

**MECHANICAL, PLUMBING, ELECTRICAL, AND SWIMMING POOL
BOARD OF APPEALS
MINUTES**

August 12, 2014

Public notice having been posted, a public hearing of the MPE Board was held at 4:00 p.m., Tuesday, August 12, 2014 in the Council Chambers at City Hall, 555 Walnut, Abilene, Texas.

MPE BOARD MEMBERS PRESENT: Pete Torres
Kenneth Rich
Melissa Sparks
James Wheeler
Terry Williams
Frank Perez
Gene Isenburg
Henry Sanchez

STAFF PRESENT: Kelley Messer
David Sartor
Donna Boarts

GUESTS: Toby Terry
Brandon Beale
Mary Ann Furgus
David Lane

1. The meeting was called to order by Mr. Williams at 4:00 PM.
2. The first item to come before the board was the approval of the February 11, 2014 and June 10, 2014 minutes. Mr. Wheeler made a motion to approve the February 11, 2014 minutes as written. Mr. Isenburg seconded the motion and said motion unanimously passed. Mr. Perez made a motion to approve the June 10, 2014 minutes as written. Mr. Wheeler seconded the motion and said motion unanimously passed.
3. The next matter to come before the board was the consideration of a request of Mr. John Caldwell to consider a natural barrier in lieu of the required fencing around a swimming pool located at 1760 River Oaks Rd., Abilene, Texas. Mr. Sartor stated the requirement that a wall or fence 4ft. high, non-climbable with self-closing and latching gates surround all residential swimming pools. One exception is that the board can hear a request of a natural barrier. Mr. Sartor made a presentation to the board showing pictures of the yard and location of the existing 6' tall chain link fence across the back of the property, and pointed out the creek area and steep slope of the creeks edge starting at the base of the fence. He did mention that the slope was considerable and the pictures did not reflect the actual severity of the slope. Mr. Sartor stated the fencing on the other three sides of the yard would need to be in compliance with the fencing requirements Mr. Williams asked if staff had a recommendation. Mr. Sartor stated that staff typically does not make a recommendation on this type of request, but staff was not opposed to the request and that the board has approved similar requests of a creek as a natural barrier. Mr. Perez asked if the chain link fence on the south side of the yard which extends from the creek bank to the east approximately 25ft would need to be replaced with a wood fence to make it non-climbable. Mr. Sartor stated that portion of the side fence would need to be replaced or

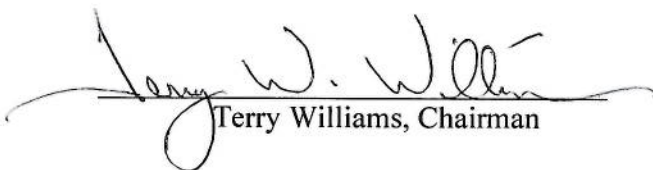
made non-climbable and the proponent should be aware of this. Mr. Sartor restated the request is for the back fence only to have the creek considered a natural barrier. Mr. Williams opened the public hearing and asked if anyone wished to speak to this request. Mr. Toby Terry stated he worked for Jeff Luther Construction and he was the supervisor on the job. Mr. Terry stated the chain link fence on the south side of the yard, the area behind the property to the south and the creek bank formed a non-accessible area and no one could access the fence anyway. Mr. Perez stated the fence portion would need to be made non-climbable down to the corner where the creek bank drops off and then the creek becomes the natural barrier for the back of the property. At this point Mr. Williams closed the public hearing. Mr. Williams asked if there was any discussion, there being none, he asked for a motion. Mr. Perez made a motion to accept the natural barrier in lieu of the required fencing for the back of the property as long as a compliant fence is extended down the side yard to the point where the creek slop starts. Mr. Isenburg seconded the motion and the motion carried by a vote of six (6) in favor and none (0) opposed.

