

TERM OF COMMISSION: January Session of the November 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 Skip Elkin
County Counsel John Patton
Deputy County Clerk Melanie Stapleton

The meeting was called to order by the Presiding Commissioner at 7:05pm.

Commissioner Stamper welcomed the newest member of the Boone County Commission, District II Commissioner Skip Elkin.

Commissioner Stamper stated that the primary purpose of this meeting was to discuss planning and zoning issues. He stated that the format for the meeting would be as follows: staff report, comments from applicant or agent of applicant, public hearing, rebuttal by applicant or agent of applicant, discussion of the commission. He also asked that all those giving comments sign in, state their name and address for the public record and state if they are present in support or opposition the issue. He also asked that testimony be succinct and focused.

Subject: Request by Larry and Mildred Clark on behalf of Voicestream Wireless for a permit to allow a transmission facility including a 200’ tower on 16.97 acres, located at 950 N Rte O, Rocheport

Stan Shawver presented the following staff report:

This property is located 5 1/2 miles west of Columbia and 4 miles southeast of Rocheport on State Highway O. This property is located approximately 600 feet south of the Route O/Route J interchange on I-70. The current zoning for the site is split between A-2 (agriculture) on the south portion of the property and C-G (general commercial) on the north part of the property. The zoning to the northeast, north, and northwest is C-G. The zoning to the west, south, east, southwest, and southeast is A-2. These are all the original 1973 zonings. The property is currently vacant. This request is to place a transmission facility on the property that will include a 200’ self-supporting lattice tower that will be used for telecommunications purposes. Staff has reviewed the application and finds that it contains all the required information for consideration by the Commission. This site is within the Columbia School District, and electric service is provided by Boone Electric Cooperative. Water service is not a requirement for this land use. In order to obtain approval for a conditional use permit for a transmission facility, the facility must meet all the specific provisions of Section 15 B as well as meet all 7 of the normal tests for approval of any conditional use permit. **As a CUP the proposal must meet the following criteria from the zoning ordinance to be eligible for approval.**

- 1. The establishment, maintenance or operation of a conditional use permit will not be detrimental to or endanger the public health, safety, comfort or general welfare.***
- 2. The conditional use permit will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted by these regulations.***
- 3. The conditional use permit will not substantially diminish or impair property values of existing properties in the neighborhood.***
- 4. All necessary facilities will be available, including, but not limited to, utilities, roads, road access and drainage.***
- 5. The establishment of a conditional use permit will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the zoning district.***
- 6. The establishment of a conditional use permit will not hinder the flow of traffic or result in traffic congestion on the public streets. This will include the provision of points of access to the subject property.***

7. The conditional use permit shall in all other respects conform to the applicable regulations of the zoning district in which it is located. The County Commission shall find that there is a public necessity for the conditional use permit.

The master plan designates this area as being suitable for agricultural and rural residential uses. The proposed use is consistent with the master plan. However, there are two issues of concern that must be pointed out. First, the zoning ordinance specifies that towers be either mono-pole or a guyed tower unless the County Commission approves other reasonable alternatives practicable for visual or technical reasons. The commission must determine that the proposed self-supported lattice tower is both a reasonable alternative and that there are sufficient visual or technical reasons to justify the approval, otherwise a self-supported lattice tower would be prohibited. The second issue to consider is the impact upon the use and enjoyment of neighboring properties, CUP Criteria #2 as mentioned previously. The proposed location of the facility is within 250' of neighboring properties under different ownership and could impact these properties. There have been no previous requests submitted on behalf of this property. Staff notified 20 property owners about this request. In general, staff supports this request, but questions why it couldn't have been placed further to the north away from the residential development adjacent to the south property line.

Stan Shawver stated that the Planning and Zoning Commission met to discuss this matter on December 21, 2000. He stated that the Planning and Zoning Commission unanimously approved the request subject to three conditions as follows:

1. That the tower be limited to a mono-pole type structure in order to limit visual impact to the neighboring properties.
2. That a revised landscaping and buffering plan be prepared and submitted by a registered landscape architect licensed to practice in the state of Missouri. The landscaping plan must be prepared to provide a year round sight proof buffer of the compound and lower portion of the tower to all adjoining properties. The buffer must be designed to be site proof within 5 years. The specific details of the landscaping plan must be worked out with planning staff and be acceptable for approval from the Planning Director.
3. That an approved landscaping plan be binding and that all planting and buffering be maintained in good condition at all times. Any planting materials that die or are not providing proper buffering will be replaced no later than the next growing season with plantings that will provide the required buffering equivalent.

Commissioner Stamper invited the applicant and agent of the applicant forward for testimony.

Ken Jacob, Attorney, 1001 E. Walnut, Tom Gilligan, Zoning Supervisor, Voice Stream Wireless, Joe Begnel, Voice Stream Wireless were present on behalf of the request.

{The applicant/agent of the applicant's presentation to the Planning and Zoning Commission is being inserted here to provide background information on the request site. The following paragraphs in italics were taken directly from the December 21, 2000 Planning and Zoning Commission Minutes:

Ken Jacob stated the location of the tower is at 950 N. Route O, near the junction of Route's O and J, near Highway 70. The actual land that the applicants are leasing is 100' X 100' on the larger tract. The reason Voice Stream needs this tower is because applicant is in the process of building a tower six miles to the east. They already have a tower six miles to the west. Applicant presented maps to the Commission. Tom Gilligan, of Voice Stream Wireless, stated that the tower site that is under construction is at the Norwest Storage Facility, which is to the east of the site. Across the river, is known as Voice Stream Kansas City Market. There is a site that stops at the river. The proposed site accomplishes successful coverage to the east of the Norwest Storage Facility, as well as to the west, where the Kansas City Market begins. In comparison to the other sites, this proposed site covers an area of about 2/3 of a mile.

