

Marion County Planning Commission
Record of Proceedings
April 23, 1998

Chairman Sieger called the meeting to order at 7:30 p.m.

This meeting was held in Marion County District Court.

Roll Call was answered by Clark Wiebe, Dean Fincham, Jo Helmer, Eileen Sieger, Bob Unruh, Marquetta Eilerts and Don Fruechting. Terry Eberhard and Eldon Pankratz were absent. Herb Bartel was in attendance. Fruechting was commended for attending, as he was on crutches, with his foot in a cast.

Sieger called for corrections to the minutes of the March 26, 1998 meeting. Note: Page 3, Klein name should read "Kline." Correction was noted. There were no other corrections. Wiebe moved that the minutes be approved as corrected. Fincham seconded the motion. Motion carried with seven in favor, and no one opposing.

Sieger asked if there were any off agenda items to be added. There were none.

Item #4 - Tabled application for Martin Marietta Aggregates - for a Conditional Use Permit (CUP) for rock quarry/gravel excavating. Everyone was reminded that the public hearing and comment period were not closed at the previous meeting, concerning this application. Bartel entered a letter, dated April 13, 1998, into the record. Bartel said he is strongly discouraging the commission from granting a CUP, in phases. Future property owners and developers need to know in advance what is going on with this property. Bill Gahan, vice president of the Kansas District for Martin Marietta, read his letter for the record. Gahan said quarry operations will stay 600 feet away from existing homes, and about 300 feet from a creek, which runs through the property. He provided photos of a quarry in Woodbine, as an example of reclamation, and showing the depth of the operation. This quarry has had no problems, even coming within 300 feet from a home, he said. Gahan said Martin Marietta brings an economic benefit to Marion County with a \$550,000 annual employee payroll and benefits, and because the county purchases about 50,000 tons of rock from the quarry each year. Sieger asked if anyone wished to speak on this application. Theo Bond spoke, asking if Martin Marietta owns the quarry located by Florence, and Gahan said, yes, they do. Bond expressed concern about a lack of reclamation work at the Florence quarry. Gordon Groening had suggestions by way of a letter, for an operating agreement between Martin Marietta and the county, and it was made part of the official record. Groening said that rights of surrounding residents is a concern. Sieger also submitted a letter from Schroeders into the record. Harry Bennett spoke to the application, and said this is one of the largest issues that has come before the planning commission. Bennett asked members to

re-enforce what the law already requires, with an operating agreement. He said with an operating agreement, local problems could be handled at the local level.

Sieger closed the public hearing at this point. Sieger said agenda items 4 - 7 need to be addressed by the planning commission, before the meeting is adjourned and re-opened, with members then acting as the board of appeals to address Item #8.

Item #5 - An application for Peter Knak to re-zone 10 acres from agricultural to rural residential. This property is located in Risley Township, on a total of 114 acres. There was no comment from the public, concerning this application.

Item #6 - Sight approval pending for Marvin Phillips, for a storage building located on Airport Road, near Marion County Lake. Bartel explained that members will not be making a recommendation on zoning in this case, as the property is zoned a planned district. He said members are not in a position to turn down zoning in this case, they may only approve or disapprove of Phillips' building plan. Phillips already has one structure at this location, which he owns, and plans are to construct a similar building, next to the existing one. Bartel said this project is at a stage where he recommends it for approval, but he also considers this second building to complete the development of this property, because another could not be added and still meet set back requirements. Unruh made a motion to approve Phillips' plan and Eilerts seconded the motion. It passed unanimously. Bartel said now Phillips must purchase a permit, in order to continue with his project.

Item #7 - A CUP pending for Rick Miller, for a paint ball course in East Branch Township, seven miles south of Hillsboro on 13 mile road, at the Goessel road. Attorney Keith Collett, Kathy Miller, (wife of Rick), and Michael Boese of Hillsboro, spoke for the applicant. Collett described the activity as basically, cops and robbers for college boys. He said paint balls are designed to ensure no one cheats, and there may be up to 40 players at one time. They said the course will be 50 to 75 feet back from the road, as the idea is to stay in cover, which is away from the road. They said courses in Wichita and Hutchinson are open on Saturdays and Sundays, which they plan to do. They may possibly have two games per day. Parking will be on the east side of a tree line, in a hay meadow. There will be two referees controlling each side, for a total of four referees. Players will be required to sign off on a release of liability form before being allowed to participate. Collett said Rick Miller asked his surrounding neighbors about the course, without any protest. No alcohol will be allowed at the 35 acre facility. Admission will be subject to sales tax. Fees range from \$30 to \$35 per game, in Wichita. Miller said there is a lot of interest in this recreation, in our area. Washable paint is used and all players will be on foot, no all terrain vehicles (ATV's) (or tanks, ha!) will be allowed. Rick Miller was a police officer

for 23 years in Goessel, so there should be no problem with drugs, etc. There was no comment from the public. Bartel expressed concern because this is a completely new request. Bartel said he feels the county should reserve some right for review, perhaps after a full, busy season. Collett agreed it would be good to look at it in a year. The public hearing was closed at this point, by Seiger.