4. The next matter to come before the board was the consideration of a request of Extreme Exteriors to consider a natural barrier in lieu of the required fencing around a swimming pool located at 2000 Shoreline Dr., Abilene, Texas. Mr. Sartor stated the request is for Lytle Lake to be considered a natural barrier on the west side, and the drainage channel on the north side of the property. Mr. Sartor showed a GIS overhead view of the property and pointed out the drainage area on the north side of the property was an overflow drainage channel for the pond area to the east which drains under Shoreline Dr. and it is not an area that is covered in water unless the pond to the east were to over flow and drain the water to Lytle Lake. He stated it does not have features which would make it a barrier and that he had informed the proponent of this and that the only natural barrier to be considered would be the lake on the west side. Mr. Sartor showed the slide show showing pictures of the area showing the distance from the water's edge and the back of the yard which shows an approximately 35ft to 40ft. of flat dry shoreline up to a 4ft. limestone retaining wall at the lower terrace of the yard which has a portion with steps down to the flat shoreline area. Mr. Perez stated he was a little confused because the pool in the pictures appears to be a relatively new swimming pool. Mr. Sartor stated the pool was new and had been constructed prior to a compliance fence being installed. Mr. Perez asked about the access to the pool area, and asked if Mr. Sartor has had a discussion with the proponent regarding the requirement to install a fence to prevent the public from just walking up to the pool area. Mr. Sartor stated that was correct. Mr. Perez then asked about the proponents intent to extend compliance fencing down to a point at the lakes edge, and if it would keep people from just walking up to it and around it. Mr. Sartor stated they have not discussed this and the proponent could address this. He further stated this would hinge on what natural barrier the board approves and then staff will work with the proponent to ensure a compliant fence is installed to the point of the natural barrier. Mr. Williams opened the public hearing and asked if anyone wished to speak to this request. Mr. Williams asked about the 4ft. retaining wall and if it meets the non-climbable requirement. Mr. Sartor stated the retaining wall consists of two rows of 2ft. high limestone blocks approximately 2ft X 2ft. X 4ft. long, and they are offset enough that they could be climbable, and there are steps in the middle of the wall to allow access to and from the upper terrace to the lakeshore. Mr. Williams asked if the stairs

and the retaining wall could be made to be non-climbable and Mr. Sartor stated they could. Mr. Perez asked if the owners have the property to allow the side fences to be extended down to the water's edge. Mr. Sartor stated he could not confirm that. Mr. Williams opened the public hearing and asked if anyone wished to speak to this request. Mr. Brandon Beale with Extreme Exteriors stated he was the project manager for the pool construction. He stated his request is for the lake and the drainage channel to be approved as a natural barrier. He stated they have talked to the homeowner and installing a fence on the north side would be difficult. Mr. Beale pointed out that the area shown on the GIS photo does not show the carport addition and outdoor living area which has been constructed on the north property line with a solid brick wall which extends another 25ft. from the back of the carport to the west toward the lake and there is no access on that side. He stated there is no access until you get closer to the water. Mr. Williams stated his understanding of the request that they will in installing fencing on the other sides and asking for the lake and the drainage ditch to be a natural barrier. Mr. Beale stated that was correct. Mr. Torres asked about the brick wall on the north side which Mr. Beale stated extended towards the lake and asked if the brick wall extends all the way to the water. Mr. Beale stated it does not go all the way. Mr. Torres asked if someone could still walk around the brick wall and access the pool from the back side. Mr. Beale stated they could but they would have a heck of a walk. Mr. Beale gave the board a picture of the brick wall in question. Mr. Perez asked about the brick wall and how far it extends. Mr. Beale stated the wall extends about 30ft. past the carport. Mr. Perez then asked Mr. Beale what area he wants to be considered as a natural barrier on the north side and asked about the drop off, or slope of the area and asked if someone could walk from the driveway down the drainage channel, around the brick retaining wall and gain access to the pool. Mr. Beale stated they could. Mr. Perez then asked if that is the natural barrier he is requesting and Mr. Beale stated yes. Mr. Perez stated he did not feel that would be approved and the wanted to discuss the lake. Mr. Williams asked staff if there was precedent for a lake to be considered a natural barrier. Mr. Sartor stated the board had approved the lake as a natural barrier for 9 Green Bay Circle a few months prior and the approval was for the lake to be a natural barrier for the back fence. The property had a stone retaining wall across the back and the water was at the retaining wall and there was no shore line. The side fences were installed to code back to the retaining wall. Mr. Perez stated he had no issue with the lake being a natural barrier so long as the fence is taken out to where people cannot easily get on the property and he is not sure if that is possible on this site. Mr. Torres asked how many feet from the stairway at the retaining wall on the west to the water's edge and asked about the construction of the retaining wall. Mr. Beale stated it was approximately 30 to 40 feet and the wall was climbable. There were no other question and no one else asked to speak so at this point Mr. Williams closed the public hearing and asked for discussion from the board. Mr. Williams gave his thoughts that there is way too much space from the back of the property to the water's edge and the limestone retaining wall could be rendered non-climbable if the stairs were either removed or a gate could be installed to meet code requirements. He stated he agreed with Mr. Perez that the drainage channel was not an acceptable natural barrier to him. Mr. Isenburg stated he agreed with the side fence and in the back it seems it is too easily accessible even with the retaining wall. Discussion was held regarding the retaining wall and how it could be altered to meet the fencing requirement. Mr. Sartor and Mr. Beale stated the wall could be made to comply. Mr. Williams asked for a motion. Mr. Torres made a motion to deny the request. Mr. Wheeler seconded the