Mr. Jacob stated that essentially, if you were using a Voice Stream telephone in this area, you would lose your call. This is why the tower is needed. Originally when the application was presented to the County, the Staff suggested that applicant speak with two other providers instead of putting one array of antennas on this tower. Also, that they approach US Cellular and Southwestern Bell to put antennas on both towers in order to cover this particular area. After meeting with US Cellular and Southwestern Bell, applicants received a letter from those companies, stating the tower lacks capacity to include any more equipment, the towers are full. Mr. Jacobs stated he believes the existing tower was one of the first towers in the County to be issued a permit under the current ordinance. Since then, that tower has

already been structurally increased. It would not handle the equipment. This would only leave the other tower available, and it would not supply appropriate coverage. That is why a new tower is needed.

Mr. Jacobs continued sighting the differences in the lattice tower and the mono-pole type. Mono-pole and guide towers are the preferred tower in Boone County. A guide tower is in fact a lattice tower, but only has wires to increase stability. Mr. Jacob believes there is an ambiguity in the ordinance. And it could possibly be changed in the future to clear that issue. In order to get a lattice tower, the ordinance suggests there needs to be visual or technical reasons.

Mr. Jacob submitted a simulation photo to the Commission of the proposed tower, as well as, a photo of a mono-pole. Mr. Jacobs stated that the mono-pole is thicker and the array of antennas is usually in a triangle. Regarding the technical issues, one of the requirements of the ordinance is to provide opportunities for other companies to locate their antennas on this tower. A lattice tower creates more opportunity than a mono-pole because it allows for different locations in which to place the antennas.

Mr. Gilligan stated that Voice Stream is open to the mono-pole type design, but prefers the lattice type because of its flexibility and its ability to accommodate a variety of antenna types. For example the Omni Directional type of antenna provide a 360 degree signal. It doesn't rest on top of the mono-pole, the 360 degree signal is blocked by the thickness of the mono-pole. By using a mono-pole, coverage is lost. For visual reasons, the lattice tower better accommodates various types of attachments. A mono-pole type is limited. However, applicant states, he is open to whatever type the Commission approves, but believes that a lattice type is more appropriate and more accommodating to a variety of antennas.

Mr. Jacob added that if there were a recommendation from the Commission for applicants to use a mono-pole, it would be acceptable. Applicant does think, however, that the ordinance is somewhat unclear on the issue of guide towers. And also for the technical issues, in that a lattice tower does give more options for co-locations. Visually, as long as they don't have lights on them, a lattice tower is more acceptable, but will go however the Commission recommends.

Regarding co-locations, either the lattice or mono-pole will have the capacity for two other companies to co-locate, depending upon their particular needs. The intended equipment for the tower, will include four antennas, two facing east and two facing west, and co-ax cable. Because the tower is 200' it will not require lights. The equipment on the ground will include the Nokia cabinets, which will be placed on a 10 X 14 pad.

Applicant agrees to get a landscape plan prepared by a landscape architect upon approval. Addressing the security issues, the site will be surrounded by a 6' fence with a locked gate and barbed wire on top. It will have an anti-tampering alert system on the gate, so Voice Stream will be aware if anyone should break in. In terms of safety, the Federal Government does not allow local governments to make decisions on emissions the antennas and equipment put out, the proposed equipment is 2000 times below any emissions that could cause harm. Applicant submitted a letter from the FAA regarding their determination. And an application to show that applicant is licensed by the FCC.

Chairperson Kirkpatrick questioned the location of the proposed tower and why it could not be placed further north.

Mr. Gilligan explained that the location is a small area. The landowner dictates where they would allow applicant to place the facility. If that area meets zoning setbacks, they usually have to comply with the landowner, due to further development plans of the property owner. Mr. Gilligan states that they have met the concerns of the landowner and the setback regulations. The site is remote and heavily wooded. Applicant stated that they will preserve existing vegetation as much as possible.

Mr. Jacob provided a letter from the property owner, Mr. Clark. The letter states that Mr. Clark believes the proposed site would be the most appropriate.

Chairperson Kirkpatrick asked Mr. Jacob of the placement of the other existing towers and questioned whether he was referring to the tower on Rocheport Road.

Mr. Jacob stated yes, that was the tower.

Chairperson Kirkpatrick stated that applicant did not give a feasible reason why the tower on Rocheport Road could not be used instead of putting up a new one.

Mr. Gilligan explained that the Staff's last comments from the meeting a month ago, had exercised an overlay of the towers in which the applicant ruled out in the engineering report, which is on file. The SBA tower to the west sits too far west to make a successful hand-off to the Norwest site. And the US Cellular site is too far east to the Kansas City site to make successful hand offs. In the application package, applicants had analyzed the two towers, but Staff overlaid that if applicant used those two towers, applicant could get the coverage objective. From a visual perspective, the two sites would accomplish what one site will accomplish. However, the letter from US Cellular indicated that the tower is full and can not be further modified.

