

TERM OF COMMISSION: March Session of the January Adjourned Term

PLACE OF MEETING: Roger B. Wilson Boone County Government Center
Commission Chambers

PRESENT WERE: Presiding Commissioner Keith Schnarre
District I Commissioner Karen M. Miller
District II Commissioner Skip Elkin
Planning and Zoning Director Stan Shawver
County Counselor John Patton
Deputy County Clerk Shawna Victor

The meeting was called to order at 7:00 p.m.

Subject: Planning and Zoning

Commissioner Schnarre noted that during Planning and Zoning sessions, the Commission will receive a report from staff and then the Commission will have the opportunity to ask staff any questions. The Commission will then move to a presentation from the applicant or agent of the applicant on behalf of their request. After that, the Commission will convene a public hearing where any testimony in favor of or in opposition to will be welcome. Following the public hearing, the Commission will discuss the issue and then vote on the issue.

Stan Shawver, Director of the Planning and Building Inspection Department, stated that the Boone County Zoning Regulations and the Subdivision Regulations are entered into the record. (note - the file copy is retained in the Planning and Building Inspection Department).

A. Request by Brandon Spry to rezone from R-S (Single Family Residential) to M-LP (Planned Industrial) of 3.0 acres, more or less, and to approve a Review Plan for Midway Electric on property located at 7301 W. Henderson Rd., Columbia

Stan Shawver stated the property is on the north side of Henderson Road approximately 500 feet east of the intersection with Locust Grove Church Road. The original zoning for the property is R-S. In January of 2001, a rezoning of the property to CG-P was approved with conditions for the purpose of allowing an optical amplifier to be located. The required Review and Final Plans were not submitted. Therefore, the zoning remains R-S. The tract was subsequently platted as Lot 1 of Midway Communications Subdivision Plat 1, also in 2001.

The site plan shows one entrance onto Henderson Road. Traffic patterns internal to the development appear to be adequate.

Water service will be provided by Consolidated Public Water District Number 1. There is an existing 4-inch waterline along Henderson Road that can be tapped for domestic service and fire flow. The water district reports that the existing waterline is capable of provide the necessary 500-gallons per minute for fire protection. The developer will have to pay for the installation of at least one fire hydrant, the location of which is shown on the plan. The developer's engineer has met with the fire district and has identified a suitable hydrant location.

The proposed allowed uses include a contractor's headquarters/warehouse, car wash, office, retail sales, mini-storage and cell tower. All but two of the uses appear to be appropriate to the site. The rezoning approval in 2001 included a restriction that no transmission tower is allowed on the site.

There is inadequate public infrastructure in the area for the wastewater disposal requirements of a carwash. The developer has proposed an on-site wastewater disposal system. This has raised serious concerns from the Boone County Regional Sewer District and the Columbia/Boone County Health Department. The Health Department is concerned for a variety of reasons including variations in flow because of weather dependant usage, removal of silt, oils and greases from the wastewater and a lack of oversight to ensure adequate monitoring and maintenance of the system. The Health Department will require an engineered design in order to determine whether a soil absorption system will function adequately prior to final plan approval. If the delay caused by the proposed condition is not acceptable to the developer it would be appropriate to remove the car wash from the plan.

There are several factors supporting a restriction on transmission towers. The site is relatively low in elevation in comparison to other property in the vicinity. The size of the tract will limit the height of a tower to a maximum of 161-feet. There has been no demonstrated demand for a transmission facility at this location. There is an existing 240-foot tall tower on Sugar Creek Drive, approximately 5000-feet from the subject site. Staff has requested the developer to submit documentation supporting the need for a transmission facility at this location. No such information has been submitted.

A buffering and landscape plan has been included on the review plan. This includes fencing and plantings to minimize visual and noise impacts to the residence bordering the property to the west. Landscaping along the Henderson Road frontage is also provided to minimize the visual impact from properties to the south.

A stream crosses the northwest corner of the property. The Natural Resources Conservation Service has recommended a vegetated buffer be established along the stream. The buffer should be a minimum of 25-feet wide on each side of the stream. The developer has shown the buffer on the plan. Significant land clearing has already occurred on the site, which raises the question whether there is sufficient natural vegetation to adequately buffer the stream.

