

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

September 28, 2006

Chairman Eileen Sieger called the meeting to order at 7:45 p.m., with a quorum present. Sieger reminded everyone this is a regular meeting, not a special meeting.

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

Item 3: Record of Proceedings from July 6, 2006. Sieger asked if there were additions or corrections. Sieger reminded members this was the public hearing on the proposed zoning changes. Avery made a motion to approve the Record of Proceedings as written and Ediger seconded the motion.

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

Sieger asked that Margo Yates add another signature line on the official copy, so Yates may sign as secretary under the chairman's signature.

Item 4: Record of Proceedings from July 27, 2006. Sieger said members received two copies of minutes from this meeting, one written by Yates and the other by Strait. Sieger asked members to look at the copy Yates wrote, first. Sieger asked if there were additions or corrections. Ensz made a motion to approve and adopt the Record of Proceedings as written, and Maxwell seconded the motion. In favor: 6; Opposed: 0; Abstained: 1; Motion carried.

Avery abstained as she was not present at this meeting.

Sieger asked members to look at the transcript from Strait. Eilerts made a motion to accept a transcription submitted by Administrator Bobbi Strait, as supportive documentation of the July 27, 2006, regular meeting. Unrau seconded the motion. Ediger asked about page numbers for Strait's transcript.

In favor: 4; Opposed: 2; Motion carried.

Sieger asked that signature lines be added for Sieger and Strait to sign on the transcript.

Item 5: Record of Proceedings from August 10, 2006. Sieger asked that "Special Meeting" be added to the title of these minutes on the official copy. Avery asked Yates to check the tape on page three, where she talked about reviewing changes in January, annually, and sending the changes on to the county commission. Avery made a motion to approve the Record of Proceedings with one correction/addition, and Eilerts seconded the motion.

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

Sieger reminded Yates to add a second signature line to the official copy.

Mueller arrived at this point. It was 8 p.m.

Item 6: Record of Proceedings from August 31, 2006. Mueller made a motion to approve the Record of Proceedings as written and Ensz seconded the motion. In favor: 8; Opposed; 0; Motion carried.

There were no off agenda items. Unrau made a motion to adjourn the regular meeting, and Mueller seconded the motion.

In favor: 8; Opposed: 0; Motion carried.

The regular meeting adjourned at 8:04 p.m.

Members began a work session with the county commissioners. Dallke mentioned small acreages and the density issue, saying we should be able to compromise on the small acreages. Avery agreed about being able to compromise, saying it is not productive if we cannot work together and it is disruptive. We need a solution both sides can live with, Avery said. Dallke said there should not be any interpretation; it should be black and white. If there are any variances, that would have to come to this board, Dallke said. Sieger said she thinks some language needs to be clarified as to whether five acres needs to be split out of a 40-acre tract, or whether we will allow five acres to be split out without the same ownership. Dallke asked about what to do about small acreages that have been split out. Dallke said that Strait suggested you could add something to the comprehensive plan for small acreages. Dallke said there are probably three issues: small acreages; density; and potential splits in the future. Where there is less than 40, and it was split out before '92?, Sieger asked and Dallke said yes. Dallke said in a nearby county they can only split every 20 years. So, there's only one easy split, Mueller said and Dallke said yes. I like 16, Dallke said. Yearout asked what to do with mortgage splits. Holub arrived at this point. It was 8:19 p.m. It's not a problem unless they default on their loan, Avery said. They are in violation of zoning regs, Yearout said. Yearout said he has known cases where the property sold to someone else and they wanted to add on and were told they have an illegal lot. The owner can be innocent, but the way the law works, it is a violation, Yearout said. The general rule of thumb in the mortgage market is they don't want more than five acres, Yearout said. If it's an acre, they are happy, Yearout said. They just generally will not take more than five, Yearout said. A split can occur because they choose to finance home improvements, Yearout said. They may own the unimproved part, but they own the rest with others, Yearout said, so it's a lot split. If someone came in later on the 40 acres, he couldn't do a lot split, Mueller said. I'd like to challenge you to think through if one per 40 is best for Marion County, Yearout said. Since visiting with Randy Dallke and spending time with the comprehensive plan, it seems they did want to encourage more development, but in reading it, it seems they wanted to encourage development more around the communities to preserve the rural areas, Avery said. I think smaller lots could happen around the communities and