Mr. Jacob stated that Voice Stream could put antennas on the other towers, but would still need the new tower because it wouldn't cover the areas that the new tower would cover.

Mr. Gilligan stated that if the two existing sites would have worked, they would have used them.

Joe Begnel, Radio Frequency Engineer for Voice Stream Wireless, stated that the tower is too far west and is a 300' tower. If going west on I-70 at the Route O intersection, the top of the SBA tower can not be seen from the highway. That is a concern because applicant wishes to have a line of site from the highway to the tower as to eliminate dropped calls.

Commissioner Caruthers asked what type of antennas would be used.

Mr. Gilligan stated that Voice Stream uses the panel type of antennas.

Commissioner Caruthers inquired whether the consideration of the radio output of the whip antenna, in a mono-pole design, would work.

Mr. Gilligan stated that other companies and emergency service types of antennas, tend to be whip antennas, they could employ whip antennas but questions their efficiency and the desired coverage.

Commissioner Mink asked applicant if they preferred the lattice tower due to technical reasons.

Mr. Jacob stated that mono-pole towers have 3, triangular-shape set of antennas on it. They have to fit on that way due to the shape of the mono-pole. Because the lattice tower has a lot of different parts connecting, it allows for more flexibility of setting different types of antennas for other types of users on the lattice type. The cost of a lattice type is more cost efficient.

Commissioner Mink questioned if a lattice tower would be easier.

Mr. Begnel stated that is correct, a lattice tower has more flexibility. Future carriers involve different sizes of antennas. The lattice tower would give more capability for future uses.

Commissioner Caruthers asked that if applicant did use a lattice type tower, did they have a specific version of guide lines to support the lattice.

Mr. Gilligan stated it was more of a space requirement and using up more land than necessary or acquiring more land than necessary. There are certain prohibitions, restrictions and limits on types of things that can be done with a lattice tower.

Mr. Jacob stated that the guide wires serve a purpose for the structural capacity of the tower. And generally they are used on much taller towers. To put them on this tower would serve no purpose, and would not add to the aesthetic quality of the area}.

Ken Jacob reiterated the location and zoning of the neighboring property. He stated that this particular tower would provide seamless coverage for the area outlined on the site map. He noted that this would prevent interruption in telephone service when moving from one area to another.

Ken Jacob stated that the County requires co-location if possible. He stated that in this situation, the County suggested that Voicestream Wireless attempt to place their equipment on two existing towers. He stated that Voicestream Wireless contacted U. S. Cellular about co-location. He stated that U. S. Cellular responded that their tower did not have the structural capacity to maintain Voicestream's equipment.

Ken Jacob stated that the tower would be 200 feet in height, therefore would not require lights. He stated that initially the tower was a lattice design. He stated that now however the tower would consist of a monopole design in order to accommodate the regulations that require that a tower be a monopole or guide design. He stated for everyone's information however that a guide tower is a lattice design. He stated that Voicestream was agreeable to the transition to a monopole design.

Ken Jacob stated that this tower would accommodate two other companies to place their antennae on the structure.

Joe Begnel stated that this tower would have a triangular platform on top with an antennae on each face, for a total of six antennae. He stated that two cables would be placed on each run inside of the tower. He stated that the base station would compound itself and would be surrounded by landscaping.

Ken Jacob presented pictures of the lattice design tower.

Tom Gilligan stated that it is required that a tower of this size be able to accommodate two additional carriers. He stated that the tower would also support two additional dishes and a radio whip.

Ken Jacob noted that Voicestream's request was approved by the Planning and Zoning Commission with three conditions. He stated that one of the conditions was a design performed by a landscape architect. He noted that the site would be surrounded by 31 trees approximately 31 feet apart. He stated that the site would be surrounded by a 6ft fence with a locked gate and an anti-tampering alert system.

Ken Jacob stated that there is also the issue of whether the tower is dangerous. He stated that this particular tower would be 2000 times below the exposure limit.

Ken Jacob stated that Voicestream has received a FAA no-hazard compliance and is licensed by the FCC to have a network in this area.

Ken Jacob stated (in reference to a complaint voiced by a neighboring property owner during the Planning and Zoning Commission), that Voicestream Wireless did not begin to work in this area before obtaining the Conditional Use Permit. He stated that Voicestream Wireless contacted GTE about the telephone wires that would be needed for the tower and GTE then begin its installation of wires.

Ken Jacob noted that numerous appraisals have shown that towers in an area do not decrease property values.

Ken Jacob stated that Voicestream Wireless chose this particular area of the property in order to take into consideration the property owner's future use and development of the property.

Commissioner Stamper convened a public hearing on the request.

Laura Esterbrooks, 10351 Kings Ln stated that her property adjoins the Clark property. She stated that she has been installing towers in Boone County for 20 years. She stated that this is not the best location for the tower on the property, only the best site for the property owner. She stated that other antennae could be used to serve Voicestream's purposes. She stated that this tower would probably need a generator, which would be very noisy. She stated that it seemed like everyone could "come to some sort of consensus, if the tower has to exist, and . . . move it closer to I-70."

David Pittman, 10250 Kings Ln stated that he has lived about 300 feet south of the property (now owned by the Clarks) for 15 years. He stated that this tower could be moved farther north, away from the adjoining property owners.

There was no one else that wished to speak

Commissioner Stamper closed the public hearing.

