

The Muscatine County Board of Adjustment met in the Board of Supervisors Office on Friday, February 6, 2015, with Chairperson Tom Harper and members Carol Schlueter, Mike Birkinbine, and Bill Tharp present, Martha Peterson was absent. Steve Boka, Interim Zoning Administrator and Dixie Seitz, Office Administrator was also in attendance.

Others present for this hearing: Kathleen Eichelberger.

Tom Harper: Okay, I will call this public meeting to order. I guess we have a few changes this time. We have an Interim Administrator, if you would like to take the lead Steve?

Steve Boka: Sure, thanks. My first meeting with you folks, I'm hoping that I will have at least one more, but then I will slip back into obscurity where I probably belong. By way of history, I came to work for the city from the City of Clinton in 1977. I went through a number of positions there, Building and Zoning Administrator, Planning and Zoning Administrator, Director of Planning, Zoning and Building Safety, also the Development Director, and had the health department, rental inspections, nuisance abatement, airport operations, and a number of different hats I wore over the years that I was there. I retired last July after 37 years of service with the city. I spent the last six months touring the east coast, enjoying the leaf season and I'm back. I had an opportunity to come back and assist in the interim basis until they get a new Zoning Administrator hired. I have been asked, and have offered to help through that process with the county. I am here for a short stay, but I appreciate the opportunity to work with you folks. I am one of the people that attach a great deal of value to what you do, since you are a volunteer group. I know that it's difficult sometime with your different schedules, so I appreciate what you do for the county and I am sure that it is appreciated by the supervisors. With that, if there are no questions, that is who I am and if you have any questions at any time that I can help you with, please let me know. I did attach, and I did ask Dixie to print out a copy of the mission statement I think the chair has that, I'm not sure if there is one for everybody. It is a suggestion, but I think it kind of follows some of the guidelines and state law and provides some clarity to appellants as to what is going on. I'm not saying that you should or shouldn't take that, but I think if you read that every month before the start of the meeting it kind of puts a nice frame on what's happening, as far as what you folks are doing. So my suggestion is that it is a nice thing to do before you start the meeting.

Tom Harper: Alright. Okay, the next item of business is to approve the minutes from the last meeting. We've all had the minutes emailed to us. Are there any changes? If not, is there a motion?

Mike Birkinbine: I move to approve the minutes.

Tom Harper: A motion has been made, is there a second?

Carol Schlueter: I'll second it.

Tom Harper: A motion has been made and seconded to approve the minutes as printed. Is there any questions or discussion? All those in favor please signify by saying Aye (4) Opposed (0) Absent (Peterson). The motion carried. Okay, we have one case today, Steve do you want to go head and read the request?

Steve Boka: Case #15-02-01. An application has been filed by Scott D. or Kathleen A. Eichelberger, Record Owners. This property is located in Seventy-Six Township, Parcel C in the SW¹/₄ of Sec. 10-T76N-R3W, East of Jasper Avenue, containing approximately 81 acres, and is zoned A-1 Agricultural District. This request, if approved, would allow the Zoning Administrator to issue a

Special Use Permit in order for the Record Owners to build a rural residence on this property after a Restrictive Covenant had been signed to sell off the existing dwelling.

Tom Harper: Okay, is the applicant or their representative here?

Kathleen Eichelberger: I am.

Tom Harper: Can you please state your name?

Kathleen Eichelberger: My name is Kathleen Eichelberger.

Tom Harper: Okay, before we go any further I will read this opening statement for you. The Zoning Board of Adjustment is a quasi-judicial board appointed by the Muscatine County Board of Supervisors. The Board's purpose is to interpret the Zoning Ordinance and to allow certain limited exceptions and variances where special conditions or hardships exist. We are an independent volunteer board of citizens and not part of the county administration. There are five members on the Board. State law requires three affirmative votes to approve any appeal under consideration, no matter how many members are present. If fewer than five members are present, which today there are only four of the five here, you have the opportunity to have the appeal delayed and tabled until the next meeting or we can proceed and hope for the best. I can't guarantee next month that we will have five members here again.

