Landsverk & Vinduska Property

As requested, this is a response to the letter received by the Marion County Commissioners from Larry and Diana Landsverk.

Attachment A is the timeline establishing permit issuance dates.
Attachment B is the governing statutes and regulations.

On May 30, 2002 permit # ZP 02-059 was issued for a primary structure. Over the next 3 1/2 years, five more permits were issued, two of which were also for primary structures. Although I cannot speak for my predecessor, I can tell you that I visited briefly with him about this property. He said he issued the permits on the claim that the property was deeded to one (joint) owner, and would remain as such. At the time, the zoning regulations required a total of 40 acres per primary structure. The applicants pointed out to Mr. Brazil that they were entitled to construct 4 homes on 160 acres. With that in mind, Mr. Brazil issued all three permits for primary structures. I am unsure why the primary structures were not required to be separated enough to meet the setbacks in case of any future lot split requests. However, they weren't and there is nothing we can do about it now.

In May, 2008, Mr. Landsverk requested information about a lot split so he could have a separate deed to his residence. I told him he had to have a minimum of 3 acres and could apply for a variance from setbacks if it was necessary. I told him that I would try to assist him without having to jump through a lot of hoops or delay the process if I could find a way to do that. I advised him that a survey was the first step.

The surveyor came to the property and erected flags along several lines on and throughout the property. As soon as the flags were erected, Bill Vinduska contacted me and voiced concerns about property lines and easements he was told were needed. He also asked about water and sewer issues. He said there were flags right up next to his cabin. I told him to schedule a time at the property when I could meet with everyone concerned. He said he lives and works in Wichita, so he could only meet on a weekend. Mr. Wittrig had also voiced concerns about the lot split and his property. He also expressed an interest in doing a lot split for a separate deed on his home as well. There were concerns about access to a creek that runs through the property. There were concerns about a shared water well and a shared lagoon. The lagoon was actually included in the Landsverk split. And there were a lot of a "what-ifs" that needed to be answered before the split could proceed.

During my initial meetings with the Landsverks, I was reassured numerous times that there would be no objections by the other owners. Since this was obviously not the case, as evidenced by Mr. Vinduska's and Mr. Wittrig's phone calls, I agreed to meet with all parties at one time to try to resolve the issues. I met with all parties at 2871 230th on August 23, 2008 at approximately 2 pm. At this meeting, there were a lot of questions and we walked around and looked at the flag locations. Since we were unable to know for

sure what flags were marking what, I advised them that when the survey was completed, I would again come out and we could follow the survey with the flags and have a better idea of how it was laid out. I also discussed easements for the driveway and for water and sewer lines. All parties were in agreement that they would continue to use the existing sewer lagoon and water well. Bill Vinduska does not have a bathroom in his house, so sewer was not an issue for him at this time. However, he expressed an interest in adding on to his cabin in the future to make it habitable on a full time basis. His cabin is bordered on the west and south by the creek and on the east by Landsverk's house. The Landsverk house is approximately 68 feet away. The community water well is approximately 50 feet northwest of Mr. Vinduska's cabin with water lines running to the Landsverk and Wittrig homes. This severely limits his ability to build any addition to his cabin.

It was initially agreed upon by all parties that no lot would extend to the creek so that all parties would have unrestricted access to the entire creek. After the initial survey was received by this office, Mr. Wittrig called me and asked if he could move his lot line over the creek so he could continue to water his yard from it. By moving his property line over to include the creek, it completely encloses a portion of the access driveway.

Initially I was scheduled to meet with the parties on Saturday, September 20, 2008 at 2:00 pm. I forgot about the appointment that morning and took some allergy meds that made it unsafe for me to drive. When they called me, I asked to reschedule for the following weekend. I was pretty groggy and don't remember very much of the conversation, but I believe they agreed to postpone. In any case, I was unable to keep the appointment after they called. I did not feel the need to provide them with any reason.

On Tuesday, September 23rd, I pulled all of the files on the property and started researching the history to help determine whether we could proceed. The primary objective for the research was to decide which structures were in existence prior to zoning and which ones weren't. It was at this time that I discovered the number of permits that had been issued. In order to put it in chronological order, I developed the timeline. After looking through the file that morning, I contacted Dave Yearout for advise. He said the owners would have to rezone and subdivide the property in order to be able to obtain any permits in the future. I had already advised the parties that they would need a variance from the setbacks, but that I didn't see a problem with getting one. Mr. Yearout reminded me that in order to grant a variance, the problem cannot be created by the owner or applicant so, by state statute, they could not be granted a variance by the BZA. Coincidentally, Mr. Brazil visited me the afternoon of September 23rd while I was working on this case, so I asked him what he remembered about it. He said they assured him the property would remain under one ownership and that he issued the permits based on that claim. He said he talked until he was "blue in the face" but they wanted their houses that close together even though he advised against it.

After researching the permits, consulting with Mr. Yearout and visiting with Mr. Brazil, I discussed the case with the Planning Commission at the regular meeting on Thursday, September 25th. The planning commission requested I send them a letter

informing them they needed to rezone and subdivide the property. They also recommended that I not schedule any more meetings for weekends. They felt my weekends should not be interrupted by work and that if zoning issues arise, they are not emergencies and should be brought to me during normal business hours. On Friday, September 26, I typed a letter to all parties and it was mailed that day. As per their own admission, they received the letter prior to our appointment scheduled for September 27th.

I feel that if the parties could agree on the specifics and remain in agreement throughout the process, lot splits could be issued if variances were obtainable. Diligent research of this case indicates that the restrictions to which the property is limited were, in fact, created by the property owners. This prevents the BZA from being able to approve any variance. Remember that Ken and Lisa Wittrig also expressed an interest in splitting out their home from the parent parcel. At the on-site meeting in August, we discussed that possibility as well. We do not have any restrictions to prevent a lot split from occurring after the initial lot split. The only mechanism to prevent this from happening is if the two splits were done at the same time, it would trigger conformance to the subdivision regulations. KSA 12-752 requires that any lot split be approved through the subdivision regulations. According to the statute, if a lot split does not follow KSA 12-752, no permits can be issued for the lot in the future. Marion County allows a lot split, under certain circumstances, to be approved by the Zoning Administrator. This does not follow the precise procedure set out in the statute, however, the statute says that if the planning commission does not make a determination within 60 days after the first meeting, the plat (in this case a survey) shall be deemed approved and a certificate shall be issued by the secretary. Effectively, if an administrative lot split is approved, it is a legal conforming lot and permits can be issued on the lot. Since we have no restrictions on the number of times this can occur, as long as it meets the density restrictions and minimum lot sizes, 3 lot splits on the Vinduska property might sneak by without having to go through the subdivision regulations. However, allowing them to skirt the rules will only result in future problems if there are as many issues as have been voiced so far.

In order to make a lot split work on this property, all involved parties must mutually agree on the location of lot lines. Access easements as well as sewer and water easements need to be spelled out as well. When they got together to iron out the issues and work through the concerns that were voiced, they were able to reach an agreement initially. A few days later when they weren't all together, one party or another decided they didn't like something about the original plan. For this reason, I am unable to get cooperation from the entire group long enough to approve a lot split. There are too many issues. A variance is NOT an option. Rezoning the property to allow for smaller lots with smaller minimum setbacks, followed by subdividing and platting are the only legal options available at this time. This will allow legal conforming lots with the ability to obtain permits in the future. It will also allow legal access to all lots and access to existing sewer and water services.