Commissioner Stamper called the applicant/agent of the applicant for rebuttal.

Ken Jacob explained the variables that other companies look for in a potential tower location. He stated that they chose sites closest to other towers. He stated that in this instance a directional antennae would not serve Voicestream Wireless. He stated that the tower was being placed on this portion of the property to avoid low ground.

Larry Clark reiterated that the portion of his property chosen by Voicestream Wireless was the highest piece of ground on his property. He also noted that the tower was as far north as possible. He stated that if the site was moved any farther north, then the height of the tower would have to increase.

Tom Gilligan also noted that the tower, in its proposed site would meet the County's setback requirements.

Ken Jacob also noted it was his belief that towers would become similar to telephone wires in that they would become part of the background and considered necessary equipment.

Ken Jacob also pointed out that all of the individuals that spoke against the tower were wearing cellular phones on their belt

Joe Begnel stated that Voicestream does not employ generators. He stated that some of the other companies that co-locate on the tower might require a generator.

Ken Jacob stated that he had never heard that towers could have a noise factor

Commissioner Stamper stated that usually generators are associated with FM towers. He asked if it would be acceptable for Voicestream to place a condition that anyone that co-locates on the tower not use generators.

Ken Jacob stated that anyone co-locating on the tower would have to be approved by the County Commission, so the ultimate decision would be in the County Commission's hands.

Stan Shaver stated that the zoning regulations and building codes do not restrict generators or have any noise level restrictions. He stated that the County Commission could place conditions that a generator be housed in such a way that it offer an adequate sound buffer.

Skip Elkin stated that a generator would normally only be used under the loss of utility.

Larry Clark stated that his agreement with Voicestream Wireless was for a battery-operated back up system only. He stated that the agreement would have to be modified in order to accommodate a generator.

Commissioner Miller noted that every time there is a tower request, there is concern by the neighborhood. She noted that the County Commission's hands are tied however, in that they cannot restrict towers if the applicant meets the requirements. She stated that Voicestream Wireless has met all of the requirements.

Skip Elkin stated that all of his concerns and questions were addressed.

Commissioner Stamper stated that nine or ten years ago there was litigation on a similar issue. He stated that specific criteria was laid out as a result of that litigation. He stated that the FCC stated that local jurisdictions could place conditions on the towers, however they could not restrict the establishment of towers.

Commissioner Miller moved to approve the request by Larry and Mildred Clark on behalf of Voicestream Wireless for a permit to allow a transmission facility including a 200' tower on 16.97 acres, located at 950 N Rte O, Rocheport with the following conditions:

1. That the tower be limited to a mono-pole type structure in order to limit visual impact to the neighboring properties.
2. That a revised landscaping and buffering plan be prepared and submitted by a registered landscape architect licensed to practice in the state of Missouri. The landscaping plan must be prepared to provide a year round sight proof buffer of the compound and lower portion of the tower to all adjoining properties. The buffer must be designed to be site proof within 5 years. The specific details of the landscaping plan must be worked out with planning staff and be acceptable for approval from the Planning Director.
3. That an approved landscaping plan be binding and that all planting and buffering be maintained in good condition at all times. Any planting materials that die or are not providing proper buffering will be replaced no later than the next growing season with plantings that will provide the required buffering equivalent.

Skip Elkin seconded the motion.

There was no discussion.

The motion passed 3-0. **Order 1-2001**

Subject: Request by Joseph and Mary Petsel and Joseph Carrone for a permit to allow self-storage units to be placed on 4.28 acres located at 6500 W Henderson Rd, Columbia

Stan Shawver presented the following staff report:

This property is located west of Columbia in the Midway area. The property is situated between Highway 40 and Henderson Rd. The property is zoned C-G (General Commercial). Property to the north is zoned A-2. To the east, property is zoned C-G. Land to the south and west is zoned A-R. There is a mobile home on the property that is to remain for a caretaker. The applicant has proposed building self-storage units on the site. This site lies within the Columbia Public School District. Water service is not required for the proposed land use. Electric service will be provided by Boone Electric Cooperative. The master plan designates this area as being suitable for residential land uses, though it should be noted that commercial zoning applies to this site. The original zoning for this site is C-G. In 1988, a request was denied that would have permitted a truck terminal to be placed on this property. Staff notified 53 property owners about this request.

Stan Shawver stated that the Planning and Zoning Commission made a motion to approve the request with the following six conditions:

1. No access is permitted onto Hwy 40 from the site.
2. Only a single access meeting county standards is allowed on Henderson Road.
3. All driveway, loading, and parking areas are to be dust free (minimum chip and seal).
4. No Billboards be allowed on the site.
5. That a landscaping buffer and buffering plan acceptable to the planning department be submitted and approved and that such an approved landscaping plan be binding and that all planting and buffering be maintained in good condition at all times. Any planting materials that die or are not providing proper buffering will be replaced no later than the next growing season with plantings that will provide the required buffering equivalent.
6. Lighting be oriented inward and downward so as to minimize light leaving the site.

Stan Shawver stated that the motion to approve received six yes votes.

Commissioner Stamper invited the applicant/agent of the applicant forward for testimony.

Mary Petsel stated that they would like to place four or five storage units on this property. She stated that there is a 30 ft access off of Henderson Rd for these facilities. She stated that there would not be access off of Hwy 40.

