

MARION COUNTY BOARD OF ZONING APPEALS/  
MARION COUNTY PLANNING COMMISSION

RECORD OF PROCEEDINGS

MAY 28, 1998

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

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

Sieger called the board of zoning appeals to order.

Item 3: Sieger asked for review and approval of minutes from the April 23 and April 30 meetings, pertaining only to the board of zoning appeals portion of those meetings. There is one correction to the minutes for the April 23 meeting. Sieger requested changing the last line of a page where Bartel said, "When the landfill closed for six months (insert words "or more") it lost it's CUP status." Sieger wished the words "or more" to be included. Sieger also asked Bartel if he said the "west 80 acres was the active area of the landfill." Bartel said this is correct. There were no other corrections to the minutes from the April 23 meeting. Sieger had several corrections for minutes from the April 30 meeting, including: Sieger requested changing the title at the top of the page to "Marion County Board of Zoning Appeals," instead of "planning commission." Sieger requested noting in the minutes that Dean Fincham was present for most of the meeting. Instead of saying that Fincham arrived late, minutes will read "Fincham was absent for roll call, but arrived for the presentation." Sieger requested two name corrections. Harry "Band" should read "Bennett," and "Dave" Siebert should read "Ed." Sieger requested including the word "proper" before the word "procedures," where the minutes state the meeting was re-opened "siting that (proper) procedures have been followed." Sieger also said Mr. Mills' objection to Eberhard's motion and Wiebe's second, must be included, as Mills made his objection to the motion, "for the record." (At this point in the meeting, Unruh arrived. It was 7:40 p.m.) Unruh said he would not vote on the minutes, as he was absent at the last meeting. Eberhard made a motion to approve the minutes (with corrections) for the April 23 and 30, 1998, meetings of the board of zoning appeals. Fincham seconded the motion. In favor: 5; opposed: 0; abstentions: 2 (Unruh and Pankratz, as both were absent from the last meeting.) Motion carried.

Item 4: Sieger asked for a motion to continue the appeal for MSW, Inc., to June 11, 1998, for possible action at that time. Sieger said a report from attorney Jim Kaup should be ready in a week. Sieger said a quorum of five will be needed at this meeting, or

no action may take place. Unruh asked how members who were not present at either hearing, can legally vote on the matter. Sieger said the board needs to seek Kaup's advice in the matter, but suggested that records could be reviewed from each meeting. Sieger said that Kaup welcomed questions via telephone, and asked if members wished to call him. Sieger said Kaup wants members to have his report for review, five to seven days before the next meeting. It was unanimously decided to enter executive session for 10 minutes, for the purpose of determining a continuation date and participation by members, with legal counsel. Executive session was extended for another 10 minutes. Following executive session, Sieger said members are not ready to make a decision, as far as setting a date, for continuation of the appeal for MSW, Inc., but the matter will be resolved before the end of this meeting.

Fruechting made a motion to adjourn the board of zoning appeals and Eberhard seconded it. Motion passed, unanimously.

Sieger called the planning commission to order. Roll call was answered by Sieger, Pankratz, Eberhard, Eilerts, Fincham, Fruechting and Unruh. Wiebe and Helmer were absent.

Item 3: Sieger asked for review and corrections of the minutes from April 23, pertaining only to the planning commission. Sieger requested changing the wording of where the meeting was held to "Marion County District Courtroom," adding the word "room" to "court." Sieger also requested specifying that a letter that was entered into the record by Bartel was from Martin Marietta Aggregates, Inc. There were no other corrections to the minutes. Unruh made a motion to accept the minutes as corrected and Eberhard seconded the motion. In favor: 6; opposed: 0; abstention: 1 (Pankratz, as he was not present at the April 23 meeting); motion carried.

