

MARION COUNTY BOARD OF ZONING APPEALS

RECORD OF PROCEEDINGS

JUNE 11, 1998

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

Roll Call was answered by Sieger, Jo Helmer, Bob Unruh, Clark Wiebe, Dean Fincham, Terry Eberhard and Don Fruechting. Marquetta Eilerts and Eldon Pankratz were absent. Herb Bartel was also in attendance.

Sieger called the board of zoning appeals to order, and determined there was a quorum. This special meeting was scheduled for the continuation of an appeal for M.S.W., Inc.

Attorney Jim Kaup said members should move into the deliberation stage at this meeting, and make a decision before the end of the evening. Kaup asked attorney Russell Mills, representing M.S.W., Inc., about the status of a recent hearing in Marion County District Court, involving the same property as in this appeal. Mills said the applicant in this appeal is not a party in the court case. Mills said it is a question of transference of ownership, due to the fact that the corporate status had not been up to date when the deed was filed. Mills said the attorney for KDHE was not aware that a second deed was filed, which corrected the problem. Mills said it was not an issue as to whether or not M.S.W., Inc., owns the property, because they do own the property. He said there is no case against M.S.W., Inc., or against Marion County Landfill, Inc. Mills said he has moved the case from Marion County District Court, to Federal Court. He said the issue is not whether or not M.S.W., Inc., owns the ground, he said the issue is whether or not the soil can be taken off the property we own. Mills is representing Marion County Landfill, Inc., as well as M.S.W., Inc. He said both companies want the same thing. He said we have no doubt in our mind that we own the property, and we have no doubt that Federal Court will recognize the sale. Mills said KDHE did not file a notice that they own the property that sold to M.S.W., Inc. Mills said no action can be taken in Marion County District Court, until a Federal Court Judge either accepts, or denies, the case. He said it will be at least four months, as defendants are entitled, by law, to have at four month notice, before they are brought into the litigation.


At this point, Kaup recommended the board go into executive session to deliberate the matter. Unruh made a motion to go into executive session for 45 minutes, from 7:45 p.m. to 8:30 p.m., for the purpose of deliberating. Fincham seconded the motion. In favor: 7; opposed: 0; motion carried.

At 8:30 p.m. the board reconvened, and extended the executive session. Wiebe made a motion to extend the executive session. Eberhard seconded the motion. In favor: 7; opposed: 0; motion carried.

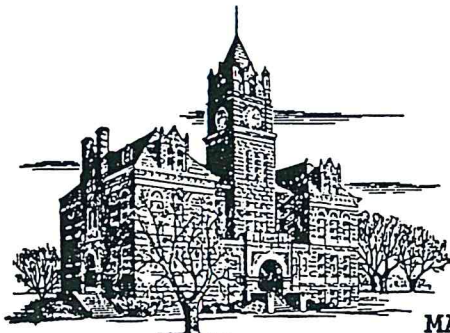
At 9:00 p.m. the board reconvened the open session. Kaup said the board deliberated the matter for an hour and 15 minutes. Kaup acknowledged a report he compiled and gave to board members. He gave Mills and Bartel each a copy of this report. Kaup explained various sections of the report. Next, Kaup presented a list of 15 proposed findings for the board to adopt. Kaup reviewed each of these findings. Sieger asked if there was any discussion. There was not. Sieger showed two large notebooks of exhibits, and said that members have taken considerable time to study the material. Kaup proposed that the board's decision be consistent with the findings in the matter, and determine that M.S.W.'s appeal should not be granted. Unruh made a motion that the Board of Zoning Appeals accept Kaup's report and adopt the findings. Helmer seconded the motion. A Roll Call vote carried, unanimously. In favor: 7; opposed: 0; motion carried. Fincham made a motion to adjourn the meeting. Wiebe seconded the motion. In favor: 7; opposed: 0; motion carried. Meeting adjourned at 9:35 p.m.

Minutes by Margo Yates, who also acted as secretary in Karen's absence.