Courtney Herbst, 4606 Nick Ct stated that the mobile home on the property is for a caretaker. She stated that the applicants have no intention of establishing a mobile home park. She stated that they do not have any intention, at this time, for a staffed office. She stated that the facilities would not require water or sewer access. She stated that these units would be engineered products. She stated that this property has been zoned general commercial since 1973. She stated that all of the applicants reviewed the conditions and are agreeable to them. She noted that there would also be a landscaping plan that would provide an adequate buffer.

There were no questions of the applicant.

Commissioner Stamper convened a public hearing on the request.

There was no one present that wished to comment.

Commissioner Stamper closed the public hearing

Commissioner Miller moved to approve the request by Joseph and Mary Petsel and Joseph Carrone for a permit to allow self-storage units to be placed on 4.28 acres located at 6500 W Henderson Rd, Columbia with the following conditions:

1. No access is permitted onto Hwy 40 from the site.
2. Only a single access meeting county standards is allowed on Henderson Road.
3. All driveway, loading, and parking areas are to be dust free (minimum chip and seal).
4. No Billboards be allowed on the site.
5. That a landscaping buffer and buffering plan acceptable to the planning department be submitted and approved and that such an approved landscaping plan be binding and that all planting and buffering be maintained in good condition at all times. Any planting materials that die or are not providing proper buffering will be replaced no later than the next growing season with plantings that will provide the required buffering equivalent.
6. Lighting be oriented inward and downward so as to minimize light leaving the site.

Commissioner Elkin seconded the motion.

There was no discussion.

The motion passed 3-0. **Order 2-2001**

Subject: Request by Merle and Beverly Wright on behalf of Faye Nowell to rezone from R-S (Single Family Residential) to A-2 (Agriculture) of 4.31 acres, more or less, located at 5550 W Gillespie Bridge Rd, Columbia

Stan Shawver presented the following staff report:

This property is located just outside of the Columbia municipal limits on Gillespie Bridge Rd. The property is zoned R-S. Property to the north and east is zoned R-S; to the south is R-1, which is a city of Columbia zoning designation. The west property line of this tract is Perche Creek, which is the boundary line between the R-S and A-2. Everything west of Perche Creek is zoned A-2. There is a single family dwelling and a detached garage on this property. The applicant is

requesting that the 4.31 acre tract be down-zoned to A-2. This property lies within the Columbia Public School District. Electric service is provided by Boone Electric Cooperative. Water service is provided by Consolidated Water District No. 1. The master plan designates this area as being suitable for residential land uses. The original zoning for this tract is R-S. There have been no previous requests to alter the zoning. Staff notified 28 property owners about this request. Initially, staff was concerned that this zoning request may be inappropriate. However, closer study of the site, including access and topography, has led the staff to conclude that this site would be extremely difficult to develop under the existing R-S zoning. Staff further notes that the A-2 zoning district adjoins this tract on the west side, so the request would not constitute a spot zoning. Staff recommends approval of the request.

Stan Shawver stated that the Planning and Zoning Commission unanimously approved a motion in favor of this request.

Commissioner Stamper called for the applicant/ agent of the applicant.

The applicant did not wish to offer any testimony.

Commissioner Miller noted that the Wrights had not signed the application.

Faye Nowell stated that she purchased the property from the Wrights and their signatures were not required on the application.

Commissioner Stamper convened a public hearing on the request.

There was no one present that wished to testify.

Commissioner Stamper closed the public hearing.

Commissioner Miller noted that this was a down-zoning.

Commissioner Miller moved to approve the request by Merle and Beverly Wright on behalf of Faye Nowell to rezone from R-S (Single Family Residential) to A-2 (Agriculture) of 4.31 acres, more or less, located at 5550 W Gillespie Bridge Rd, Columbia.

Commissioner Elkin seconded the motion.

There was no discussion.

The motion passed 3-0. **Order 3-2001**

Subject: Request by PF Net Property Corp to rezone from R-S (Single Family Residential) to C-GP (Planned Commercial) of 3 acres, more or less, located at 7301 W Henderson Rd, Columbia

Stan Shawver presented the following staff report:

This site is located west of Columbia in the Midway area on Henderson Rd. The property is zoned R-S (Single Family Residential). All of the surrounding property is zoned R-S, except an area of A-R near the southeast property line of this tract. This request is to rezone 3 acres from R-S to C-GP (Planned Commercial). If approved, a review plan and a final development plan will have to be submitted before any construction activity may take place on the property. The applicant's proposed use for this site is an Optical Amplifier Site, which is required to boost the signal on fiber optic cables. This site is within the Columbia School District, and electric service is provided by Boone Electric Cooperative. Water service is not a requirement for this land use. The master plan designates this area as being suitable for residential land uses. The original zoning for this tract is R-S. There have been no previous requests submitted on behalf of this property. Staff notified 55 property owners about this request. While the master plan

designates this area for residential land uses, the plan does suggest that the use of planned commercial and industrial districts is an acceptable method of providing for such uses. Staff believes that the proposed use can be sited at this location with very little impact on the surrounding properties if the proposed staff conditions are imposed. Any review plans should include extensive landscaping details.

Staff recommends approval subject to the following 7 conditions.