Kathleen Eichelberger: I would like to proceed.

Tom Harper: Okay, would you like to make an opening statement concerning this request?

Kathleen Eichelberger: This is very new to me. I have been living in my home, which is approximately a half a mile from where this proposed area is. I've lived there for (??) years. It's a family farm. My husband has literally lived there his entire life. So moving away from this particular area has never been an option. My husband is the record holder of about 400 acres now; however I am only on a couple of parcels. At this point, you know this is a house that has been in existence for... where there has been very little done to it since my in-laws moved into it in the 50's. And I never would have dreamt that this house is still... So a lot of the problems that have come up now is just because of the Restrictive Covenant at this time. There are a couple of reasons why it's almost dire for us to move, number one, the house is just not that, we are living in now, needs a lot of work to be done and where do you send a family of five? I've got three boys, my husband, I work in town and everywhere I go I try and look for renovations to existing homes. One of the biggest things that is an issue to us is the hog confinement that is about a half of a mile from the house now. This will take us about a mile from that and it will be on the right side, on the correct side of the wind. It takes us farther away from the smell.

Tom Harper: Is that a hog confinement on 231st?

Kathleen Eichelberger: No, it's the one on Jasper. There are now two in a very small little area between Jasper and 231st Street.

Carol Schlueter: Are they your hog confinements?

Kathleen Eichelberger: No they are not.

Carol Schlueter: So who owns the hog confinements?

Kathleen Eichelberger: Those are Doug and Virgil Eichelberger's.

Carol Schlueter: So how are they related to you?

Kathleen Eichelberger: They are cousins of some sort, but I will tell you honestly, they put these up and unfortunately it's kind of made a rift in the neighborhood as far as that goes. They don't live there, but everyone else lives there with their smell.

Tom Harper: So your residence is in the corner of Jasper and 235th?

Kathleen Eichelberger: Correct, that's where we live.

Tom Harper: And you are asking to build further to the south on Jasper?

Kathleen Eichelberger: Correct.

Carol Schlueter: On this other property that you had purchased from Healey's?

Kathleen Eichelberger: The Healy's, yes.

Carol Schlueter: Okay, so you say this house where you are at now, which is the farmstead, correct?

Kathleen Eichelberger: Correct.

Carol Schlueter: So it's going to be torn down then?

Kathleen Eichelberger: No, what my husband foresees is, we have three sons and he would love to have one of them become a farmer. And that we would maintain our residence there and then that would be a farm house for one of our boys to be able to live in. But in order to do that, you know, we need to have a place to go. I will tell you seriously, we've discussed so many different options, you know, tearing this house down and building right where it's at. But the logistics of that and moving your family in the meantime, you know, where Scott can still do his work and we can still have all of these things, that was one issue. The house also is just a one bathroom home; I share a bathroom with four stinky boys. That is something that we would have a hard time of modifying with this home. I mean, it's almost at this point like we are running into each other. I would say we have been sitting in limbo at this point for about 20 years.

Bill Tharp: Steve or Dixie, I have an email here that says that the non-till ground by buildings is 55 but the rest is an average of 77. I remember, maybe it was three for four years ago we had a case that we did not cut out certain parts of the parcel. We took the average of the entire parcel. So what is the average of the entire parcel?

Dixie Seitz: Well if you average the 55 and 77, it would be 66.

Bill Tharp: So the 55 is carving out that parcel?

Dixie Seitz: Right.

Carol Schlueter: Where is the 55 at then?

Dixie Seitz: Well the aerial didn't copy very well. Do you see where the timber is? It's kind of diagonal right there. Its timber here and here, everything else is farmed. Where she wants to place it is kind of in the timber area, it's never been farmed.

Carol Schlueter: But the email says, by the buildings. So to me the buildings should be right here. I don't understand the email. To me the rest of the farm is 77.