maybe with some financial or tax incentives we could encourage some development around the communities, Avery said. Can we kind of think outside the box and see if there's a way we can achieve that?, Avery asked. I just wonder if this is something for discussion, Avery said. I remember discussing trying to help or revitalize some of the communities, Sieger said. I do think it's worth exploring, Avery said. Maybe it will get us to a place we need to be if we could think outside the box, Avery said. We need to be careful around the three communities of Marion, Hillsboro and Peabody, not to disrupt future plans for those communities, Sieger said. Yearout said members are struggling with some of the same issues as other counties. Yearout said there are fast-growing areas and corridor communities, with one example being growth from the Big Red One at Ft. Riley. Yearout said one thing he has dealt with in other small, third-class communities, is there is usually a hot button in rural areas. It was the landfill, here, Yearout said. Other places its corporate hog farms, or wind farms, Yearout said. Sieger said the correct term is Wind Energy Conversion Systems (WECS). You're not getting any argument from me, Yearout told Sieger. They're not a farm, Yearout said. Other communities have used inter local agreements with the board and community zoning boards, Yearout said. Once you get past the complaints about mobile homes, junk cars, and dogs, mainly its mobile homes and manufactured homes as lots of people just hate them with a passion, there's a way of bringing those complaints to the table if that's the way you want to do it, Yearout said. Those kinds of tools are available if the county is interested and the communities want to participate, Yearout said. We had a meeting with the communities, Sieger said. Yearout talked about lot size. Yearout said the communities could be approached about encouraging development. Perhaps some around Florence, because of highway access, and Goessel has some going on down there, Yearout said. Yearout said sometimes what happens is small lots are created and it's hard for communities to extend services out to the area. That's been talked about, Maxwell said. Yearout talked about annexing land. I've grown to observe that it doesn't matter how much land you own in the country, you live on one to two acres, Yearout said. Those moving to the country to live, not to farm, are really only wanting to take care of one to two acres, Yearout said. It's the path of least resistance, Yearout said. There were literally hundreds of five acre lots created in Butler County, but the bulk of them today after a number of years, the people take care of one to two acres, Yearout said. Do you think they should have been one to two acres to start with?, Sieger asked Yearout. They should have been smaller, Yearout said. Now comes the challenge of how to handle water and sewer, it's a double-edged sword, Yearout said. People are going to be neat or junky, wherever they are, Sieger said. For the most part, the junky folks are creeping out and looking for a place in the country, Yearout said. What happens is a lot of the problem properties are from people who have junky lifestyles, Yearout said. They aren't ag oriented, Yearout said. It's probably the first property they've owned, Yearout said. They think it's cheap to live in the country, but it's not, Yearout said. That's why I say if they get 20 or 40 acres, they'll take care of it, Ensz said. You have control through the sanitation code, more than anything else, Yearout said. Ensz asked Yearout why