Item 4: Tabled application for Eldon Schmidt, with a re-zone pending from agricultural to rural residential, for pt. NW1/4 SW1/4 26-19-1, which was published in the Feb. 26 issue of the Peabody Gazette-Bulletin. Eldon Schmidt was present and explained his application. Schmidt said he has a contract on 10 acres of the 32 1/2 acres he owns. This property is located on the east side of Lehigh, a half mile off the highway. There is a house and outbuildings on the 10 acres. The house has been empty for about one year. Set backs are: 80 to 100 feet on the north; over 100 yards on the east; and about 100 yards from the road to a building. This property is served by Rural Water District #4 and has a septic system. There is access to the field, if the 10 acres are parcelled off. Remaining acreage would be non-conforming because it is still agricultural, but less than 40 acres. No one from the public was present to speak on this application. Mrs. Schmidt said they have tried to sell the entire 33 acres, without success. Sieger closed the public hearing for this application and explained to the Schmidts, the traditional meeting procedure of hearing all agenda items before making



decisions. Bartel told Schmidts they will be notified of the decision.

Item 5: Application for Jim Ratzlaff, with a variance on set back requirements, for pt. SW1/4 4-21-2, which was published in the April 29 issue of the Peabody Gazette-Bulletin. Jim and Cheryl Ratzlaff were present to explain thier application for their property, which is in East Branch Township. They wish to construct a 30'x 40' metal shed for a shop and storage, with a variance of a 25' set back to the road. If a 30' set back was used, the building will sit too close to the creek and flood area, and there also is an incline which would need to be filled. This building would sit parallel to the road. Bartel said the floor must be one foot above flood elevation, and by moving the location it will not be in the flood plane. A house with a double-attached garage, is the only other structures on the 12 acre property. Pankratz abstained from voting on the matter, because he owns property across the road from the applicants. Bartel asked Ratzlaffs if there would be any openings at all on the west wall of the structure. They said no. The only entrance would be on the south, and possibly a walk-in door from the east. No one from the public wished to speak to this application.

Item 6: Progress report concerning the Martin Marietta Aggregates, Inc., operating agreement. It was reported that Marion County Attorney Dan Baldwin will be working on this agreement. Bartel said a draft agreement will be presented to planning commission members for review, after which several landowners who have retained counsel will get to look at it. Sieger said Don Maroney, who is involved with leasing agreements for Martin Marietta out of Topeka, inquired about the operating agreement and had a couple of concerns, although he did not say what kind of concerns. Sieger and Bartel plan to give Baldwin input, concerning the operating agreement. Members planned to continue Item 6, but make a motion later in the meeting. Rocky Hett said he welcomes anyone to come look at the quarry. Unruh did visit. Pankratz said he visited with Gerry Kline and planned to visit the quarry. Sieger also hopes to visit the quarry.

Item 7: Martha Krispense, involving a preliminary discussion for a potential application. Martha Krispense was present to discussion her property, located SE1/4 10-19-3, which she recently purchased from Ralph and Wanda Richmond, and which is across the road from where she lives. Krispense said she tried to purchase just the farmland, but Richmonds wanted to sell it all. Krispense said her family has farmed this ground for 18 years, and wishes to continue to do so. There are two dwellings on about 5 1/2 acres, including a 70 year old house, and a double-wide mobile home, which was moved on the property in 1993. There are also various outbuildings, and a lagoon which has been serving the two homes. There are separate electrical hookups for each home and a gas well currently heats both structures, although Greeley Gas said there is no problem with updating this. Both homes are on well water, but have applied for rural water.



Krispense said her family is willing to come up with 10 acres, in order to sell the homes, by extending the property line into the pasture. She said they would like to sell off a plot with the two dwellings on it. Bartel said he viewed the property, which was originally a family farmyard. Bartel said the homes are not set up as really two separate parcels, so he is hesitant to recommend using 20 acres of farm ground and feels it is appropriate in this case that it be a 10 acre site, with a rental or home business. Bartel said this case is not at a hearing stage, but at a hearing stage he would express these feelings. Bartel said he thinks it is a 10 acre site, rather than two 10 acre sites. Krispense said several people have expressed an interest in the property, but they are no where near getting a contract on it. She came to ask for a recommendation on how to proceed with a possible sale. Unruh asked about the mobile home sitting on a concrete slab without a basement. The mobile home has it's own separate entry way from the road. Krispense showed members where a natural break could be made, dividing the property into six and four acres, although they would have to share a lagoon. Bartel said he is not recommending dividing a 10 acre tract. Eberhard said members need to set a policy for such cases, as this question has come up before, and he said it probably will not be the last time it comes up. Krispense said the well has not been tested, but was in the past, as Richmonds had foster children and had to have it tested. Krispense said the well has adequately served both residents. Eberhard said there would be set back problems, if the property were divided. Sieger said members cannot take any action at this point. Krispense asked if the board desires her family to make an application, before proceeding. Sieger said an exact survey is not necessary, before an application may be made. Eberhard said one option would be to make an application for 10 acres, or more, in case a buyer requests additional footage. Krispense asked if specifics need to be addressed as to whether the property would have a rental or a business. She was told the property could be advertised in a single notice, as either a rental or a home business.