Kathleen Eichelberger: May I ask who the email is from?

Dixie Seitz: Randy Spies from the Assessor's Office. We always ask him what the CSR rating is.

Kathleen Eichelberger: Well ideally Scott would have loved to build a house across the road and that is good ground. That's where they farm every single year. We however, the reason why this particular chunk of ground that we are considering that we would love to have the house there, is because this has been pasture land. Since Scott has purchased it, it has never been anything other than hay and pasture because it is very rolling. It does not have, it doesn't have the quality of land that he likes to farm. It's way too difficult for him to get his machinery in and out. It has never been anything but hay since we have owned this property.

Carol Schlueter: Okay, so it's not timber ground?

Kathleen Eichelberger: No, the timber is not, no the timber actually does not belong to us. This is close to St. Malachy's church. Are you familiar with St. Malachy's church? (no) St. Malachy's church is just right behind the timber. The edge of our land is where the timber begins.

Tom Harper: And this is the old railroad right-of-way right here?

Kathleen Eichelberger: Correct.

Carol Schlueter: Well I thought it was timber ground, but to me if it's hay ground, to me that is farm ground. I'm sorry, but that's the way I feel. I farm too and to me hay ground is farm ground and it can be tillable.

Bill Tharp: Well the issue that I see here and the one that jumps out to me is that we have a requirement from the county that gives us the direction that we need and we just follow what they direct. One of the things that they talk about is the CSR being 55 or over, that disqualifies the piece of property for having a rural residence. So the reason why is because we as a Board of Adjustment we make sure that county ground continues to be productive for farm ground, if it's possible. They have set 55 as the point where it is possible. So looking at the non-till ground, as you say is non-till that's 55, which 55 or over we are required to say we can't do it. The rest of the ground has an average of 77 and I just found out that it's an average of the 77 and 55, which would put it over 55. So I see my hands as being tied because I don't get to just make a decision as to what I think is the right thing, but I have to go with what the county tells me that I have to do. With the CSR rating being above the level where they have given us direction, our hands are, in my opinion, our hands are completely tied. Because they have said that the CSR has to be below 55, so that would be 54 or below and this is just not in that area. I wish that I could vote yes to help you out because it sounds like you have...

Kathleen Eichelberger: So if I wanted to put a 2,499 pig hog confinement, I could do that right there on this piece of ground, but I cannot put my house there? This is the only piece of land that I own.

Bill Tharp: I don't know the requirements for a hog confinement, but I do know the requirements for a rural residence. I'm sorry that I can't give you that answer.

Tom Harper: I need to back up on one thing. Was there any correspondence?

Steve Boka: No.

Kathleen Eichelberger: No, actually all of the neighbors have come up to us asking, where are you going to build your house?

Tom Harper: Well and we still have the Restrictive Covenant that is on file. I mean, it's been recorded and it was when the Healey house or farmstead was split off.

Carol Schlueter: Right, it states at no time in the future shall a single one family dwelling be built or moved onto the above described real estate without first obtaining written permission from the appropriate Muscatine County Zoning Authority, which you are at today. But I still have a problem with the CSR rating, the 55 and above on that. That's my problem with it.

Tom Harper: Okay, is there any further discussion or comments?

Carol Schlueter: Steve, do you have any comments in regards to this?

Steve Boka: Well I was looking at the zoning ordinance section dealing with the A-1 use specifically states the CSR rating of the land: Muscatine County's rich soil is an asset to be valued and protected, while being utilized to its greatest potential. Applications, which the proposed property has a Corn Suitability Rating of 55 or higher as calculated by the weighted average of the entire parcel, should generally not be granted. This factor is of high importance. So that's what I think is what the board is referring to.

Carol Schlueter: But they could tear the old one down and build there, right?

Tom Harper: Right.

Carol Schlueter: So it's not that you don't have the option of doing that.