motion and the motion carried by a vote of six (6) in favor and one (1) (Frank Perez) opposed.

5. The next matter to come before the board was the consideration of a request of Mrs. Mary Ann Fergus to consider a natural barrier in lieu of the required fencing around a swimming pool located at 1926 Campbell Dr., Abilene, Texas. Mr. Sartor stated the pictures and original request were for a natural barrier for the entire boundary of the lake and the owner's property. He stated his understanding that Mrs. Fergus has decided to construct a compliant fence from the south side of the house which would extend southward to the retaining wall at the lakes edge. He further stated the fence on the north side of the property was in compliance with the exception of a fence from the north fence back to the house and a portion at the retaining wall at the north boundary where the existing fence stops about two to three feet from the retaining wall. Mr. Williams opened the public hearing and asked if anyone wished to speak to this request. Mrs. Mary Ann Fergus addressed the board and stated the house sets on a peninsula with a retaining wall around the entire property at the lake's edge constructed of rock and concrete approximately 5ft to 6ft high. She knows this because she has been down there. Mrs. Fergus stated the north fence was compliant. She then explained the proposed fence to be constructed from the south side of the house straight out to the lake retaining wall. Mrs. Fergus confirmed the north fence has a gap from the retaining wall to the fence, but she will have a compliant fence section installed to close it. She stated her contention is that the remainder of the property forms a natural barrier. Mr. Williams asked about the GIS view which shows a property line indicating the main house and a guest house to the east are on two separate properties and asked if she intended to extend the fence across both properties. Mrs. Fergus confirmed that to be correct. Mr. Williams asked if anyone else wished to speak to this case. Mr. Perez stated he would be abstaining from the vote. Mr. David Lane with Southwest Pool spoke to this and the previous case regarding possible compliant fencing options for both cases. Mr. Lane finished by stating he felt Mrs. Fergus could build a compliant 4ft. fence that extended from the house out to the water and prevent anyone from accessing the pool. There being no further discussion, Mr. Williams closed the public hearing and asked for discussion from the board. Mr. Williams asked one additional question of Mr. Sartor regarding the retaining wall from the south to the east. He asked if all the retaining wall looks like the west retaining wall. Mr. Sartor stated it did, or even more vertical than the west portion. Mr. Williams then asked for a motion. Mr. Wheeler made a motion to approve the lake as a natural barrier. The motion was seconded by Mr. Torres and the motion carried by a vote of six (6) in favor and one (1) (Frank Perez) abstention.
6. The meeting was adjourned at 4:58 P.M.


Terry Williams, Chairman


David Sartor, Acting Secretary