

TERM OF COMMISSION: April Session of the February Adjourned Term

PLACE OF MEETING: Boone County Government Center Commission Chambers

PRESENT WERE: Presiding Commissioner Don Stamper  
District I Commissioner Karen M. Miller  
District II Commissioner Linda Vogt  
Deputy County Clerk Michelle Malaby  
County Counselor John Patton  
Director of Planning and Building Inspection Stan Shawver  
Planner Don Abell

The regular meeting of the County Commission was called to order at 7:01 p.m.

Mr. Shawver reported **Carol Moyer and Richard and Margaret Moyer request a permit for an agri-business on 4.54 acres located at 5915 Blythe Road.** The site is located 1.75 miles south of Ashland at the intersection of Highway 63 and Blythe Road. Access is from Blythe Road, a gravel, county maintained road. The property is zoned A-2 (Agriculture), as is all surrounding land. There are two structures on the site; a 20' by 25' building and a 40' by 80' building. The applicants own 31.2 acres at the site, but only 4.54 acres are included in this request. The property has been used to market produce grown on the premises. The applicants hope to expand their operation in order to sell a greater variety and quantity of produce and agriculturally related products than they can currently produce. This site is in the Southern Boone County R-1 School District. Water service is provided by Consolidated Public Water District No. 1. Electric service is provided by Boone Electric Cooperative. No previous requests have been submitted for the property. The 1973 master plan and the eighty five percent complete draft of the 1996 plan designate this area as suitable for agriculture and rural residential land use. Staff notified 25 property owners concerning the request. No one appeared in opposition to the request at the Planning and Zoning Commission meeting on April 18. Staff received one phone call in support of the request. The Planning and Zoning Commission voted to recommend approval with the stipulation that only sales of produce and horticultural related items be allowed on the premises.

Carol Moyer, 5606 I-70 Drive SE, Columbia, stated she and her parents purchased the property five years ago. She is disabled from a job she spent a great deal of time training for. They started this seasonal business with a partner three years ago. Her partner decided he needs to work on his own property. She learned hard lessons in how to run an agri-business last year. She installed a water line in preparation for a drought. We live in a rain forest. She would like to expand the business in order to support herself with the proceeds.

Commissioner Miller stated she believes this is a good use for the property.

Commissioner Stamper opened the public hearing. There was no response.

Commissioner Miller moved that the County Commission of the County of Boone approve a request by Carol Moyer and Richard and Margaret Moyer for a permit for an agri-business on 4.54 acres located at 5915 Blythe Road, Ashland.

Commissioner Vogt seconded the motion. Motion passed unanimously. **Order 260-96.**

Mr. Shawver reported **Amega Mobile Home Sales, Inc., for Ricky Knight and Dixie Davis, requests a permit to allow two single wide mobile homes to be attached as a single unit located at 759 Cedar Tree Lane, (Wilton) Hartsburg.** The property is located in the unincorporated town of Wilton, six miles southwest of Ashland on State Highway M. Access is from Cedar Tree Lane, an asphalt, county maintained road. This tract is zoned R-S (Single Family Residential), as is all adjoining property. There is a house, mobile home and garage on the property. The mobile home was placed on the property in 1992, however, there has been a mobile home on this lot since at least 1984. The co-applicants have placed a second mobile home on the lot with the intent of tying the units together into a single living unit. If approved, they will build a roof over the two units. Section 4.A. (9) (f) of the Boone County Zoning Regulations states, "manufactured homes and mobile homes designed as a single wide unit may not be attached to

other single wide units, thus creating a double unit, without first obtaining a conditional use permit." Wilton lies within the Southern Boone County R-1 School District. Water service is provided by Consolidated Public Water District No. 1. Electric service is provided by Boone Electric Cooperative. No previous requests have been submitted for the property. The 1973 master plan and eighty five percent complete draft of the 1996 plan designate this area as suitable for agriculture and rural residential land use. Staff notified 29 property owners concerning this request. No one spoke in opposition to the request at the Planning and Zoning Commission. However, five comments were received prior to the hearing regarding sewage disposal and the number of people living at the site. The Planning and Zoning Commission voted to recommend approval of the request with the following conditions:

1. Applicants shall obtain required building permits.
2. The dwelling, when completed, will be covered by a single shingle roof.
3. The exterior surface of the dwelling will be covered by siding.
4. Wastewater for the dwelling shall be inspected by, and meet approval of, the City/County Health Department.
5. All conditions shall be met, and the project completed, by November 1, 1996.