A five minute break was taken.

Item #4 - Request for expansion by Martin Marietta on 240 acres, next to their existing operation, north of Marion. Members expressed concern about set backs. Unruh said he toured the property on Wednesday, and he is not interested in approving a CUP for the south 80 acres, as it is not economically feasible. He said members may want to possibly look at the west 80 of the north quarter, with set backs on the north side to protect the stream. He said using this approach, it would include about 100 acres total and would serve the Schroeder boundary on the east side and protect the stream. Unruh said he was really impressed with what the quarry is trying to do with reclamation. Wiebe asked about the speed of reclamation and whether it could be part of an operating agreement. Bartel said phased approval for the quarry operation is unfair to the public. He said it is best to have an operating agreement and approve everything from the beginning, so people know what is going on. Bartel said five to 10 years from now, you do not know how many more changes there are going to be, and people may move in that would not have, if the decision was made in the beginning. The public needs to know what you are going to approve, totally, Bartel said. Members discussed a possible 106 acre site, minus set backs. Bartel said he could request an operating agreement be compiled, by asking the county commissioners. Martin Marietta has been working this present site since 1992, with seven to 10 years of rock remaining at the site. So, Bartel said there is plenty of time to have an operating agreement compiled. Gahan said 106 acres would be satisfactory to Martin Marietta. It was explained that planning commission members will approve an operating agreement, first, then present it to Martin Marietta officials for approval. It was noted that Schroeder's asked for a 1,000 yard buffer around their property, to protect from explosives. Members spent a lot of time discussing each boundary of the quarry operation. Unruh expressed a desire for straight boundary lines. Wiebe made a motion to approve recommending a CUP for Martin Marietta Aggregates for mining purposes for 106 acres, as described on photo frame 13, dated 1/13/96, submitted by Martin Marietta Aggregates on the north Marion quarry, less a set back of 660 feet from the east boundary, less a set back of 300 feet following the contour of the creek on the north boundary, including the yellow cross-patch area, as identified on photo, less set backs, and also contingent on an operating agreement. Fincham seconded it. A Roll Call vote followed. All were in favor of the motion, except Unruh, who voted against it. Motion carried.

Item #7 - It was decided to address this item before Item #5, as people were waiting for a decision in this case, and the evening was getting late. Members reminded that all parking must be off the roadway. Eilerts said she would like to have an opinion from law enforcement, before making a decision. Helmer said, as a mother with kids this age, it would be nice to have this recreation opportunity in the county, and said she thinks it would bring money in. Members decided since they were previously informed that law enforcement said they may use the facility for their own training operations, they must not have a problem with it. Bartel suggested a one year probation period. Unruh said trash must be controlled and restroom facilities be hidden, off the roadway. Unruh made a motion to recommend a CUP for the paint ball course, on the E1/2 E1/2 NE1/4 9-21-2, with the limitations that all parking must be off road, restroom facilities must be out of sight from the road, trash must be kept picked up, and the operation will be reviewed in one year. Fruechting seconded the motion. A Roll Call vote followed. All were in favor of the motion, except Wiebe, who voted against it. Motion carried.

Item #5 - Knak application to re-zone 10 acres. Members believed set backs are okay in this case. Bartel recommended it for approval. Fruechting made a motion to recommend that 10 acres be re-zoned from agricultural to rural residential. Unruh seconded the motion. It was unanimously approved, and motion carried.


Sieger adjourned the meeting for the planning commission, with a motion by Helmer, with Unruh seconding the motion. Motion carried, and Sieger re-opened the meeting, with members acting as the Board of Zoning Appeals.

Item #8 - This appeal is for a determination of land use for M.S.W., Inc., concerning property located around the old county landfill. Attorney Russell Mills represented M.S.W., Inc., and attorney Jim Kaup was present for the county. Members were told the burden is on the applicant to prove the county's zoning to be unlawful, as the burden is on the county to prove the CUP has lapsed for the old landfill. Public comments may be submitted to the county clerk's office, but only comments relevant to the issue will be considered. Kaup suggested allowing public comments to be submitted for a period of 10 days, followed by a response period of seven days, for the applicant to respond to the public comments. Kaup said a final decision could be made in the matter at the next regular meeting of the planning commission, on May 28. Kaup reminded everyone that another request, concerning M.S.W., Inc., where they have asked the county commission if their plan for a landfill is consistent with the county's solid waste plan, is a separate matter from this one. Bartel gave a history of the old landfill, in Wilson Township. Bartel said when the county adopted zoning, in 1992, the landfill was not made non-conforming, it was given a CUP with the understanding the operation would comply. Bartel said when the landfill closed for six months, it lost the CUP status, which
"OR MORE"