Item 4: Application for Eldon Schmidt. The non-conforming acreage that would remain is agricultural and is not eligible, even for an agricultural permit, because the lot is non-conforming, Bartel explained. Bartel was asked what happens if an adjacent land owner buys the non-conforming acreage. Bartel said if it is combined with another parcel, it is eligible again. Unruh asked what happens if someone wants to put a home on 25 acres. Bartel said members would be on the spot and would have to change zoning, again. Bartel said if property was less than 40 acres in 1992, then it is eligible for a permit, because it is grandfathered-in. But, by splitting it in 1998, it is no longer eligible, Bartel added. Bartel said members are going to have to think about what they want to do with the 40 acre tracts, (if they begin making changes) because there are a lot of them. Bartel said the matter needs to be published, so it is not sold without someone knowing it is non-conforming. A home cannot be built on the 23 acres, without a zoning change, Bartel said.



There is a lot of 40 acre tracts selling in the county as a single site, so when you set a precedent of splitting up 40's for home sites, you are setting a really big precedent, Bartel told members. Pankratz made a motion to approve re-zoning 10 acres from agricultural to rural residential, with a covenant on the remaining acres as non-conforming. Fincham seconded the motion. Fruechting said to Bartel, if a covenant is not filed on it, then buyer beware. Bartel said yes. In favor: 7; opposed: 0, motion unanimously carried.

Item 5: Application for Jim Ratzlaff, with a variance on a set back. Bartel recommended restricting the west wall of the proposed building to have only window openings and not doors, or a solid wall, because it is too close to the road. When questioned, Bartel said he would not back down on this recommendation. I can recommend the variance with the west wall windows only, or solid, he said. Bartel was asked if a nearby hedge row did not present a natural barrier, but he said hedge rows are sometimes removed by the county and his recommendation stands as is. Unruh made a motion to approve a variance on a set back for Jim Ratzlaff's property, as presented, with the stipulation there be a set back of nothing less than 25 feet. Fruechting seconded the motion. In favor: 6; opposed: 0; abstained: 1 (Pankratz); motion carried.

Item 6: Martin Marietta Aggregates, Inc., operating agreement. Eilerts made a motion to continue this matter at the July 23 meeting, and Eberhard seconded the motion. In favor: 7; opposed: 0; motion unanimously carried.

It was explained to the Ratzlaff's that on a variance the board makes the final decision, so they have final approval.

Sieger asked if anyone had any further business for the planning commission. There was none. Eberhard made a motion to adjourn the planning commission meeting and Fruechting seconded the motion. In favor: 7; opposed: 0; motion unanimously carried.


Sieger re-opened the board of appeals meeting.

Item 4: Sieger said members are still trying to resolve the continuation date for the MSW, Inc., appeal. Bartel suggested solving the date dilemma at a later date. Eberhard said an aerial photograph would help members. Sieger said Kaup was checking on dates and they are to get back to him. It was decided that members would call Kaup back and go into executive session for 15 minutes for the purpose of determining a continuation date for MSW, Inc., with legal counsel. Fruechting made a motion to enter executive session and Eberhard seconded it. In favor: 7; opposed: 0; motion unanimously carried. Following executive session, Sieger said some checking was done regarding a continuation date for an appeal for MSW, Inc., and asked for a motion. Fruechting made a motion to continue to June 11 for an appeal for MSW, Inc., at 7:30 p.m. at the courthouse. Fincham seconded the motion. In favor: 7; opposed: 0; motion unanimously carried. Unruh made a

motion to adjourn the board of zoning appeals and Eberhard seconded it. In favor: 7; opposed: 0; motion unanimously carried. Meeting adjourned at 9:45 p.m.

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

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Eileen Sieger,  
Chairman