

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

October 27, 2005

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

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

Sieger pointed out members need to add to the agenda the Record of Proceedings from the recent work session. Sieger said members will need to have two actions, one for the Record of Proceedings from the September meeting, and one for the work session minutes. Sieger asked if there were any other corrections, or additions to the agenda. Sieger asked if anyone had off agenda items. Brazil said he has handouts for off agenda. Maxwell said he has an off agenda item, and Sieger said she will address member terms.

Sieger asked for corrections, or additions, to the Record of Proceedings of the September 22, 2005, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Mueller made a motion to accept the Record of Proceedings as written, and Maxwell seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Sieger asked for corrections, or additions, to the Record of Proceedings of the open work session on September 22, 2005, which followed the regular meeting. Sieger had a correction on page one, where the word "for" needed to be added. Sieger also had a correction on page two where a sentence needed changing. Maxwell had a correction on page one where "east" should have been "ease." Eilerts made a motion to approve the Record of Proceedings for the work session with three corrections. Ensz seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 4: An application for David Harris, requesting a lot split for five acres for property located in East Branch Township. This application was published originally on August 31, 2005. Not all the information was ready to address the application at that time, so it was republished on October 5, 2005, in *The Free Press and The Free Press Extra*. Brazil passed around a survey of this property, for members to review. Sieger asked and Brazil said, yes this is an existing home site. Brazil explained the owner plans to sell, and had Brazil out to view the property. A new lagoon was permitted and is in line with all requirements, Brazil told members. The survey was all that was needed, and we have it now, Brazil said. Sieger asked and Brazil said yes, it came out of an 80-acre tract. Ediger asked if the buildings are being used now, and if someone lives there, now? The current landowner was living there, Brazil said. He wants to sell off the home site and keep the ground, Brazil added. From the five acre lot splits that have been done this year, what remarks have you heard?, Sieger asked. People are pretty comfortable with five acres, Brazil said. The only real complaints are that they have to get a legal description and

survey done up front, with the application deadline, Brazil said. Sometimes that comes after the fact, and if we go to an administrative review this will no longer be an issue, Brazil said. Avery asked if we are ready to go to handling lot splits administratively the first of next year? Brazil said he would check to see if changes will need to be made to the comprehensive plan in order to start handling lot splits administratively. Eilerts asked if this property has had an application before the planning commission in the past. West of Peabody, two lot splits were approved for an auction, but it was never finalized, Brazil said. Because it wasn't completed, it's like a CUP (Conditional Use Permit), Brazil said. If they don't complete the scale drawing and ag disclaimer on the deed, it's not final, he explained. A lot split per parcel is a one-time deal, Brazil said. If it's finalized, Mueller said. Ediger asked if there is a time limit? I think we should find out before it comes before us, Avery said. I'll go back and look if a time limit is built in, or go back to case law, Brazil said. I think the applicants have been pretty happy with the lot splits, Brazil told members. Are there any problems with this application?, Sieger asked. Any discussion?, Sieger asked. Sieger reminded members they are acting as the planning commission for this application. Mueller made a motion to approve the application for David Harris for a short form lot split of five acres in the "A" Agricultural Zone District as presented, and require 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. Eilerts seconded the motion. In favor: 7; Opposed: 0; Motion carried.

Item 5: An application for Lloyd Klassen, requesting a variance from required 22-foot wide modular home to 14 feet, and from required masonry wall, for property located in Risley Township. Members are acting as the Board of Zoning Appeals for this application. This application was published in the October 5, 2005, issues of *The Free Press and The Free Press Extra*. Sieger asked if members have to need Maxwell to make a quorum for the Board of Zoning Appeals, in order to be able to appoint him as the alternate. Maxwell asked if he is not appointed to the Board of Zoning Appeals, if he may speak as a member of the public about the application? I think the intent is, if there is any vacancy, it can be filled, Mueller said. There is a quorum for the Board of Zoning Appeals. Dale Klassen was present to speak about the application. He explained that Lloyd Klassen is his father. He said they have a 350 head cow dairy, located north of Hillsboro, and presently farm about 35 acres along with the dairy operation. Klassen said his father is about 75 to 80 percent retired. This leaves me on the farm alone, and it's getting difficult for him to come and help me, as needed, Klassen explained. He said he already owns the trailer that he wants to move on the farm for hired help to live in. We're proud of our property, and we keep it up, Klassen told members. When we think the trailer's usefulness is past, we would like to put a modular home in its place, Klassen said. I cannot find local dairy help, so I need to provide housing, Klassen said. He showed members an aerial photo of the farm, which was taken in 1991. He showed on the photo where his home is located and where he is proposing to put the trailer. He said he would put a privacy fence around it. It is a 1986 model trailer, which is still very sound, Klassen told members. I thought originally that I would just paint it, but I think maybe I might put vinyl siding on it and try to extend the life of it, Klassen said. I'd like to see the trailer last 10 years, as my son will be out of college at that point and we can see what