In order for the buffer to function more efficiently as a filter it is important that water sheet flow through it rather than flow through in a linear fashion. The drainage plan uses open ditches to convey stormwater to the stream, with a rip rap pad to dissipate energy at the end of the ditch at a point. An additional structure should be added to distribute the stormwater that leaves the ditch so that it sheet flows through the buffer.

The property scored 78 points on the rating system.

Staff recommends approval of the rezoning request.

Staff recommends approval of the Review Plan subject to the following conditions:

1. Prior to final plan approval, an engineered wastewater system design shall be submitted to and approved by the Columbia/Boone County Health Department. As an alternative, a design shall be submitted to and approved by the Missouri Department of Natural Resources for the wastewater system.
2. The cell tower shall be deleted from the list of proposed allowed uses and the location of the cell tower on the site plan shall be removed.
3. The developer shall work with the Natural Resources Conservation Service and/or the Missouri Department of Conservation to determine whether the existing vegetation is adequate as a buffer and if not, to develop a plan to enhance the buffer with additional plantings. Such a plan shall be developed prior to final plan approval.
4. Amend the stormwater plan to include a "sheet flow structure" so that stormwater leaving the site flows through the stream buffer in a sheet rather than linear form. The final stormwater plan shall be submitted for approval prior to final plan approval.
5. Since land clearing has already commenced at the site, all erosion control practices shall be installed prior to final plan approval.

The Planning and Zoning Commission conducted a hearing on this request on February 17, 2005. There were seven members present at that meeting. A motion was made to approve the rezoning request. This motion received four "yes" votes and three "no" votes. Another motion was made to approve the Review Plan with the following conditions:

1. Prior to final plan approval, an engineered wastewater system design shall be submitted to and approved by the Missouri Department of Natural Resources.
2. The cell tower shall be deleted from the list of proposed allowed uses and the location of the cell tower on the site plan shall be removed.
3. The developer shall work with the Natural Resources Conservation Service and/or the Missouri Department of Conservation to determine whether the existing vegetation is adequate as a buffer and if not, to develop a plan to enhance the buffer with additional plantings. Such a plan shall be developed prior to final plan

- approval.
4. Amend the stormwater plan to include a “sheet flow structure” so that stormwater leaving the site flows through the stream buffer in a sheet rather than linear form. The final stormwater plan shall be submitted for approval prior to final plan approval.
 5. Since land clearing has already commenced at the site, all erosion control practices shall be installed prior to final plan approval.

This motion received four “yes” votes and three “no” votes. Both requests are before the Commission with recommendations for approval.

Aaron Barnhart, engineer with Marshall Engineering and Surveying, Brandon and Michelle Spry, 7103 W. Elizabeth, Columbia, and Dennis Seaver, Marshall Engineering and Surveying were present on behalf of this request.

Aaron Barnhart stated this application has been made so Mr. Spry can have this property rezoned and he can move his offices to this location. This is a straight forward application and they do not have any issues with staff comments. They will move forward with the wastewater facility after approval of the request to prevent any unnecessary spending by the applicant and they do not have a problem working with DNR on this facility.

They are also ok with working with the Department of Conservation and Department of Natural Resources on the stream buffer.

The sheet flow structure for storm water can be engineered.

Also, the erosion control is being done in phases as the building and construction phases occur.

Mr. Barnhart requested the Commission reconsider the use of the cell tower. This is something Mr. Spry would like to keep open and on the table. There is not a provider at this moment interested in this site. Staff comments seem to indicate only a physical limitation of the site, such as elevation and height of the tower. He believes this is either not a physically usable site for a cell tower and never find a provider or they can in the future come up with a provider that can work within the limitations.

There was no public opposition to the tower at the Planning and Zoning meeting.

Staff indicated the applicant may come back at a later date with a Conditional Use Permit (CUP) application and then have Planning and Zoning require the applicant to meet all the conditions of Section 15 of the Zoning Regulations. Mr. Barnhart does not understand why they should have to go through that process if all issues can be worked out at this time. They do not have any problems with meeting the conditions of that section if that is what it will take to have a tower put in at a later date. They do not want to have to go

through the process again.

