

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

September 25, 2003

Vice Chairman Bob Unruh called the meeting to order at 7:32 p.m., with a quorum present for both the planning commission and the Board of Zoning Appeals.

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

Unruh asked for corrections or additions to the Record of Proceedings for the August 28, 2003, meeting of the Marion County Planning Commission/Board of Zoning Appeals. Unruh asked if members are now operating under the new comprehensive plan. Officially, the new one is our comprehensive plan, Brazil said. So, we're kind of in the gray area right now, Unruh said. Some of the tools are not in place, yet, Brazil said. Unruh referred to page four of the plan and Sieger's comments at last month's meeting about considering taking action for the county lake similar to action that was taken for the reservoir. Mueller made a motion to accept the Record of Proceedings as written and Ediger seconded the motion. In favor: 6; Opposed: 0; Motion carried.

Unruh asked about off agenda items and Brazil said he has a couple of housekeeping things to bring up.

Item 4: A continued application for Willis Peterson, requesting a variance from required front setback of 30 feet to 20 feet, side setbacks from 10 feet to three feet on the north and south, and rear setback from 20 feet to five feet, for property located in Centre South Township. Peterson was present and explained he needs another continuation, because due to a recent storm the man doing the plans has not had a chance to complete the plans and Peterson would also like a chance to talk with Dan Crumrine about moving the sewer line. Brazil said he recommends another continuation. As long as we address it each meeting, it's okay, Brazil said. Unrau made a motion to continue this application to the October meeting, and Mueller seconded the motion. In favor: 5; Opposed: 0; Motion carried.

Item 5: An application for Marion Cabbage, requesting a variance of acreage requirement from 10 acres to 6.4 acres, and a rezone from agricultural to rural residential, for property located in Milton Township. Members will deal with the rezone request first, and the variance request second, Unruh said. Unruh explained the rezone goes on to the county commission as a recommendation needing their final approval, but the variance is a final action. Cabbage explained the state highway department is moving U.S. 77, and showed members a diagram. He owns 6.4 acres on one side. He said he asked if he could sell or deed it back, but was told no. They said they would let me fence it and give me a use permit, but they don't want to buy any more than they have to, Cabbage explained.

Brazil asked how many acres Cabbage had, before, and Cabbage said 12.8 acres. You have owned this land since 1961, Unruh said. It was non-conforming, but compliant, Brazil said. As staff, I think public highways are good for everybody and my recommendation is to approve it, Brazil said. So, basically it was an issue out of your control, Mueller said. Cabbage showed members on the diagram where his house sits. So, did the new highway end up on the other side of your home?, Unruh asked. It was on the west side and now it's on the east side?, Unruh asked and Cabbage said yes. Unruh asked if anyone from the public wished to speak. Unruh asked if there were any more questions. Unruh closed the public hearing for this application and opened the floor for discussion.

It's clear this is an issue beyond his control, Mueller said. Unruh asked if there is rural water on this property, and Cabbage said no, there is a well. Unruh asked if the sewer is compliant and Brazil said yes. Ediger made a motion to recommend a rezone from agricultural to rural residential, and Avery seconded the motion.

In favor: 6; Opposed: 0; Motion carried.

Members are now acting as the Board of Zoning Appeals for the second part of this application. Brazil said he did receive a letter that refers to factor #1, in support of this request. Unruh referred members to the five issues a variance request is suppose to meet. Are there any questions, or concerns?, Unruh asked members. Does anyone from the public wish to speak?, Unruh asked. In light of the fact this application clearly meets all the requirements, Mueller made a motion to approve the variance request from 10 acres to 6.4 acres, and Avery seconded the motion. In favor: 5; Opposed: 0; Motion carried.

Item 6: An application for Douglas Koehn, requesting a variance from required front setback of 75 feet to 45 feet, for property located in Lehigh Township. This property presently is ag zoned, Unruh said. Koehn owns approximately 80 acres, two and a half miles west of Lehigh. Unruh reviewed the project description on the staff report. Brazil was called to look at the waste water system and noticed the new shed and informed Koehn he needed to seek a variance. Unruh reminded members we have had some similar issues in the past. Koehn told members it was just ignorance that he did not know of the required setback, and he knows that is a poor excuse. Is your plan at some point in the future to build additional buildings?, Unruh asked. A shop building in the future, Koehn said. Do you plan to build a home?, Unruh asked. I live there now, Koehn said. In terms of timing, you might consider a charge in penalties for not putting an application in prior to construction, Brazil said. Just so it gets a little attention, he added. I just hate to see someone get in a situation they can't get out of, Brazil said. Unruh asked if the county signs about zoning could be clearer? I have wondered if we have given the public enough warning, Unruh said. If you read the newspaper like I do, I know it's been publicized a lot and talked about a lot, but some how we miss some of those things, Unruh said. I think looking at the future, maybe we should do a media push and maybe budget for new signs, Brazil said. I think this was an honest mistake, Brazil said. I can think of another where they were trying to avoid the system, Brazil said. If it's constructed by someone in the construction business, they should know and that disturbs me, Avery said. I think if they are in the business, they have an obligation to know, Avery said. It is a question of judgment if it's an individual landowner who just did not know, opposed to someone in the business, Avery said. I think it's a very healthy and important discussion to have, but

I do have one question, Mueller said. Is there any interference with the intersection, or anything?, Mueller asked. My main issue was when they pull out of their drive can they see both ways?, Brazil said. Frontage is to the north, not to the county road, Ediger said. Unruh asked if there were any other questions, or any comments from the public. Unruh closed the public hearing for this application. Unrau made a motion to approve the application for Douglas Koehn for a variance of no more than 30 feet. Ediger seconded the motion. In favor: 5; Opposed: 0; Motion carried.