Ricky Knight, 759 Cedar Tree Lane, Hartsburg, and Dixie Davis, 761 Cedar Tree Lane, Hartsburg, were present.

In response to a question from Commissioner Stamper, Ms. Davis replied she is purchasing the second mobile home from Amega Mobile Home Sales.

Commissioner Stamper opened the public hearing.

Bernice Hyde, 725 W. Highway M, stated she owns land adjacent to this property. She does not believe there is enough room for two trailers and a proper septic sewer system. They will have to park their cars on their property. They currently park in the alley. An individual has purchased property next to this site and plans to use the alley for access.

A resident of Ashland asked why does planning and zoning let some do anything and some nothing? There isn't room on the lot for one trailer, let alone two. She attends Goshen Church. It is a disgrace to have to look at the property.

In response to a question from Commissioner Stamper, Mr. Shawver replied he believes there is a septic tank on the property. That is true for most properties in Wilton. Gerry Worley of the City/County Health Department has told him the problem with Wilton's wastewater treatment, or lack thereof, can only be solved with money. You can walk along any of the roads in Wilton and see sewage being discharged directly into the ditch.

Commissioner Stamper asked is there reason to believe the addition of a mobile home unit on this lot will impede their ability to treat wastewater on-site?

Mr. Shawver replied he cannot answer that question. Mr. Worley has commented the soils in Wilton will percolate properly for septic tanks. Nelson Knight refurbished the old school house and installed a septic system using less than 400 feet of lateral lines. It is functioning properly.

Mr. Knight commented he had to have a septic tank installed when he moved to the site.

Ms. Hyde commented it is not the right kind.

Ms. Davis stated there are separate sewers for the house and mobile home.

Mr. Knight stated his system was inspected and approved by the Health Department in 1992.

In response to a question from Commissioner Stamper, Mr. Knight replied he will live in the mobile home and will only have one restroom.

Ms. Davis clarified three people will live in the mobile home.

In response to a question from Commissioner Stamper, Mr. Shawver replied the lot is 77' by 140'. The lots were laid out at the turn of the century.

In response to a question from Commissioner Vogt, Mr. Shawver replied when this request was initially made, there were zoning violations on the property. The property has been cleaned up and there are currently no violations.

Commissioner Miller stated she is concerned with blocking the alley. She would place a condition on the request prohibiting parking in the alley so she does not have to go through what she has with a similar alley in Wilton. She wants the property to remain free of zoning violations.

The location of the alley was discussed.

Ms. Hyde commented on the history of the area.

Commissioner Miller stated she believes the property is in better shape today than it was six months ago. Her biggest concern is that the conditions be followed.

Commissioner Vogt stated she believes the request is reasonable.

Commissioner Stamper questioned whether the condition desired by Commissioner Miller regarding the alley is enforceable. Can Mr. Knight be held accountable for anything in the alley?

Mr. Patton replied assuming it is enforceable, the mechanism for enforcement would be permit revocation. It might be better to couch the condition in terms of requiring their vehicles to be parked on their lot. Conditions must relate to use of the land subject to the conditional use permit.

Following discussion, Commissioner Miller moved that the County Commission of the County of Boone approve a request by Amega Mobile Home Sales, Inc., for Ricky Knight and Dixie Davis, for a permit to allow two single wide mobile homes to be attached as a single unit located at 759 Cedar Tree Lane (Wilton) Hartsburg, with the following conditions:

1. Applicants shall obtain required building permits.
2. The dwelling, when completed, will be covered by a single shingle roof.
3. The exterior surface of the dwelling will be covered by siding.
4. Wastewater for the dwelling shall be inspected by, and meet approval of, the City/County Health Department.
5. The property shall remain free of zoning violations.
6. All vehicles are to be contained on the property possessed by the applicant.
7. All construction related conditions shall be met, and the project completed, by November 1, 1996.