Commissioner Miller asked Mr. Shawver if staff requested the information on the tower and not receive it. Mr. Shawver stated that is correct.

Commissioner Miller stated the applicants have not submitted the information showing there is a need for a cell tower in the area. Mr. Barnhart stated the applicant estimates there might be a future use for it, there is not a necessary need for it now. They believed this is a zoning issue that could be handled now in case a future need did arise then it would already be approved zoning wise. Then the only thing that would need to be handled is the structure plans meeting all requirements at that time.

It would be cumbersome for the applicant to prove the need for a future need. Mr. Barnhart does not understand the opposition to go forward in having it as an allowed use at this time. Midway is a rapidly developing area.

Mr. Barnhart noted there is an AT&T substation near the applicants land.

Commissioner Elkin stated the County Regulations regarding communications towers states something to the effect of having an identified need for a tower.

Mr. Shawver stated there were no specific regulations on communication towers before 1991 in Boone County. It was required that any structure taller than 100' had to have a CUP. Over the years, the County approved a number of CUPs for towers, such as television, radio stations, and microwave communication towers.

When the cellular phone era came to Boone County, around 1990, a number of requests were received by the County almost simultaneously for cell towers around the County. As part of this, the County became aware that the Federal Aviation Administration (FAA) regulations state any structure taller than 200' must be lighted, with either a strobe light all the time or the tower be painted red and white for daytime sight with a red light at night. There were a number of towers erected with flashing strobe lights, which were practically in people's backyards. There was an uproar in the community and the County was requested to develop regulations.

The County Commission appointed a committee of people from the communication industry, aviation industry, and lay people to study this issue specifically. This committee developed specific transmission facility regulations for Boone County.

These regulations outlined that towers would be located in agricultural, sparsely populated areas. These towers should, however, have a conditional use permit and should meet a number of tests. The idea of which was to limit the number of towers, to require co-location as much as possible, owners were required to allow co-location and charge a reasonable rent, and the final decision of what was considered reasonable would be the

County Commission.

Towers are conditional uses in A-1 and A-2 districts and in commercial districts. Towers are permitted uses in industrial districts. This has resulted in all towers that come before the Planning and Zoning Commission and County Commission has to justify its need and prove they cannot locate on an existing tower.

This has been very effective in Boone County because there is only one cell tower with three users. In Cooper County, you might see three towers bunched together, for example. There is adequate service in Boone County. Before a new tower is approved, the applicant has to prove there is not space on another site. There is co-location on all towers in Boone County.

Mr. Shawver noted there are cell phone company representatives in his office on a regular basis checking for sites. When they are told they need to co-locate, the majority of the time they do not come back because they have found a tower to co-locate on.

Towers require a Conditional Use Permit under Chapter 15 of the Boone County Zoning Regulations. The section on transmission facilities is very specific on what requirements have to be met before an application can be considered. Those regulations do not apply in the light industrial zoning because it is a permitted use. The only restriction in the light industrial zoning is any structure taller than 100' must have a conditional use permit. Whether the Commission could require the applicant to meet all other restrictions even though all they would need to do it have a permit for height restriction has not been discussed. He has not discussed this issue with John Patton, County Counselor, but believes Mr. Patton would say there is not necessarily a nexus when the only issue is the height.

Mr. Shawver stated for the applicant to say they have to comply with all the regulations when the only regulation they would have to comply with is having a tower over 100' tall and they would have to come in and request a permit.

Commissioner Elkin stated there are concerns with the carwash because the wastewater. Mr. Shawver stated that is correct.

Commissioner Elkin stated staff is suggesting if the applicant can design a system that meets DNR regulations then that concern will go away. Mr. Shawver stated that is correct.

Mr. Barnhart stated the applicant is concerned because this is planned zoning that a CUP cannot be applied for under planned zoning. The applicant does not feel there is a way to approach this tower issue since they have been told to apply for planned zoning. If this is the case, then they could come back with a CUP application at a later date. He is not sure if he understands the regulations on this issue.