happens, he said. Avery asked about the variance request for the foundation. Sieger asked what Klassen plans to do for a foundation. He said put pads down, but use skirting. Eilerts asked if it would last 10 years without a foundation? It will have a concrete foundation, Klassen said. With support pads?, Brazil asked and Klassen said yes. I'm trying to situate things so just to use one lagoon, Klassen said. Usually, KDHE (Kansas Department of Health and Environment) does not combine human and animal waste, Brazil said. I have a friend that just got approved to do that, Klassen said. You could definitely tie the house and the trailer together, Brazil said. There's no animal waste in that, Ediger said. No, his animal waste goes to another, Brazil said. Siegers asked why not use a permanent foundation? Because of the additional cost, Klassen said. But, eventually you would put a modular home there?, Brazil asked and Klassen said yes. But, it wouldn't have the same footprint, Sieger said. We've had some of these issues before, Sieger said. Mueller asked if Klassen has an employee lined up? Not at this time, but as soon as I have things ready, Klassen said. You have someone that commutes, now?, Sieger asked and Klassen said yes. I have one that will be moving on and I'm going to have to replace him, Klassen said. Sieger looked for employee housing for ag use in the regulations. Brazil said he would have to look for it. It would just be the structure and the fencing, and that's all you're really planning, Sieger said and Klassen said yes. And, you really feel that a nearly 20 year old trailer is in good shape?, Sieger asked. The inside is in good shape and it's a little weathered and needs some paint or siding, Klassen said. Sieger asked and Klassen said the trailer is currently in a trailer park in Hillsboro. I see this as very similar to one about a year ago, and there was a father and son and a new trailer and I don't see any difference, Ediger said. Because they have different kinds of anchors doesn't change the ball game, Brazil said. It's still an anchoring system, Brazil said. The difference between mobile homes and modular homes is that modular homes have building codes, Brazil said. What about cinder block or masonry foundation, would that change your plans?, Mueller asked Klassen. I'd have to see what it would cost, Klassen said. The codes are for stabilization for storms, etc., Sieger said. Are they as secure that way as they would be with some kind of masonry?, Sieger asked. I'm not sure how it's different?, Klassen asked. Does anyone from the public wish to speak about this application?, Sieger asked. Maxwell wished to speak. He keeps calling it a trailer, and trailers have been outlawed in Marion County, Maxwell said. A mobile home is anything constructed previous to 1976, Brazil said. We have a minimum 22-foot wide requirement, he added. Singlewide mobile homes have been turned down, so what makes this different?, Maxwell asked. It's newer, Brazil said. It may be allowed as an accessory use, under Article 21 addressing servant's quarters, Brazil said. The regulations call for permanent structures for primary residences, Brazil said. If there was a defined timeframe it would be easy to address in my mind, Brazil said. I think 10 years is pretty close to permanent, Maxwell said. Yes, 10 years is a long time, Brazil agreed. Avery reminded members that for an application from the Burns area, the owner was required to make his foundation per regulations in the plan. And, then we did not do that a year ago, Avery said. The first application intended it to be a permanent structure, Mueller said. The second application was temporary for a son, Brazil added. The second application was presented as a secondary residence, and was for a transition period and if it worked out would be replaced with a modular home or a double wide, Mueller said. It's complicated, Brazil said, but on one hand, we want to stay consistent. I think it's great that he's going

to bring in new people, but my concern is that we stay consistent, Avery said. We've done less than 22 foot wide for employees several times, and it's the foundation that's the question, Brazil said. The cost of putting it in is an issue, Brazil said. There are two options: a permanent cement wall; or a cinder block wall, which have been addressed after the fact, but it is just as stable, Brazil said. There is a way to fill the concrete blocks with concrete and anchoring them, Maxwell said. Maxwell questioned the age of the trailer and the fact that other people have been turned down. I don't know about the rest of you, but I've taken some flack from it, Maxwell said. What other option would you have?, Sieger asked Klassen. Spend a lot of money, Klassen said. How long is the trailer?, Ediger asked and Brazil said 84 feet. Ediger wondered if the trailer might measure 14x80. If he did a foundation under it, can you see 10 years from now going to a modular and using this foundation for it, and adding to it?, Ediger asked. Then you're limited to the length of a home, Klassen said. That's why I'm asking how long it is?, Ediger asked. I'm trying to justify the cost, Ediger added. I need affordable housing for an employee, Klassen said. If I knew he'd stay around, I'd build him a house, or if I had a son ready to come home, I'd build him a house right now, Klassen said. Sieger closed the public hearing for this application.