Kathleen Eichelberger: Well I don't have the option of doing that, personally I do not have the option of doing that. That will never happen. This situation is a deal breaker in my home right now. My boys and I will probably be moving to town now. If I do not...no...this is a house that finally my husband...I have the means to be able to say, I can build a house. I have the personal means. I was a part-time teacher for a long time; I have become more financially ready to be able to take on this burden myself. This is a big deal for us. I love living in the country, but I can no longer live in this particular household. And you say it's an option, but there really isn't, there is no other option.

Bill Tharp: If you can convince the county to change their law so that it won't be 55 or so that it would be above your weighted average of your CSR, I am very ready.

Kathleen Eichelberger: And who would that be?

Bill Tharp: It would be the Board of Supervisors.

Kathleen Eichelberger: Okay.

Bill Tharp: But I would be very ready to grant, you know, to vote yes if the CSR was below whatever the county sets. Because that is what I have to go on, it's not me making the real choice here.

Kathleen Eichelberger: I understand that.

Bill Tharp: It just works that way. So if you want to convince the Board of Supervisors that the CSR is incorrect and it should be higher than I would be happy to come back and go ahead and change it. But again, that is just me personally.

Kathleen Eichelberger: Well and I understand that you are looking at the average, however, when you look at this particular piece it is the best choice for our family.

Bill Tharp: Yeah, but the reason why I am looking at the average is because the county tells us that we have to look at the average.

Kathleen Eichelberger: So I need to talk with the Board of Supervisors about the possibility of changing that?

Bill Tharp: Well that would be my suggestion because they are the ones that make the rules and they make the laws and we just follow them. We are a volunteer board and we are just told to follow the law and that is what we are trying to do here. I'm sorry.

Carol Schlueter: Yeah, I am too.

Mike Birkinbine: But we've had to implement this across the board in the past. The number 55 holds us to be accountable to that.

Bill Tharp: There have been no exceptions in the time that I have been here.

Kathleen Eichelberger: The Board of Supervisors have provided no exceptions?

Bill Tharp: Well I don't know, I don't think that they would provide an exception. I think that you would be asking them to change the law.

Carol Schlueter: Yeah, to change the ordinance that they provided.

Bill Tharp: That would be the only way that we would be able to do it. It's just like if they were to change the law that seatbelts were required and were no longer a violation, then you wouldn't get picked up for it. It depends what they change the law to. Again I am sorry.

Mike Birkinbine: Well that wouldn't meet the Restrictive Covenant requirements anyway, right?

Carol Schlueter: Pardon?

Mike Birkinbine: That still doesn't get you past the Restrictive Covenant that's on this property.

Bill Tharp: Yeah, and I couldn't guarantee how the other members of the board would vote on the Restrictive Covenant.

Tom Harper: Yeah, if the Restrictive Covenant was rescinded, than that might change the whole rural residence value of the property and whether it could be built on. I don't know if the Restrictive Covenant can be rescinded.

Steve Boka: Well the only way that you could really do that is a legislature move. You would have to go back through the board and to create an environment that was more conducive to this kind of request and then come back with the request. That's not what is before this board.

Bill Tharp: I'm ready to make a motion in the positive.

Tom Harper: Alright, is there any further discussion or questions? If not, go ahead.

Bill Tharp: I will make a motion that we approve the Special Use Permit in order for the Record Owners to build a rural residence on this property after a Restrictive Covenant had been signed to sell off an existing dwelling.

Tom Harper: Is there a second?

Carol Schlueter: I'll second it.

Tom Harper: The motion has been made and seconded to approve the request as stated. Any other discussion, any questions? Okay, we will go ahead and vote on it and we will have a roll call. Bill?

Bill Tharp: Nay.

Tom Harper: Carol?

Carol Schlueter: Nay.

Tom Harper: Myself, I vote Nay. Mike?

Mike Birkinbine: Nay.

Tom Harper: The motion has been denied.

Carol Schlueter: Yeah, I'm sorry.

MUSCATINE COUNTY BOARD OF ADJUSTMENT
By Steve Boka, Interim Zoning Administrator