there is a push for lagoons. KDHE (Kansas Department of Health and Environment) pushes for them, Yearout told Ensz. After World War II, the state recognized problems with folks creating on-site wastewater problems, Yearout said. In the beginning, the state required septic tanks and laterals, and they were fine, but were an on-site sewer system, Yearout said. With more people moving to the country, septic lateral systems were failing, Yearout said. The state needed a solution for how to handle the problem and on-site sewers and lagoons became the solution, Yearout said. It was strongly suggested that local governments push lagoons, Yearout said. When the lagoons failed, they put in septic tanks and laterals, Yearout said. They weren't really solving the problem, Yearout said. The systems are expensive, and most new home sites are not farmers, Yearout said. This cost keeps the junky people out, Yearout said. Some have banned septic tanks and laterals and lagoons, Yearout said. Yearout told about a new system that treats the sewage, resulting in clear water being disposed. What do you want to see when new houses are developed around the county?, Yearout asked. I think we all want to see quality homes, Sieger said and members agreed. You can set your development standards high, Yearout said. Yearout questioned seeing new residences scattered among the gravel roads. Can we take that back?, Sieger asked. People cry on my shoulder, saying this is not what I envisioned country living to be, Yearout said. It's the green acre syndrome, Yearout said. All those things people have in their mind when they move to the country, Yearout said. Slowly moving farm equipment is quaint on TV, but when I'm late and I have to follow him..., Yearout said. You need to get a clear understanding of what you want to see, because at the end this will mean hard, hard decisions, Yearout said. As long as they can meet what is required on site, does it really matter if it's one acre, two acres, or five acres?, Yearout asked. Rural water does not cover all of Marion County, Yearout said. I assume you can hit well water in most of the county?, Yearout asked. Some people in my area can't drink the water, Sieger said. Strait said they could treat the water. There are two to three gallon a minute wells in my area, Unrau said. If the quality and quantity is not there, so many wells add to the problem, Yearout said. Water is the first key and that's a burden on the developer, Yearout said. You can have proof of water as a requirement, before approving a lot split, Yearout said. You're almost derelict in your duty if you're not proving water is adequate and make that a pre-condition of a lot creation, Yearout said. The sanitation code addressed what is required, Yearout said. There ought to be an annual on-site checking system for all wells and wastewater, Yearout said. Would this require additional staff?, Avery asked. Or, can we require a company come out and do it?, Avery asked. There are companies, and that's all they do, Yearout said. There are certified maintenance teams, Strait said. You can divide the cost among the residences, Strait said. We've seen photos of horrific cases, Avery said. Some people dump sewage in creeks and ditches, Holub said. Other states require on-site annual inspections, Yearout said. I'm not advocating that, but there are some things that can be done to keep the junky folks out, Yearout said. If you make them buy 40 acres, they can't afford that, Yearout said. If you make them abide by state requirements, they can't afford that, either, Yearout said. Most people

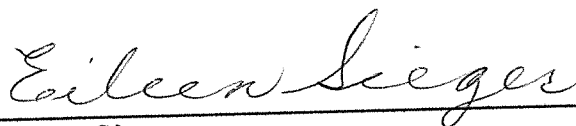
who own rural land are trying to hold on to what they have, as they have money tied up in assets, but there's no cash, Yearout said. For the majority of those acreages, the farm boundaries can remain the same, Sieger said. There are ways not to impact the ag land as much, Yearout said. Is there really an absolute minimum, beyond the sanitation code, that you want to require people to buy?, Yearout asked. There are different conditions in Marion County, and 40 acres is not the only way to go, Yearout said. Ag districts are as varied across the state as we have counties, Yearout said. Sedgwick County's entire county is zoned ag with a two acre minimum, Yearout said. So, in theory, Sedgwick County could be broken up into all two acre lots with no rezones, Yearout said. This goes back to 1968, when Sedgwick County implemented their regs, Yearout said. Every parcel of ground of public record in '68 is allowed to be built upon and is allowed to be split, Yearout said. Every split after that must be formally platted, Yearout said. There have been instances where people have had to do a single acre plat, Yearout said. That's what the law requires, Yearout said. One thing that might be an issue in Marion County is Scully Estates owns about 200,000 acres, Mueller said. You could go with sections, Yearout said. You have ownerships in the Flint Hills and there are thousands of acres owned there, too, Yearout said. That's mainly in Chase County, Sieger said. I would be very uncomfortable telling someone who owns a 10 acre tract that if other homes have been built there they can't build a home, Yearout said. Then you have a regulatory taking as in Lucas v. Carolina, which was a supreme court case, Yearout said. Mueller asked Yearout if he was talking about existing lots of record before zoning, and Yearout said yes. If we require paved roads, how do we address the others?, Avery asked. They become the exception, Yearout said. Yearout talked about establishing rules and regulations for subdivisions. Yearout quoted a state statute. In theory, you cannot restrict someone from building on their land, Yearout said. Original town site plats were all done about the same time by rural residential people, Yearout said. There were standard rules about how town sites were established, Yearout said. Those lots still today have rights attached to them, Yearout said. In theory, if someone buys one of those lots they can build on it, Yearout said. Single lots in unincorporated communities, they can build on if they meet the sanitation code, Yearout said. Such as 50x140 city size lots, there are people who own them, Yearout said. You've got to accommodate existing lots in some form, Yearout said. There are two issues here; one is a set of standards for new lots, and the other is recognition to accommodate existing lots, Yearout said. If someone has 80 acres and creates several separate deeds and can record the deeds and sell the lots, people won't know probably until they request a permit to build, Yearout said. Then, they are angry and asking who to sue, Yearout said. Sue who you bought it from, Yearout said. I've used covenants between landowners and the county, that they will do no additional division of the property at all except as described, Yearout said. The more you encourage lot development around the cities, the more you restrict them, Yearout said. Avery mentioned improved roads and taxes offsetting the cost of services. We evaluate lots based on the people present, Yearout said. They may not have kids, but eventually a family with kids may live there, Yearout said. That's why