Brazil said since it's for an employee as a second residence, we have a real pattern there. It's the other issue, that it's not permanent, Brazil added. I see it as a transition process, Mueller said. He already owns the manufactured home and it's a benefit to him to bring it on site, Mueller said. I like his plan of a transition period, Mueller said. I still think there's a difference between this application, the last application, and the first one, Mueller said. Maybe if we can do something with a 10-year time limit, Mueller said. I hate to see him have to put a lot of money into it and then tear it all up in a few years, because all the investment will be gone, Mueller said. A time limit would be a compromise, Avery said. I think 10 years is a long time, although I understand the need for this, Avery said. The intent of temporary would be very clear with a time limit, she said. Mueller asked Brazil if that would be doable? Time limits are very doable, Brazil said. Sieger asked members to review the conditions that must be met in order to grant a variance. Sieger questioned number five in the conditions. I think that comes back to permanent vs. transition, Mueller said. And primary vs. secondary, Brazil added. Is 30 years about the maximum life expectancy of a mobile home?, Avery asked. I've seen some fall apart in no time at all, and others last a long time, and I'm not sure what it is that's different, Sieger said. I think 15 years is probably the maximum, Maxwell said. On the other applications, weren't they also using the cement board type product for skirting?, Mueller asked. The vinyl skirting doesn't seem to have the strength to hold up, Sieger said. Ediger made a motion to approve a variance for Lloyd Klassen's dairy from 22 feet to allow for the construction of a 14 foot manufactured home in an "A" Agricultural Zone District, and recommend this only as a secondary residence only for the purpose of housing employees for a period of 10 years. Mueller seconded the motion. In favor: 5; Opposed: 1; Motion carried. Eilerts voted to oppose the motion, because she prefers a shorter time period.

Sieger asked members to now address the foundation issue. Cement board is a good product, Mueller said. Mueller made a motion to grant a variance for Lloyd Klassen as

requested for a variance from permanent foundation requirements, with a time limit of 10 years. Ensz seconded the motion. I support this because it is a transition period for a secondary structure, Mueller said. In favor: 5; Opposed: 1; Motion carried.

Maybe we need to look at things as primary and secondary structures and maybe you create a category, Brazil said. So the public will understand the difference, Avery said. I think we need to look at this, because every time it comes up, Maxwell said. In ag communities, a secondary structure is very common and it's hard for urban folks to understand, Mueller said. It's a different category, Mueller said. That's why I think it needs to be addressed, Maxwell said. We need to square it up, he added. Whenever it comes up about not having a permanent structure, I have one property in my mind, Brazil said. In this case, a mobile home was brought in and it was developed and then the mobile home was removed, and there's a lagoon, power pole, etc., left on the property, Brazil said. We need to clarify it, because we spend 45 minutes trying to decide what is fair, each time, Avery said. I'll issue a construction permit and will work with you on the wastewater, Brazil told Klassen.

Item 6: An application for Dennis Krause, requesting a lot split for 5.44 acres, for property located in Clear Creek East Township. This application was published in the October 5, 2005, issues of *The Free Press* and *The Free Press Extra*. Krause was present to speak about the application. He explained his mother owns a house and garage on this property. I came back in 1981 and bought these 80 acres and my folks live in the same section and they were ready to retire so they bought the house from me at that time, and no deed was recorded, Krause said. So, when my mom died two years ago the deed was in my name, but my brothers and I actually owned it, and now we want to sell the house to a family, Krause said. Sieger asked and Krause said yes, this is where my mother and father retired. And, it's coming out of an 80?, Sieger asked and Brazil said yes. Is someone living in the home, now?, Ediger asked. Yes, the people who bought it have moved in, Krause said. They had to be out of their house by September 30, so I said they could go ahead and move in, Krause said. Avery asked if a realtor sold it, and Krause said yes. Avery asked if realtors still don't understand zoning? It can be sold with intention of change, but if one of the set backs wasn't right, it becomes very difficult to make changes after a sale, Brazil said. The family I sold it to, he's my god child, so if it wasn't him, I would have waited for your approval, Krause said. Members explained it's not a problem with this application, but they are concerned about future problems with realtors and contractors not informing owners about zoning. Brazil said he has sat down with realtors on an individual basis and gone over zoning. Members pointed out there are probably realtors out there that Brazil has not had a chance to visit with. There are two surveys, Maxwell said. There is a change on one of them on a set back, which doesn't make a difference, but there was a change, Maxwell said. Brazil agreed it is not an issue in this case, but it could have been. Ensz made a motion to approve a short form lot split of 5.4 acres in the "A" Agricultural Zone District as presented by Dennis Krause, and require 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.