MARION COUNTY BOARD OF ZONING APPEALS



Eileen Sieger,
Chairman



MARION COUNTY COURTHOUSE

MARION COUNTY KANSAS
OFFICE OF THE PLANNING COMMISSION

P.O. BOX 126
 MARION, KANSAS 66861
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 1-800-498-2009 (Toll Free From Area Code 316)
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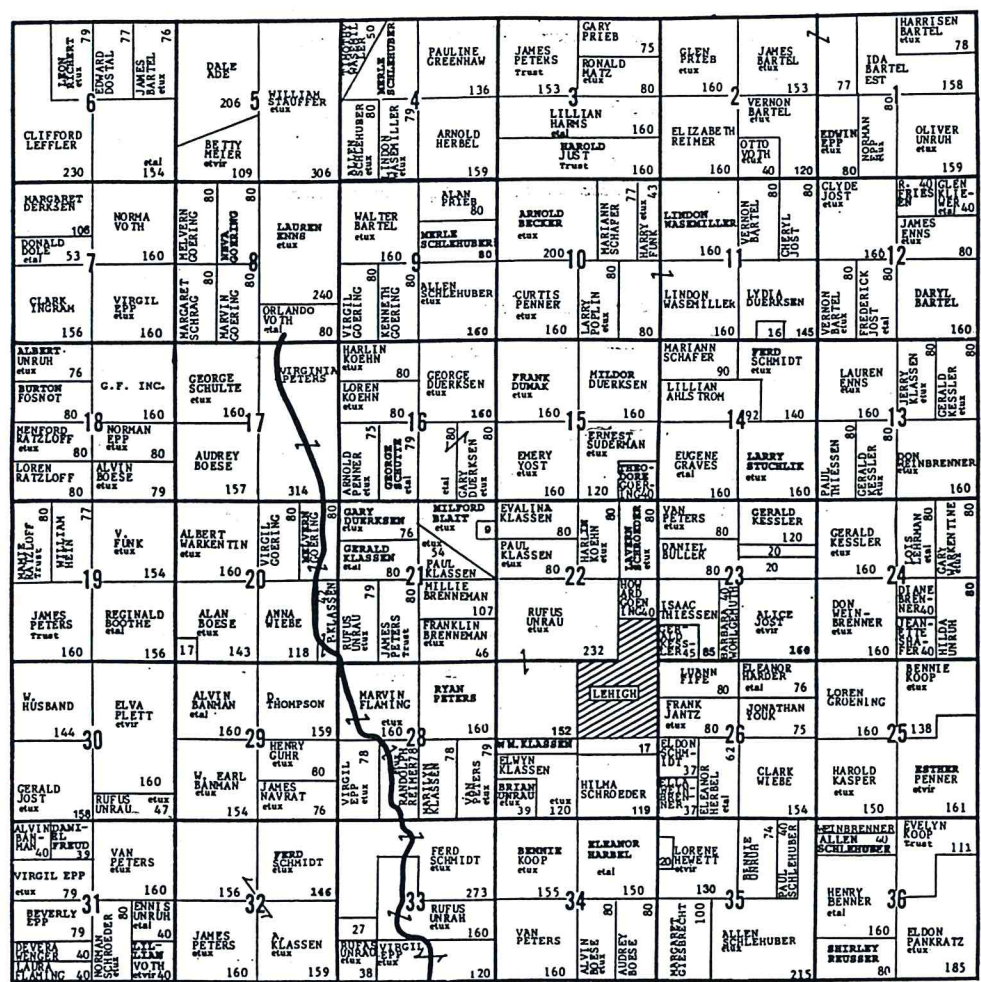
**MARION COUNTY ZONING REGULATION FOR
 REZONING OR VARIANCE:**

The property affected shall be designated by legal description and a publication notice and written notice shall be mailed at least 20 days before the public hearing to all owners of record of land located within at least 5,280 feet of the area proposed to be altered.

T-19-S

LEHIGH PLAT

R-1-E



PUBLIC NOTICE

(Published in the Gazette-Bulletin, Peabody, Kansas, February 26, 1998)

**NOTICE
 PUBLICATION
 Rezone Pending**

Application: Eldon Schmidt
 Rezone from: AG to RR
 Location: Pt. NW/4, SW/4 of 26-19-1

Public Hearing
 Marion Co. Planning Commission
 March 26, 1998 7:30 p.m.
 Marion County Courthouse