Commissioner Vogt seconded the motion. Motion passed unanimously. **Order 261-96.**

Mr. Abell reported the next item is a **petition to vacate and replat lot 118 Gateway South Plat No. 7 in accordance with Section 1.8 of the Boone County Subdivision Regulations**. The subdivision is located south of Columbia on State Highway K. The subdivision is zoned R-S. Gateway South was initially developed in 1971, with plat 1 filed for record on March 19, 1971. Lot 118 is part of plat 7, recorded in April, 1976. Development continued over the next decade. Lot 118 was platted with a notation on the face of the plat to indicate the lot was for a park. However, no recreational improvements have ever been made to the lot, nor has any action been taken to deed the lot to the Homeowner's Association or to a governmental entity to develop the lot for open space use. The present owner has petitioned the County Commission to vacate the lot. If vacated, the owner plans to replat the lot into four lots for development.

At the request of Commissioner Stamper, Mr. Shawver stated this item falls under section 1.8 of amended subdivision regulations adopted by the County Commission last November, calling for a public hearing prior to vacation of land. The commission also adopted a policy outlining the criteria to be used in considering the petition.

Tom Schnieder, 11 N. 7th St., Columbia, stated he represents the applicant, Danieal Miller, a local attorney. Mr. Miller desires to replat the 9.4 acre lot into four residential lots ranging in size from 1.4 acres to 3.25 acres. Mr. Schneider presented a copy of the proposed replat, but stated Mr. Miller will return with the document during the replatting phase. As Mr. Shawver indicated the county has a two step procedure. The first step is to vacate the existing plat. At a later time, the normal replatting process will occur, at which time the commission will deal with things such as infrastructure. The development issue here is sewer. The Department of Natural Resources is apparently getting involved with a nearby property, which is the subject of a letter to the commission from the homeowner's association. The applicant is not in a position to spend a lot of money on engineering for sewers unless he knows the concept of replatting is appropriate and is endorsed. There will be an opportunity to address infrastructure--when replatting occurs. Various criteria are included in the new vacation ordinance. The first is the vacation must not adversely affect the neighborhood. The proposed lots are much larger than the developed, city sized lots in Gateway South. The new lots will be more consistent with the larger lots to the west which are also wooded. Another criterion concerns traffic circulation, road alignment, etc. Alton Park Road stubs up to this lot. Traffic circulation is not an issue. The third factor is that the vacation not affect property values. Again, the lots will be well above the minimum lot size. The sewer issue will be resolved during the replatting phase. They are receptive to the vacation being conditioned on the applicant meeting appropriate sewer criteria during the replat phase. The letter from the homeowner's association indicates they really are not opposed to development per se, they just want it done right. So does the applicant.

Commissioner Stamper opened the public hearing, stating comments should concern the affect of the plat vacation on the neighborhood, using the criteria which has been described.

Doug Hardesty, 6460 Alton Park Road, stated his property is adjacent to that in question. He believes the property was set aside by previous developers because it does not lend itself to development. A creek runs through the middle of the lot. There is a steep hill on the back of the lot. He is not saying there is no room for development, but he believes four lots is too many.

Commissioner Stamper stated they are not debating the replat, but rather the merit of vacating the existing plat. The opportunity to debate the merits of the plan will be when it is submitted. Comments should reflect the impact vacation would have on your property and quality of life.

Mr. Hardesty reiterated his concern that the lot will be overdeveloped. Much of the land will be consumed by an access road. There is also a sewer system on the lot. The average lot size in that part of the subdivision is four acres.