was approved for the entire quarter. He said the west 80 acres was the active area for the landfill. Originally, when the landfill was opened in June of 1974, there was an agreement with the county to provide a landfill. This agreement contained the first option for the county to purchase the landfill. Then, Tom Grosse died, and Steve and Bill Grosse took over the operation. In 1994, they asked the county commission to increase tipping fees, so closure costs could be met, which was approved. Also in 1994, the Kansas Department of Health and Environment (KDHE) advised them that solid waste would have to be taken elsewhere after October of 1996, because this was the deadline for landfills to have a liner. The 1974 agreement was good for 20 years, then in December of 1994, the county entered into an agreement with the Grosse's for operation of the landfill in which the county specified the Grosse's would close in October of 1996. In the agreement, the county accepted closure responsibility, if the Grosse's could not afford it. As part of the county's commitment for closure, a financial test was passed, so they would have financial resources. The county prepared for KDHE a closure agreement, which was necessary because KDHE's permit was issued to Tom Grosse and was not transferred when he died. One other provision in the agreement was the property was not to be sold without county approval, so the county determined the agreement had been broken and notified KDHE and the Grosse's that the county is not responsible for closure. A final order was then issued by KDHE, saying the landfill could stay open based on this final order, through October of 1996. In August of 1996, the county issued a request for proposals for a transfer station. This request was issued to all operators wishing to bid on construction of a transfer station. The county included a model operating agreement and offered the county shop, south of Marion, as a possible site. A letter came in September of 1996 from KDHE to the county and the Grosse's, instructing that the landfill was to close in October of 1996. Bartel said M.S.W., Inc., requested that he sign a letter, which he would not sign, concerning the property's current status. Bartel said there never was a non-conforming status and the CUP has lapsed. Bartel said he did not notify the Grosse's that the CUP lapsed. He said it is their responsibility, and nothing requires the county to notify them. Mills asked Bartel how the underlying zoning is determined. By use, Bartel replied. Mills said M.S.W., Inc., is a Kansas Corporation, located in Wichita. He said it is not B.F.I., and not a phantom company. He said M.S.W., Inc., has purchased 130 acres that was formerly known as Marion County Landfill, Inc. He said the property is consistent with zoning regulations, today, as a non-conforming use. Mills said he believes Bartel is mistaken. He said there is a statute regarding existing uses and that zoning should not apply to an existing use of any building or land. He said the landfill was in use before zoning was enacted. Mills said you can not ignore the law and the operation must be allowed to continue. He said the 130 acres are grandfathered-in and are not subject to zoning regulations. He said as early as 1971 there was a contract with the City of Marion and Tom Grosse for a landfill, so the use

existed as early as 1971. In 1974 there was an agreement with the county, the property was permitted by KDHE, and was recognized as a lawful use, Mills said. Mills said there was no public hearing for the landfill's CUP, and suggested that zoning regulations were all approved at the same time. Your own zoning regulations say that in order to have a CUP, a plan must be determined, yet no plan was submitted. There was no public hearing and no recommendation on the CUP, Mills said. Who requested the CUP?, Mills asked. Not the Grosse's, he said. A CUP was never issued and no conditions were ever placed on the CUP, Mills said. The fact is, there wasn't a CUP, and there never has been one, Mills said. Mills said a landfill is not allowed in an agricultural district or zone, so from the time zoning was established, the landfill was non-conforming. Mills said a CUP is not a vested right, but a non-conforming use is. A non-conforming use can not be taken away, Mills said. Mills noted there was a request from the county for a Subtitle D landfill at this site, in February of 1994. This was a family business, Mills said. If Mr. Tom Grosse were here today, we would not be sitting here, because he would have a permit, Mills said. The only issue is whether we have a legal non-conforming use, he said. Mills noted that in February of 1994, Grosse's applied for a vertical expansion. Mills said a non-conforming use no longer exists if an intention to abandon the operation is determined. He said Grosse's attempt to approve a vertical expansion for the landfill, shows they were intending to continue operations at the site. At this point Mills was asked to stop his presentation. He said he never has interrupted his presentation before. This appeal was continued to April 30 at 7:30 p.m., in the courtroom. Wiebe opposed continuing the matter. Meeting was adjourned just before 12:30 a.m. Whew!

*Minutes by Margo Yates - 6 hours


Eileen Sieger, Chair