Mr. Shawver stated if the Commission approves the Review Plan with a tower location on it, the only reason the applicant would have to come back is if there would be a tower over 100'. If the Commission does not approve the tower location, the only way the applicant could come back is with a Revised Review Plan with the expectation that all the evidence would have to be provided that there is a provider for the tower and a need in this area.

Commissioner Schnarre stated a Review Plan can be adjusted at any time for any reason and the applicant would have to bring forward a Revised Review Plan. Mr. Shawver stated that is correct.

Mr. Barnhart stated if any changes were made then they would have to go through the rezoning process again.

Mr. Shawver stated the Review Plan would have to be brought back through the process as a Revised Review Plan. To say that no one is concerned about this request, he noted the notice that went out to the neighbors did not say anything about a tower. The notice said the applicants were requests rezoning and approval of a Review Plan. Perhaps the Elders of Locust Grove Church might have had a different opinion if they had known there was a 160' tower was going to be in their front yard.

Commissioner Schnarre opened the floor for a public hearing on this request.

There was no one wishing to speak on this request.

Commissioner Schnarre closed the public hearing.

Commissioner Miller stated she cannot support an open tower site and if the cell tower proposal had to stay on the Review Plan, she would not support this request. She can, however, support staff conditions.

Commissioner Schnarre stated the majority of the time when a company wants to place a tower somewhere; they are the ones that do the work, not the land owner.

Commissioner Elkin stated he agrees with Commissioner Miller. If the County allows this zoning with the cell tower then people will be coming in from now on. This is a precedent he does not want set. He believes the County has done a good job of controlling the number of towers. He can support this with staff conditions.

There was no further discussion on this request.

Commissioner Miller moved to approve the request by Brandon Spry to rezone from R-S (Single Family Residential) to M-LP (Planned Industrial) of 3.0 acres, more or less, located at 7301 W. Henderson Road, Columbia.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 85-2005**

Commissioner Miller moved to approve the request by Brandon Spry to approve a Review Plan for Midway Electric located at 7301 W. Henderson Road, Columbia, with the following conditions:

1. Prior to final plan approval, an engineered wastewater system design shall be submitted to and approved by the Missouri Department of Natural Resources.
2. The cell tower shall be deleted from the list of proposed allowed uses and the location of the cell tower on the site plan shall be removed.
3. The developer shall work with the Natural Resources Conservation Service and/or the Missouri Department of Conservation to determine whether the existing vegetation is adequate as a buffer and if not, to develop a plan to enhance the buffer with additional plantings. Such a plan shall be developed prior to final plan approval.
4. Amend the stormwater plan to include a “sheet flow structure” so that stormwater leaving the site flows through the stream buffer in a sheet rather than linear form. The final stormwater plan shall be submitted for approval prior to final plan approval.
5. Since land clearing has already commenced at the site, all erosion control practices shall be installed prior to final plan approval.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 86-2005**

B. Request by Sells Development Group LLC to approve a Final Plan for Lenway Estates Planned Development, located at 9689 I-70 Dr. NE, Columbia

Mr. Shawver stated the property is located at 6989 I-70 Drive N.E., approximately 4 miles east of Columbia. The 36.94 acre tract was originally zoned A-R. In 1994 17.12 acres was rezoned to Recreation REC, the remaining 19.82 acres retained the original A-R zoning. The golf driving range was allowed by conditional use permit in 1989. A rezoning to RS-P and CG-P and review plan was approved in December 2004.

The Planning and Zoning Commission approved the review plan after a series of modifications to the originally submitted plan.

The County Commission approved the review plan with one condition as follows:

- The restrictive covenants of the development shall state acknowledgement of the kennel to the west of the property.

The draft restrictive covenants on file with the Planning Department include such acknowledgement.

The property scored 56 points on the rating system. 11 property owners were notified of this request.

Staff recommends approval of the final development plan.

The Planning and Zoning Commission conducted a hearing on this request on February 17, 2005. A motion was made to approve the Final Plan and this motion received unanimous approval.

Bill Crockett, Crockett Engineering, was present on behalf of Sells Development Group LLC.

Bill Crockett stated this Final Plan is before the Commission because the condition that was placed on the preliminary plan.

Commissioner Elkin stated he knows there were some property ownership issues with another tract the Commission recently rezoned. He does not want the same thing to happen with this land. Mr. Shawver stated this Final Development Plan is bound to the land not the owner.