Bob Whittet, 1980 Westwood Drive, stated he represents the Gateway South Subdivision Neighborhood Association. He is a past chairman of the group. He has lived there 16 years. Dick Otto of the Boone County Regional Sewer District (BCRSD) attended their last meeting and spoke to them about sewer problems as they relate to the vacation of this lot. Gateway South neighbors bordering lot 118, particularly Bill and Bette Stetzel and he and his wife Candy, are frustrated with the discussion concerning vacation of this lot, because of existing sewer problems. Marshall Engineering designed a sewer system which is on lot 118. Mr. Whittet read a letter addressed to Mr. Abell dated April 24, 1996, which was previously submitted to the County Commission. The letter indicates the association voted not to support development of lot 118 until sewer problems associated with the lot are solved. They believe the problem will become worse if additional homes connect to the system. They believe property values and the health and welfare of residents are being adversely affected by the problems. The system designed by Marshall Engineering is handling six homes in the lower portion of the subdivision below lot 118.

At the request of Commissioner Stamper, Mr. Shawver pointed out the lots referred to on a map.

Mr. Whittet stated they spoke with Mr. Miller about his plans for developing the lot. Mr. Miller is an investor in the private sewer system. There are problems with the system. Sewage leaks into the stream. BCRSD requested the Department of Natural Resources (DNR) investigate the situation. There is an odor in some homes since the system was installed.

In response to a question from Commissioner Stamper, Mr. Whittet replied the odor is not necessarily in the homes on the system. The homes he is referring to are on West Way Drive.

Commissioner Miller commented there was not an odor problem until the system was stalled.

Mr. Whittet stated installation problems have also occurred since 1995. They took down the fence and dug a hole on the easement in the Stetzel's back yard in order to connect the system to the county sewer. No notice was given. The hole remained for six months, as well as the pipe. When the hole was finally filled in, Mr. Stetzel had to put the fence back up and re-seed the lawn. This Spring, again without consulting the Stetzels, another hole was dug in their yard. Mr. Whittet stated a sewer vent was installed behind his yard in an attempt to solve the odor problem. It is on the easement, but it is an insult to him. He suspects his property value has decreased by about \$10,000. Mr. Marshall has yet to respond to their concerns. Mr. Whittet stated his wife attempted to approach them as the sewer vent was constructed. They were rude to her. The attitude of Marshall Engineering was "it is not your property, tough, you take it." They attempted to halt the construction of the vent in order to consult with them and arrive at a reasonable solution. No discussion occurred. From their perspective Marshall Engineering has been unprofessional, discourteous and uncivil. The Neighborhood Association, the Stetzels and the Whittets in particular, oppose vacation of lot 118 for development until the sewer problems have been solved. When they have been, they are willing to support his plan provided they are given an opportunity for review. Mr. Miller has been cordial. He does seem concerned.

In response to a question from Commissioner Stamper, Commissioner Miller replied BCRSD has not accepted the system, nor will they until the problems are resolved.

Commissioner Stamper summarized the situation as he understands it.

Paul Richard, 6561 Gateview Drive, stated they have probably lived in the subdivision longest. His wife has lived there since 1971. They purchased the property with the understanding lot 118 would be a park, titled to the neighborhood association. It is his understanding the lot has changed hands three times. They have never been given the option of taking title to the lot. They like the property the way it is with the trees and wildlife.

Commissioner Stamper asked Mr. Richard if he is aware of any covenants that state the property would be donated as a park?

Mr. Richard replied no, he has not checked. It was probably a verbal understanding.

Bob Jewett, 6251 South West Way, stated he is involved with the group trying to properly dispose of their wastewater. He is not happy with the situation. He wants to see Marshall Engineering take care of the problems so the system can be accepted by BCRSD. Mr. Jewett stated he does not object to vacating the lot, but will he have an opportunity to discuss his objections to replatting the lot into four lots?

Commissioner Stamper stated before a replat can be considered, the lot must be vacated from the original plat. The County Commission does not know what Mr. Miller's plans are for the lot. He really is not in a position to propose an alternate plat, until it is vacated.

In response to a question from Mr. Jewett, Commissioner Stamper confirmed notice will be given when that time comes.