1. That no transmission tower is allowed in association with this facility.
2. Only a single access meeting county standards is allowed on Henderson Road.
3. All driveway, loading, and parking areas are to be dust free (minimum chip and seal).
4. No Billboards be allowed on the site.
5. That an extensive landscaping buffer and buffering plan acceptable to the planning department be submitted and approved and that such an approved landscaping plan be binding and that all planting and buffering be maintained in good condition at all times. Any planting materials that die or are not providing proper buffering will be replaced no later than the next growing season with plantings that will provide the required buffering equivalent.
6. Lighting be oriented inward and downward so as to minimize light leaving the site.
7. That it be recognized that the tract must be properly subdivided in accordance with county regulations.

Stan Shawver noted that the Planning and Zoning Commission approved the request subject to the conditions.

Commissioner Stamper called the applicant/agent of the applicant forward for testimony.

Tom Schneider, 11 N. 7th Street stated that he was present on behalf of PF Net. Also present was Lonnie Heft, Site Acquisition Agent.

Tom Schneider stated that the request site is approximately three acres and about one mile northwest of Midway. He stated that there are a number of commercial facilities located on the same side of the highway as this property.

Tom Schneider circulated photographs of the zoning map and a copy of a typical facility of this nature. He stated that PF Net partners with AT & T on these projects. He stated that the general amplifiers are usually spaced about fifty miles apart. He noted that the facilities are generally unobtrusive. He noted that there is a generator that is tested for about an hour every week. He further noted that the facilities are phone-monitored from Houston.

Tom Schneider stated that the purpose of the facility is to house the equipment that is necessary to boost light wave signals traveling through fiber optic cables. He noted that there is a security fence around the facility. He stated that the conditions placed by the Planning and Zoning Commission were acceptable.

Tom Schneider noted that all property owners within 1000 ft received notification of the request. He stated that there was no response to the letters.

Commissioner Miller asked if it would be acceptable to have a dust-free surface on the site as stated in the conditions.

Lonnie Heft state that it would be acceptable to place an asphalt or crushed rock surface. He asked if the site could be built to match the site plan.

Tom Schneider stated that this is a development plan that could be discussed during the review plan stage.

Stan Shawver stated that this site plan had not been critiqued in this way. He stated that the regulations do require a dust free surface on parking area and drive. He stated that the County Commission has the authority to allow areas to be otherwise. He stated that if the Planning and

Building Inspection Division received complaints then it would have to be brought up to County standard.

Stan Shawver stated that the site plan had not been forwarded to other departments such as the fire.

Commissioner Miller asked how much of this space would be used for a parking lot.

Lonnie Heft stated that there would be one employee parking on the lot.

Commissioner Stamper convened a public hearing on the request.

There was no one that wished to comment.

Commissioner Stamper closed the public hearing.

Commissioner Miller moved to approve the request by PF Net Property Corp to rezone from R-S (Single Family Residential) to C-GP (Planned Commercial) of 3 acres, more or less, located at 7301 W Henderson Rd, Columbia subject to the following conditions:

1. That no transmission tower is allowed in association with this facility
2. Only a single access meeting county standards is allowed on Henderson Road.
3. All driveway, loading, and parking areas are to be dust free (minimum chip and seal).
4. No Billboards be allowed on the site.
5. That an extensive landscaping buffer and buffering plan acceptable to the planning department be submitted and approved and that such an approved landscaping plan be binding and that all planting and buffering be maintained in good condition at all times. Any planting materials that die or are not providing proper buffering will be replaced no later than the next growing season with plantings that will provide the required buffering equivalent.
6. Lighting be oriented inward and downward so as to minimize light leaving the site.
7. That it be recognized that the tract must be properly subdivided in accordance with county regulations.

Commissioner Elkin seconded the motion.

There was no discussion.

The motion passed 3-0. **Order 4-2001**

Subject: Request by Barry and Sheri Homan to rezone from A-2 (Agriculture) to REC (Recreation) of 34 acres, more or less located at 14341 N Proctor Rd, Columbia (appealed)

Commissioner Stamper stated that this request is before the County Commission on appeal. He stated that the applicant submitted a letter requesting to table the issue.

Barry Homan, applicant was present for this issue.

Commissioner Stamper asked the applicant to state why he would like the issue tabled.

Barry Homan stated that there was a scheduling conflict with his wife and he was still waiting on information from various departments for his request.

Commissioner Stamper asked if there was anyone that was present that would like to comment on the matter.

There were indications from the audience that individuals would like to comment on the matter.

Commissioner Elkin stated that he had read the staff report and did not see any need to table the issue. He proposed that the County Commission proceed with consideration of the issue.

The County Commission decided to proceed with the issue.

Commissioner Stamper asked Stan Shawver to present the staff report.

Stan Shawver presented the following staff report:

This request is to rezone 34-acre tract from A-2 to REC (Recreation). The property is located 4 miles east of Harrisburg, 10 ½ miles north of Columbia and 2 miles west of Highway 63. The site is located about ½ mile south of Highway 124 on Proctor Road, which is a gravel, county maintained road. A traffic count conducted in 1998 indicated the traffic level to be 35 vehicles per day.

The original and current zoning for this tract is A-2, as is all of the surrounding property. This property is within the Harrisburg R-8 School District. Boone Electric Co-operative provides electric service. Information from the Public Water District indicates that there is no public water at this end of Proctor Road. The master plan designates this area as being suitable for agriculture and rural residential land uses.