Commissioner Schnarre opened the floor for a public hearing on this request.

There was no one wishing to speak on this request.

Commissioner Schnarre closed the public hearing.

Commissioner Elkin moved to approve the request by Sells Development Group LLC for a Final Development Plan for Lenway Estates Planned Development, located at 9686 I-70 Drive NE, Columbia.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 87-2005**

C. Petition submitted by Aubrey and Kimberly Weger to vacate the plat of Kimberly's Hope subdivision

Mr. Shawver stated the department received a petition to vacate Lot 1 of Kimberly's Hope Subdivision, which is a one lot subdivision on Route F. This tract is zoned A-2 (Agriculture) and is approximately five acres.

Section 1.8.1.3 of the subdivision regulations require the County Commission to hold a public hearing in order to consider any petition to vacate and/or re-plat, taking into consideration character of the neighborhood; traffic conditions; circulation; the proper location and improvement of streets and roads within and adjacent to the subdivision; property values in the subdivision; public utilities; facilities and services and the re-plat will not generally adversely affect the health, welfare, or safety of persons owning or possessing real estate within the subdivision to be vacated or surrounding real estate.

The owners' intent is to vacate and resurvey that with enough land to make a 10 acre tract, which will be sold separately.

Aubrey Weger, 4905 Route F, Clark, was present on behalf of this request.

Aubrey Weger stated he has been notified by the Missouri Department of Transportation (MoDOT) that his property will be allowed two accesses. He has to realign his current property to allow for access to the back of his property.

Also, if he sells the property he will need to replace the lagoon. The current lagoon is on the wrong side of his current property line.

Commissioner Schnarre opened the floor for a public hearing on this request.

There was no one wishing to speak on this request.

Commissioner Schnarre closed the public hearing.

Commissioner Elkin moved to approve the petition submitted by Aubrey and Kimberly Weger to vacate Kimberly's Hope subdivision.

Commissioner Miller seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 88-2005**

D. Receive and Accept the following plats:

- **Biggs Corner. S33-T47N-R12W. A-1. David Biggs, owner**
- **Southern Boone County Fire Protection District. S3-T45-R12W. A-2. Southern Boone County Fire District, owner.**
- **Golf Plat 2. S2-T48N-R12W. R-M. Gary Naugle Co., owner.**

Mr. Shawver stated Biggs Corner is a 7.65 acre, one lot plat zoned A-1. The owner had to go before the Zoning Board of Adjustment to receive a minimum lot size variance and this request was approved. The majority of Mr. Biggs property is located on the west side of Route DD.

Southern Boone County Fire Protection District is owned by Southern Boone County Fire Protection District located on Mt. Pleasant Church Road. This is zoned A-2.

Golf Plat 2 is located on Golf Boulevard. This is a larger Neighborhood Improvement District (NID) lot.

Commissioner Miller moved to receive and accept the following plats and authorize the Presiding Commissioner to sign said plats:

- Biggs Corner.
- Southern Boone County Fire Protection District.
- Golf Plat 2.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 89-2005**

Subject: First Reading of Cost Sharing Agreement with University of Missouri (Wastewater Construction Planning for South Two-Mile Prairie Region)

Commissioner Miller stated this is the County's contract with the University of Missouri, which is the grant recipient for this project. This project is a partnership between the University, the County, Ashland and the Boone County Regional Sewer District. The County's cost share obligation is \$45,000 of in-kind contributions and \$44,000 of cash contributions.

The University is in the process of hiring a company to do water sampling from the creeks. There will be a winter and summer sample and those will be analyzed to determine what areas will be best able to handle a regional wastewater plant.

The BCRSD will do the facility study.

Commissioner Schnarre stated this is a first reading and requested the Deputy County Clerk to schedule this item for a second reading at the next available meeting with an appropriate order for approval.

There was no public comment.

The meeting adjourned at 7:38 p.m.

Attest:

Wendy S. Noren
Clerk of the County Commission

Keith Schnarre
Presiding Commissioner

Karen M. Miller
District I Commissioner

Skip Elkin
District II Commissioner