they call you all a planning commission, Yearout said. You are planning for the future, Yearout said. You're seeing people move in to small towns and the country that aren't from Kansas, Yearout said. They have no roots here, but they are looking for a place to live, Yearout said. People from Colorado are moving here in droves, Yearout said. People from California moved to Colorado, Yearout said. The average age of existing farmers is high and there are no young folks coming in behind them, Yearout said. Rice County data shows changes in farms, and it opened up a lot of folk's eyes, Yearout said. Their county over all had lost population, but places in the country had increased, Yearout said. Maxwell asked which Kansas counties currently ban septic systems and lagoons. Johnson, Riley, Osage is considering it, Miami, Douglas County is struggling with it, and I think Shawnee has, Yearout said. Maxwell asked about the term 'taking.' Maxwell said he has run across three forms: physical taking; title taking; and economic taking. Maxwell told Yearout he came up with a new one: regulatory taking. In all honesty, no zoning case has resulted in a taking and no compensation has been paid, Yearout said. Maxwell read some information he found and Yearout said that was from the Lucas case. Maxwell said it was from more than just the Lucas case, as several others were mentioned. The Lucas case was in South Carolina and it imposed restrictions regarding the high water mark there, Yearout said. It said you can't build in front of the high water mark, because of hurricanes, Yearout said. Lucas was a developer, Yearout said. Yearout said Lucas bought two, two-acre lots which cost \$900,000, but the zoning said no building. Pictures were taken as far as you can see up and down the coast, and there are houses all along there, Yearout said. Regulatory taking required the state to buy his lots, Yearout said. There are houses built on those lots, today, Yearout said. It is one thing for you to listen to somebody threatening to sue you and it's another for a lawyer to discuss with someone what it's going to cost you to pursue a lawsuit, Yearout said. Sieger asked what else everyone wishes to discuss tonight. The comprehensive plan talks about encouraging development, Yearout said. A new issue that was brought up is the sanitary code standards, Yearout said. It's easy to say, but hard to do, as existing homes may be on a septic tank or a lagoon, and they would need to be converted to a new acceptable system if sold, Yearout said. Yearout asked members if they have copies of statutes in their books, and they said yes. Governing bodies must go through the process to establish rules, Yearout said. Kansas law requirements are not uniform throughout Kansas counties, Yearout said. Yearout showed members the statutes that apply to Marion County. So, these are current, Avery said. They're current except for one, Yearout said. For the most part, the statutes have not been amended or changed much since they were written in '91, Yearout said. Yearout reviewed the requirements for a planning commission, and reminded everyone that Board of Zoning Appeals (BZA) decisions are final. Governing bodies have sued their own BZA, Yearout said. Yearout asked and Sieger explained the board had been hearing the lot split requests. I strongly advocate allowing the administrator to handle administrative items, Yearout said. Sieger said that changes in zoning and CUP's (Conditional Use Permit) come to the planning commission. Yearout agreed. A lot of things they cannot do and