The applicants live on the property, and operate a landscaping business from the site. In 1999, a conditional use permit was issued to allow an outdoor recreational facility on a 10 acre portion of this property. The applicant included a copy of the permit as part of the application. The Conditional Use Permit was issued with six conditions. One of the conditions stated the permit was to be issued for one year. At the end of the year the County Commission was to review the permit to determine whether the use had been compatible with the neighborhood. Upon review, the Commission found that the conditions of approval had not been complied with. Specifically, it was found that the hours of operation had not been followed and the required 60 dust free parking spaces had not been provided. The Commission suspended the Conditional Use Permit with the provision that it may be reinstated at a later date if the original conditions are complied with.

In analyzing this request, it is necessary to consider all of the possible uses allowed by the Recreation zoning district. It is not sufficient to consider only the use proposed by the applicant.

Staff notified 18 property owners concerning this request.

Staff recommends the request be denied for the following reasons:

- Insufficiency of Resources. The proposed Recreation zoning allows a variety of commercially oriented recreational uses. Many of those uses require higher levels of service than are available to the property. The resources required to service the property can generally be broken down into three categories, Utilities, Public Safety Services and Transportation.
- Utilities. The only utility service available in the area is electricity. No public sewer or water systems are available to support the intensive uses allowed in the REC district. The utilities available to the property are insufficient to support 34 acres of recreational uses.
- Public Safety Services. The nearest fire station is in Harrisburg approximately 5 miles away. Ambulance services will originate in Columbia approximately 10 miles away. The more intensive use of the property will increase the demand for services from the Sheriff due to increase traffic and law enforcement calls to the property.
- Transportation. Proctor Road is a county maintained gravel road. The more intensive uses allowed by the REC zoning will increase traffic on Proctor Road. This will increase the amount of resources that the County will have to dedicate to maintain the road in a safe condition.
- Noncompliance with the Boone County Master Plan. The Master Plan designates this property as being suitable for agriculture and rural residential land uses. The existing pattern of development in the immediate vicinity is in compliance with that designation. A 34-acre recreation tract is not compatible with the current pattern of development. If the rezoning is approved, the likely result will be a shift in the development pattern toward more urban uses, which will further strain government and utility services in the area.

Stan Shawver stated that the Planning and Zoning Commission unanimously approved a motion to deny the request on December 21, 2000 following a public hearing.

Commissioner Stamper asked the applicant to proceed with testimony in support of his request.

Barry Homan stated that he did not bring the materials necessary to make his presentation. He stated that he had not received the necessary reports from the departments as of yet.

Commissioner Stamper asked Barry Homan to state which departments he was still waiting to receive information.

Barry Homan cited all of the following: Public Works, Sheriff's Department, and an engineering report from Marshall Engineering. He stated that he was not able to make a presentation without these documents. He stated that the County Commission had tied his hands to make a presentation based on the information present at this time.

Commissioner Stamper stated that the County Commission had not tied Mr. Homan's hands. He stated that the County Commission took into consideration the observations and testimony in detail from the Planning and Zoning Commission meeting.

Barry Homan stated that the issue on spot-zoning introduced at the Planning and Zoning was not viable. He stated that the last five zonings for recreations approved by the County Commission were spot zonings. He stated that recreational zoning is not included on the master plan. He cited the example of Pinnacle Youth Park. He stated that all recreational zoning (in Boone County) is spot zoning.

Commissioner Stamper stated that there were other substantial issues such as water supply, adequate sewage, transportation problems.

Barry Homan stated that his property has a private well that is inspected by Public Health. He stated that Public Health requires a water test from staff which is performed at the time of the granting of a CUP. He stated that he has a letter on file stating this fact. He stated that if they have need for public water in the future, it would come from Public Water District #7. He stated that it was his belief that if public water were on Proctor Rd at this time, then it could increase the density of the area. He stated that at present, his property would be the only one serviced by a six-inch water line.

Barry Homan stated that he was also required to place a fire hydrant on the property.

Barry Homan stated that he worked with Greg Edington, Public Works on the road issue. He stated that the traffic count on the road is 30 cars per day, not 35 cars per day. He stated according to Greg Edington, the traffic on the road would be increased more substantially by an increased density of houses on the road, than the use of the park.

Barry Homan stated that he and his wife have placed a great amount of money and time in this property. He stated that of the 34 acres, 20+ would be held as a wildlife preserve. He stated that that there is a ten-acre section that would be renovated into a wildlife prairie. He stated that they have worked with various departments to implement improvements in the park.

Commissioner Stamper stated that when the County Commission signs off on 34 acres, they do so based on the property, not on the intentions of the property owners.

Commissioner Stamper stated that it was astonishing to him the lack of information presented at the Planning and Zoning Commission meeting. He stated that it was a not a good way to approach it by not having this information at the time of the County Commission hearing either.

Barry Homan stated that the approach was to get a feel for the staff report and the Planning and Zoning Commissioners, and then put together a plan that would be acceptable to cover all items and concern. He stated that it is difficult to correlate this amount of information into a presentation in such a short amount of time.

Commissioner Stamper asked that Barry Homan continue his presentation in support of the

request.

Barry Homan stated that Boone Electric services the property. He stated that there is no public sewer in the vicinity or in the area. He stated that they are working with Marshall Engineering to put in a wetlands system. He stated that this would upgrade the system into a more environmentally friendly system.

Commissioner Stamper stated that Gerry Worley stated that the water system has not been inspected or tested as required.

