People only live on one, or two acres, and don't take care of it, Yearout said. Five acres is an awful lot to mow, Yearout said. Say you have 80 acres divided into two twenties and a forty, Unrau said. What if you do a lot split on all?, Unrau asked. I want to see what that looks like, Unrau said. Maybe we should allow from 10 up to split, but from 10 down not allow it, Dallke said. Yearout asked about mortgage splits. The issue is if you take a real estate mortgage on a rural home, five acres is the maximum they will take on un-platted rural property, Yearout said. Countrywide Homes has a maximum of two acres, Yearout said. Yates asked if we could identify if there are any such mortgage splits in Marion County, and Yearout said yes. The appraiser's office may split property, for tax purposes, the home separate from the ag property, Yearout said. What if the county won't change?, Avery asked about the mortgage issue. Then, some mortgage companies will not serve the county, Yearout said. That's a factor that needs to be taken into consideration,

Yearout said. Do we know with the existing regs if this has been happening?, Sieger asked. I bet it has and you're not aware of it, Yearout said. It's not been an issue because no one has defaulted, Yearout said. It's just been happening in approximately the last five years, Strait said. I had five acres and I bought the 80 it came out of and they wouldn't budge, but I never knew why, Holub said. Sieger asked if any of the things discussed constitutes changes to the comprehensive plan, and Yearout said no. But, I think they should mesh, Sieger said. You update your plan at the annual review, and yes it would make sense to tweak the comp plan, Yearout said. I think we pretty well covered most things, Dallke said. Strait showed a photo with .71 acres, and how more than you would think fits on that amount of space. I keep going back to the pages Bobbi sent out about two options, Ediger said. She mentioned ag one and ag two, for forty and up and smaller acreages, Ediger said. That would allow someone to build on the smaller acreages, if they are zoned ag two, Ediger said. People believe zoning dictates taxes, but it doesn't, Yearout said. How much do we want building codes to play into this?, Unrau asked. Building codes are separate from zoning and everything else, Yearout said. The day will come when the same company that sets property insurance rates will be doing the same for building codes and if you're not classified you would be classified 10 and have sky high insurance rates, Yearout said. In Seward County they would call the office before determining if they would loan money on a house, Strait said. The county can adopt codes, but you have no jurisdiction inside the cities, Yearout said. Through inter-local agreements you can establish codes for the county, Yearout said. Gas utility companies are a lot more happy to work where codes are established, Yearout said. Dallke asked about inspections. It will take some money to implement it, Maxwell said. You can get deeper into it, such as landscaping, Maxwell said. I'm for it, but it will take some money, Maxwell added. You need certified staff and people to police it, and an electric, plumbing and building officer, Maxwell said. Bobbi worked with some people on an insurance claim and it helped them out, considerably, Holub said. A lot of people add on to their property and do not get a permit, Avery said. If we have this in place, there should not be any surprises, Avery said. It still happens with building codes, but if you catch a contractor doing it you can take their license, Yearout said. Why lose a lot of money because they're not getting permits?, Avery asked. The expense of the permit fees covers the cost of inspection, Strait said. The appraiser can use the information for taxes and they could apply for neighborhood revitalization, Strait said. Centre has saved money on fire insurance by adding water wells and this could be something that would help people, Holub said. If there is no ability to document, they will not loan or insure the property, Yearout said. Dallke asked about a November meeting. The inventory can't be done until January, but the language Mary asked for could be e-mailed, Strait said. There's got to be some type of regulatory procedure through the sanitary code, Sieger said. I think first you need to go through the discussion of what happens with the lot sizes, Yearout said. To me, the

lot sizes are determined by a lot of the other issues, Sieger said. Unrau asked about building codes and mortgage and insurance companies. They're encouraging local adoption of those codes, Yearout said. El Dorado currently is rated a class five, Yearout said. This sets what premium rates are, Yearout said. If El Dorado shows improvements to get lowered to a class three, every property owner will see reductions and the big ones will be commercial rates, Yearout said. My initial reason to have building codes is to build fine communities, Unrau said. And, safety, Ediger added. Yes, Unrau said. Do you think maybe we could get some draft information by next month?, Sieger asked. We normally would meet November 16, 2006, because of Thanksgiving, but we could go with November 30, 2006, to give more time, Sieger said. Strait asked about the first Thursday in December. It was decided to schedule a meeting for November 30, 2006 at 7:30 p.m. in the commission room. Sieger said it will be called a regular meeting and work session, so minutes from this meeting may be reviewed. Yates is to send Strait the four corrected minutes that need signatures. Yearout said he will send information before Thanksgiving, Dallke said. Mueller asked if the variance request could now be published in time for the November 30, 2006 meeting. Yes, Strait said. Actually, we have two, Strait said. We had a CUP (Conditional Use Permit) request, today, Strait said. Members asked Strait to ask the CUP applicant if they want to come in November. Strait said she may not have time to gather all the information needed for this application and publish in time, as this is a very involved application. Strait told members the county commission approved a job description for a new employee as her staff. Avery asked, and Strait said this is a new position, as Margo O'Dell is going fulltime with the health department. Strait explained they are changing the department's organization. Sieger reminded members to turn in their mileage. Mueller made a motion to adjourn and Avery seconded the motion.

In favor: 8; Opposed: 0; Motion carried and the meeting adjourned at 9:37 p.m.

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Eileen Sieger,
Chairman

Margo Yates,
Secretary