Mr. Shawver commented both issues can be addressed tonight.

Commissioner Stamper stated the commission is only considering the vacation tonight.

Mr. Shawver replied the agenda indicates both will be considered, but the vacation must be considered before the replat can be.

Discussion of how to proceed ensued.

Mr. Schneider stated they will stipulate they are dealing with phase one--vacation--tonight.

Mr. Jewett stated his concern is that if the lot is replatted, that the lots of approximately the same size as the existing lots in plat 7. Most are three or four acres in size.

The commission continued to discuss process.

Mr. Shawver commented the replat is on file and has the proper engineer's seal. The commission does not **approve** the replat, but following the public hearing the commission can authorize the replat. Following authorization, the replat would proceed to the Planning and Zoning Commission for consideration under the regular platting process. So if vacation is approved, the commission can then debate the concept of a replat.

In response to a question from Commissioner Stamper, Mr. Schneider replied they are willing to deal only with the issue of vacation tonight. However, the plan before the commission will be the plan presented during the platting process. If the commission is not interested in having four lots, it should factor in the commission's determination concerning vacation.

Commissioner Stamper stated he believes it would be difficult to discuss the merits of four versus nine versus one lot without knowing the end resolution of the sewer issue. It would be difficult to consider anything other than the issue of vacation tonight.

Mr. Patton commented the Sewer District is accepting wastewater from the system and charging residents for service. They are relying on the Department of Natural Resources to bring the issue to a conclusion. Whether these four lots are or are not attached will not affect that conclusion.

Mr. Shawver noted if the commission decides to vacate lot 118, the vacation should not take affect until a subsequent replat is ready for approval so as not to vacate the easements on the lot. Therefore, the commission would approve the concept of vacation.

In response to a question from Commissioner Stamper, Commissioner Vogt replied if the commission approves vacation of the lot, it assumes it will be replatted. Any replat will have to comply with current regulations.

Commissioner Miller stated she does not want to replat the lot until the sewer issue is cleared up. The people who did not participate in installing this system are the ones being negatively affected.

Mr. Jewett replied that is not really fair. The people in homes on top of the hill do not have a problem because they have gravity systems. The people who invested in the new system are trying to take care of their sewage disposal problem. They are trying to do what is right. They just happened to hire a contractor who isn't quite doing his job.

Mr. Whittet clarified the sewer vent is one of the current problems. Mr. Whittet stated he spoke with Mr. Miller. He indicated he invested money in the sewer system for three lots to tie in.

Mr. Schneider stated it sounds like unfortunate things have happened with the sewer system. While they regret the problems, they do not believe they are germane to this request. In regard to the question raised about the size of lots and terrain. There may be development difficulties, but it is possible to build on the side of a bluff. The lots will not develop if they are not developable. It will take money to bring the sewer system into compliance. It will be more economical for the problem to be resolved by four lots rather than one.

In response to a question from Commissioner Stamper, Mr. Patton replied if the lot is replatted, the developer will attempt to market the properties. To build on them, they need building permits. They will have to comply with regulations for sewage treatment service. Whether the Sewer District accepts the pump station or not is dependent on the satisfactory conclusion of the engineering problems and enforcement by the DNR. County government cannot hold Mr. Miller hostage to repairing the sewer problems. The Sewer District is taking and treating the wastewater. If the DNR does not do anything, the Sewer District will have to decide whether to continue to accept the wastewater. There does not seem to be any party who is the focal point of responsibility for the system. He is told Marshall Engineering is both the designer and constructor. He is not aware of what private relationship exists between the property owners and Marshall Engineering. They will have to resolve their problem by agreement or through the courts.

In response to a question from Commissioner Stamper, Mr. Jewett replied the six property owners met with Mr. Marshall about three weeks ago. Mr. Marshall did his best to convince them he wants to correct the problems and that he is working on them.

Commissioner Miller asked does Mr. Marshall plan to take care of the problem of the sewer vent?