Stan Shawver stated that Gerry Worley called him last week in response to a visit by Barry Homan to state that the Homans water system had not been tested or inspected as required. He stated that he spoke with Gerry Worley again at 4:30pm today and he reiterated those comments.

Barry Homan stated that the well is inspected by the Missouri Department of Health in Jefferson City, MO. Barry Homan stated that he had a report that indicated that the water had been tested.

Stan Shawver reiterated his previous statement about the testing of the water for the public record. He stated that Gerry Worley stated that with the kind of well owned by Mr. Homan, the Department of Health should pull samples and test the water. He stated that Gerry Worley stated that this had not been done.

John Patton noted that Gerry Worley is a Department of Health representative.

Barry Homan stated that this was a misunderstanding on his part, however the water has been tested. He stated that he has the records to prove this.

Barry Homan noted the fire hydrant in reference to the safety issue. He stated that the Sheriff's Department is generating a report regarding other areas of the safety issue, such as documentation on calls regarding the property.

Barry Homan stated that his property is on the bus route. He stated that if there are any ruts caused by buses or other traffics, then property owners in the area fix it themselves if possible.

Barry Homan stated that the layout of this property would allow for the uses they have proposed and not much of anything else. He stated that they feel that this property will provide a park setting for family oriented activities, an amenity that is not currently available in Boone County. Barry Homan stated that his park brings a vast amount of people to the area. He stated that a lot of people require overnight stays, which brings commerce to the area. He stated that putting a park in Boone County could not be a detriment. He stated that the real issue is the hours of operation. He stated that they have taken into consideration the residents in the area.

Barry Homan stated that he and his wife began the parking lot last year (21 spaces). He stated that they saw the need to control the stormwater in the area so they also worked to place a pond in the area. He stated that they are working with several entities to mold this into an environmentally friendly place.

Commissioner Stamper convened a public hearing on the request.

Kenneth Darwent, 14351 N Proctor Rd stated that he is concerned about the fact that the applicant is a private individual whereas the other locations that have recreational zoning are owned by organizations. He stated that the applicant failed to meet the guidelines set by the Conditional Use Permit. He stated that he believed that the recreational zoning is too much of a blank check and there is no checks and balances. He stated that he likes the peace and quiet of the area.

There was no else present to testify.

Commissioner Stamper closed the public hearing.

Commissioner Stamper called the applicant for rebuttal.

Barry Homan reiterated that the County Commission would have a much fuller tool of evaluation if he were able to make a complete presentation, if the issue were tabled.

Commissioner Stamper asked Stan Shawver if he had any additional comments.

Stan Shawver submitted a letter that he sent to Barry Homan dated March 30, 1998 for the public record. The letter basically stated that the zoning that would be sought by the applicant (recreation) was not suitable for the area. Several criteria were stated in the letter if the recreational zoning was sought.

Stan Shawver stated that all of the spot zonings stated by Barry Homan were all pre-existing recreational uses that had grandfather rights, which required rezoning in order to make improvement. He stated that the Rader request did meet the sufficiency of resources test. He stated that Gerry Worley also advised him that Mr. Homan installed a septic tank without first obtaining a permit. He further noted that the tank had not been properly inspected.

Stan Shawver stated that Barry Homan did not provide a presentation to the Planning and Zoning Commission. He stated that there was adequate time for Mr. Homan to prepare his presentation as many other applicants have done on a regular basis. He noted that Mr. Homan only had 8 uses of his property last year, one of which was not compliant with the Conditional Use Permit. He stated that the 34 acres has potential for a number of uses, which is what the staff recommendation was based on.

Skip Elkin stated that he had an opportunity to review the site with Commissioner Vogt. He stated that when he purchased his first house, he used every second of his free time to remodel it. He stated that he placed the finest of everything in his home with no intention of ever moving from that location. He stated however that he transferred jobs and had no choice but to move from the area.

Skip Elkin stated that when the County Commission places recreational zoning on a property, then the zoning stays with the property. He stated that the County Commission has to consider the most extreme cases that go with the zoning with making a decision. He stated that a number of uses under the blanket recreational zoning would not conform to the area.

Commissioner Miller stated that this request shows how critically needed the planned recreational category is needed. She stated that if this zoning were in place, then Mr. Homan's property could be limited to the botanical garden, etc. that he wishes to have. She stated however that she agrees that the recreational zoning would be all-inclusive of items that would not be conducive to the neighborhood.

Commissioner Stamper stated that in all candor, he felt as though Mr. Homan was attempting to manipulate the Commission. He stated that the County Commission went out on a limb to allow a Conditional Use Permit and it was not abided by. He stated that he could not support the request.

Commissioner Elkin moved to deny the request by Barry and Sheri Homan to rezone from A-2 (Agriculture) to REC (Recreation) of 34 acres, more or less located at 14341 N Proctor Rd, Columbia.

Commissioner Miller seconded the motion.

There was no discussion.

The motion passed 3-0. **Order 6-2001**

Commissioner Reports

Commissioner Stamper

Commissioner Stamper stated that the County Commission drew its annual assignments this morning. He stated that those assignments would be implemented this week.

Commissioner Miller

Commissioner Miller did not give reports.

Commissioner Elkin

Commissioner Elkin did not give reports.

There was no public comment.

The meeting adjourned at 9pm.

Attest:

Wendy S. Noren
Clerk of the County Commission

Don Stamper
Presiding Commissioner

Karen M. Miller
District I Commissioner

Skip Elkin
District II Commissioner