In off agenda items, Brazil reported it is in the plan that the planning commission does approvals for lot splits, so they will need to write in that it is okay for lot splits to be handled as an administrative review. And, it's a one-time deal once you do a lot split, after that it has to be platted, Brazil said. With platting there is a two-year time limit, but here it's left open, unless the intent is to refer to the platting, but I like it direct, Brazil said. And, these don't go to the county commission?, Sieger asked and Brazil said no. The majority of our applications are existing home sites, Brazil said. I'd like to see it become administrative, Avery said. And, appeals would come to us?, Avery asked. Appeals would come to the Board of Zoning Appeals, Sieger said. It would be the LESA (Land Evaluation and Site Assessment System) system they would appeal, Brazil said. If you take out the existing home sites, there may be a month when we don't meet, Brazil said. I think it's good for the board to be involved, even if you don't make any decision, Maxwell said. At least have a report, Sieger said. I don't have a problem with a report, but it would be smoother, Avery said. Probably a 10-day review time, like on the construction permits, and usually I can turn them around in two or three days, Brazil said. And then people wouldn't have to wait until the next month, Sieger said. Brazil handed out the same proposal from the county commission for members to review. We have had questions about areas outside zoning, Brazil said. Are you comfortable with these, or do we need another work session, or do we just compile all Kaup's suggestions?, Brazil asked. There were territorial questions brought up by Hillsboro at the work session, Avery said. Do we want to explain that we are not advocating it either way, but we did not hear an answer about territorial rights?, Avery asked. The extra territorial zones were excluded after 1992, Brazil said. There are areas of urban influence, which are designed to give the cities with zoning a stronger voice, Brazil said. And, there are growth areas around the cities without zoning, Brazil added. Do we want to relax it?, he asked. I'm going to be a strong advocate against giving up that jurisdiction, Brazil said. Do we want to put it on next month's agenda, as a discussion item?, Brazil asked. And, it's the last meeting of the year, Mueller said. There are still quite a few areas that are not quite clear, such as net density per section, to be sold off of any acreage of any size, Sieger said. For density per section, you're just looking at growth areas, Brazil said. You could have 1.6 acres left of a parcel, Sieger said. Jim Kaup addressed that and called it wasteland, Maxwell said. Well, I don't like it, Sieger said. I would like to see us come up with a proposal of what is acceptable at the next meeting, Mueller said. I can compile all Kaup's suggestions in your packet, Brazil said. I think we're ready to present a proposal, Avery said. Brazil said he gave copies of the memo to the mayors. The next meeting is a week earlier than usual, and is on November 17, 2005. Sieger reminded members that Ediger, Unrau and Maxwell all have terms up for renewal at the end of the year. They are three year staggered terms and one position is still vacant. We have a nice balance on the planning commission, Brazil said, and I want to hold onto that. Sieger said she was impressed with Brazil's presentation to the mayors, and all members agreed. Maxwell showed members a drawing he made, concerning the Conditional Use Permit (CUP) for a repair shop on U.S. 56, where members suggested re-routing the driveway. I thought I was familiar with this property, but after looking at it again, it is considerably different than I remembered, Maxwell said. Instead of coming off the road, there's going to have to be a jog made, he said. Now, I don't know what the state or the county is going to do to the guy, Maxwell said. Brazil agreed it is farther out and around than he was

imagining. There are black and yellow signs going around the corner, Brazil said. And you are going to start to get into the first residence, and I don't know what road and bridge is going to say, but we need to keep it as far south as we possibly can, Brazil said. If road and bridge says they can't do it, they are going to be back in to see you, Brazil said. We thought it was a good solution, because the neighbors complained about the traffic, Mueller said. This taught me a lesson that maybe I need to go look prior to an application, even if I'm familiar with the area and maybe should go look afterwards and see how some of this works out, Maxwell said. There's one at the county lake that's a little different, and I think it's better, Maxwell said. You mean he took it down?, Ediger asked. Yes, he dug it down so it's all on the same level, Maxwell said. Sometimes these decisions and suggestions work out pretty good, Sieger said. Brazil encouraged members to use up their mileage for the year. As for rezones, I've had the benefit of going back out and seeing how they've worked out, Brazil said. And going out and driving around the lake and seeing how it's panned out, just in my time I can see the difference, he said. So, the pains taking process of looking at set backs really is paying off, Brazil said. The county has been saved from having a salvage junkyard, and there are some other examples of things that the county would have that in my mind would be less than desirable, Sieger said. At the next meeting Maxwell will tell members about a trip he took where he saw 825 wind turbines. Eilerts said that Texas has proposed putting wind generators out in the ocean. Eilerts asked about mileage, and Brazil said to and from meetings and viewing sites, and work sessions. Ediger made a motion to adjourn the meeting and Avery seconded the motion. In favor: 7; Opposed: 0; Motion carried and the meeting was adjourned at 9:37 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

Eileen Sieger,
Chairman