Mr. Jewett replied he cannot answer that. Mr. Marshall is aware the sewer vent is a big concern. Mr. Jewett stated he would not want the sewer vent behind his house either. Apparently he knows of other methods of dealing with the odor and he knows he has to resort to them.

In response to a question from Commissioner Vogt, Mr. Jewett replied plans were approved before he purchased his property. This is not the first time he has installed this type of system.

Mr. Hardesty, also one of the six investors, stated he bought his property even later. One contingency on the purchase of his house was that the sewer system met regulations. Supposedly it did because the bank said okay. There is a problem with the way the system is functioning.

In response to a comment by Commissioner Vogt, Mr. Patton replied the installation of the vent was an attempt to solve the odor problem.

Commissioner Vogt stated it doesn't appear that Mr. Miller can successfully develop the property without solving the problems with the sewer system.

Commissioner Stamper replied he could plat it for two lots and have on-site treatment. The two issues are being mixed. The sewer system problems have very little to do with whether this lot should be vacated and replatted. The most compelling reason he has heard against approving the request is that the lot was pledged as a park. However, no one has any evidence of that.

Commissioner Miller asked can the commission approve the request with the condition that Mr. Miller cannot tie into the sewer system until the problems are resolved?

Mr. Patton replied no, it is a yes or no proposition based on the criteria the commission adopted for determining whether the request is appropriate.

Commissioner Miller stated if the problems with the sewer system did not exist she would say the request is appropriate.

In response to a question from Commissioner Vogt, Mr. Patton replied if the commission approves the request and someone then presents evidence of the lot being promised as a park, it would be a civil law issue.

Mr. Schneider stated he looked at the plat this morning. It does not purport to dedicate lot 118 to the county as a park. The lot simply says park on it.

Commissioner Vogt moved that the County Commission of the County of Boone vacate lot 118 of Gateway South Plat 7 in accordance with Section 1.8 of the Boone County Subdivision Regulations and entertain a replat of said vacated plat.

Commissioner Stamper seconded the motion.

Commissioner Miller read a portion of the subdivision regulations and stated she does not feel like she has a choice in the matter.

Mr. Patton commented that particular section deals with vacating the entire plat. This is a partial vacation.

Commissioner Stamper stated he does not have strong opposition to vacation. He is concerned with the sewer problems. He wishes, when such problems occur with a contractor, that the county could prohibit the contractor from obtaining other permits until the problems are resolved.

In response to a question from Commissioner Miller, Mr. Patton replied to get the replat approved, Mr. Miller has to prove public sewer service is available to serve the property.

Motion passed unanimously. **Order 262-96.**

In response to a question from Commissioner Stamper, Mr. Patton replied this is a unique situation because the subdivision plat existed and was developed. This sewer system is a modification. Supposedly odor problems are prevalent close to pump stations because pressurized sewage is dumped into a gravity system and there is sewer gas.

Commissioner Miller commented this has been a problem for over six months. Mr. Marshall has not been responsive.

**SUBJECT: Application for Permit for Use of Courthouse Square/Government Center for Regional AIDS Interfaith Network Walk for Life**

Commissioner Vogt moved that the County Commission of the County of Boone approve an application for a permit for use of the Courthouse Square/Government Center for the Regional AIDS Interfaith Network Walk for Life on May 5, 1996 from 10:00 a.m. to 3:00 p.m.

Commissioner Miller seconded the motion. Motion passed unanimously. **Order 263-96.**

**SUBJECT: Lease of Agricultural Land**

Commissioner Miller moved that the County Commission of the County of Boone approve, and authorize the Presiding Commissioner to sign, the attached lease of agricultural land between Boone County and Michael and Susan Vogan.

Commissioner Vogt seconded the motion. Motion passed unanimously. **Order 264-96.**

The meeting adjourned at 8:30 p.m.

Attest:

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Don Stamper  
Presiding Commissioner

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Wendy S. Noren  
Clerk of the County Commission

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Karen M. Miller  
District I Commissioner

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Linda Vogt  
District II Commissioner