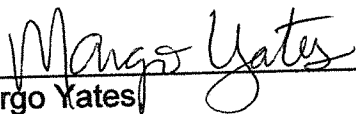
should not be allowed to do, Yearout said. You've got things in your regs that most counties do not have, Yearout said. Avery asked about more work sessions. Mueller asked about the wish of the county commission. Hein said as soon as possible. Holub said he is still intrigued with that one split. Strait asked about mortgage splits. What if someone wants to remodel their house so they split five acres, and then when they sell there's an issue because the new owner can't build a new home?, Strait asked. Surely we can work around that, Holub said. You establish a hard rule and you always run into people who have exceptions and a lot of the time it's how do you handle the exceptions, Yearout said. There's always going to be someone on the other side of the line, Mueller said. I'm also intrigued by the sanitation issue and the requirement for proof of water, Holub said. We can't deny it based on water, but we ask it, Sieger said. Did you have people who assumed they could get rural water?, Yearout asked. We do live in a time where no one wants to take personal responsibility, Avery said. Do you want to start with the density and small acreage?, Holub asked. At some point we need to address the language in the regs, Sieger said. We're not clear on the one per 40 or one split out of the 40, Sieger said. How many sections have several owners on it, very few, but there are going to be the exceptions and we'd have to make allowances for those, Yearout said. On the lagoons and sewers, we go strictly KDHE, Yearout said. The county has no stance or preference either way, so the county does not prefer lagoons, Yearout said. I was told in 1990 that if my septic tank went bad I had to go to a lagoon, Ensz said. Yearout said KDHE does not mandate to you what you have to do. Septic tanks are not really designed to provide treatment, Yearout said. Lagoons work great if they hold water and have enough water in there to work, Yearout said. Ninety percent of the failures out there are because they do not take care of them, Strait said. Avery asked if there are any applications for October, and Strait said no. Members discussed having another work session on their regular meeting date in October. Maybe we're going to arrive at a better place by working through all this, Sieger said. I can be patience when I have to, Holub said. Maybe we can look at how much development we have had maybe over the last five years and see if we have encouraged development, Avery said. We could look at what we've had, what changes we have made and what we want for the future, Avery said. There was discussion of having an inventory, but I'm not sure it was even started, Sieger said. Avery read a previous goal of educating the public with brochures, etc. The most effective tool you've got is the utilities, because if they can't get utilities....., Yearout said. Real Estate people, too, Sieger said. Dallke mentioned a small business wanting to put a sign on the highway and the state turned it back to the county to take care of. It's state law and it's also federal law, Yearout said. In zoned counties it's only allowed on commercially zoned land, but those rules don't apply to every state and local highway, Yearout said. Currently, our county regs do not allow billboards in ag zoned land, Strait said. We'll develop a plan and give them what their options are, Yearout said. I had my eyes opened up on the last group of minutes, Maxwell said. I appreciate and am amazed at the job Margo Yates does on the minutes, Maxwell said. Yates has done a tremendous job and the minutes are

completely accurate, Maxwell said. Avery asked for a draft of the minutes as soon as possible. Sieger said the next regular meeting is scheduled for October 26, 2006, and this time will be used to continue this work session. Maxwell made a motion to adjourn the work session, and Ediger seconded the motion. In favor: 8; Opposed: 0; Motion carried and the work session adjourned at 10:22 p.m.

MARION COUNTY PLANNING COMMISSION/BOARD OF ZONING APPEALS



Eileen Sieger,  
Chairman



Margo Yates  
Secretary