Item 7: An application for Mark Penner, requesting a variance from required rear setback of 50 feet to three feet, for property located in Carlin Township. I want to build a 36x36 horse barn on my place, Penner told members. The reason I want to move back is I need it back from a lateral field, he said. I have a letter from my neighbor in support of my plans, Penner said. The property I'm building next to is just a hay meadow, he said. Unruh read the letter. There are no other structures around?, Mueller asked and Penner said no. Brazil asked if it was all right to add the letter to the file and Penner said yes. Penner showed members the property on a map. The plans are for the southwest corner of his property. But, the setback issue is really to the west, Brazil said. It's setback to the north far enough it clears the south property line, right?, Unruh asked and Penner said yes. Brazil showed members photos of the property. My concern is where he is proposing to build the barn, will it be within site of the neighbors?, Avery asked. Will it obstruct in any way?, Avery asked. There are trees and what not, so I don't think they'd really be able to see it, Penner said. Ownership can change and that's my concern, Avery said. I'll tell you what my preference is, but I'm not set in stone, Unruh said. Coming within three feet of the property line is really close, he said. You may need to get back in there and three feet really does not allow for any activity back in there and you may have great neighbor relations right now, but you may not live there forever and your neighbor may not live there forever, Unruh said. If we go by our staff recommendation, it would keep you 20 feet back from the property line, Unruh said. Does that work with your issues and the lateral lines?, Unruh asked. I think I can make that work, Penner said. I talked to Mark about patterns and what we've allowed in the past, Brazil said. Unrau asked, and Brazil explained if you would replace the lateral lines you would have quite a bit of expense. And it seems to be compliant?, Unruh asked and Brazil said yes. 20 feet allows him to get in there and mow weeds, Ediger said. Other comments?, Unruh asked. Anyone from the public wish to speak?, Unruh asked. By moving out we're not going to be building over any other utility lines?, Unruh asked and Penner said no. Unruh looked at the five-variance issues and reviewed them with members. Unruh closed the public hearing for this application.

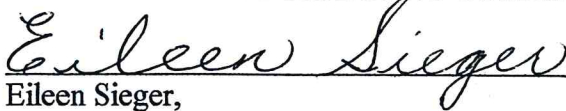
Mueller made a motion to approve a rear yard setback of no more than 30 feet for the application for Mark Penner. Unrau seconded the motion. In favor: 5; Opposed: 0; Motion carried.

Off agenda items: Brazil presented three books that are available for members to check out. Brazil handed out copies of two articles on wind farming in Butler County. Unruh asked about a lawsuit filed in Butler County. I couldn't give you an honest answer, Brazil replied. Commissioners approved the comprehensive plan and gave me permission to get

a contract for the zoning regulations, and what that may mean to you is a couple of work sessions, Brazil said. The consultant can come and go over the changes with you, Brazil said. We may be able to get this in place by the middle of next year, he said. Most times when I have come away with a bad taste in my mouth it was directed by the laws, not the plan, Unruh said. You should let your views be heard and we should not take it personally, Unruh told members. Now we may have an opportunity to put more or less leverage on some of the issues, Unruh said. The things the public asked for are actually in the plan, Brazil said. But will they be implemented?, Unruh asked. As I recall when we had those meetings it was interesting to me how local community leaders picked up on things and the feedback came, Unruh said. I felt very good about that and I think now it's good that we carry that out, Unruh said. I was pleased we stayed with the same consultant throughout the whole process, Brazil said. Unruh referred to a state supreme court decision on a lawsuit from an article in the *Free Press* this week. Unruh said he received his agenda via e-mail. Unruh said he would like to see power point used in the future, too. The health department got funding for power point, Brazil said. They're not cheap, he added, by the time you get the laptop and the projector. Will there be any future training sessions?, Avery asked. Usually the Kansas Association of Planning and Zoning Office has a spring training meeting, and I'll let you know, Brazil said. Mueller asked about corrals built in a county road ditch and steel posts actually coming right out on the road. Mueller questioned if there is anything about such a situation in the zoning regs? Brazil questioned if this would be grandfathered in? It's new within the last year, Mueller said. Members discussed if people are just now aware of zoning. Most of the time you don't pay attention until you think it's going to affect you, Avery said. I have to say the Koehn's were in anguish and I was glad to have them have a sigh of relief, Unruh said. They called me out for the wastewater, so it's not like they were trying to avoid the county, Brazil said. I think after 10 years I honestly think it's time to look at a penalty, Unruh said. The point you brought up is a good one, a contractor should know, Unruh told Avery. Could penalty come up in the process of the new regs?, Mueller asked. How would it be enforced?, Ediger asked. Through the county attorney, Brazil said. You really want to reach every household?, Brazil asked. Spend \$600 and send a note to everyone, he said. If you had to set a schedule for penalties, what kind of scale would you be looking at?, Unruh asked. What about in proportion to the cost of the building?, Avery asked. Sooner or later someone is going to spend \$100,000 on something, Brazil said. Members discussed printing some educational materials. The budget is set every June and July, so at this point we're looking at next June and July to put it in the budget for 2005, Brazil said. Some kind of condensed version of the new regs, Mueller said. The county web site is up and running and they should have the regs on there soon, and hopefully before 2004 we will have our agendas on there, too, Brazil said. Ensz made a motion to adjourn and Avery seconded the motion.

In favor: 6; Opposed: 0; Motion carried and the meeting adjourned at 9:05 p.m.

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Eileen Sieger,
Chairman