

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
 Deputy County Clerk Shawna Victor
 Planning and Building Inspection Director Stan Shawver
 County Counsel John Patton

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

Subject: Sheriff’s Department – Second Reading and Approval of Budget Revision (Security Camera)

Commissioner Elkin moved to approve the following budget revision:

Department Account and Title	Amount Decrease	Amount Increase
1251-71600: Equipment Lease	\$250.00	
1251-91400: Auto Truck	\$400.00	
1251-91300: Machinery and Equipment		\$650.00

Said budget revision is to transfer funds to cover the cost of a security system in the Information Center Lobby and Entrance Doors.

Commissioner Miller seconded the motion.

William Woodward of 200A Unity Drive, Columbia, stated he would like to see if the County could work on getting these cameras put on the Internet. This is something that is done in other states and has helped the detainment of prisoners when they have escaped.

There was no further discussion and no public comment.

The motion passed 3-0. **Order 1-2002**

Subject: Prosecuting Attorney’s Office – Second Reading and Public Hearing of Budget Amendment (Victim Witness Grant)

Commissioner Miller moved to approve the following budget amendment:

Department Account and Title	Amount Increase
1262-03411: Federal Grant Reimbursement	\$9,812.00
1262-10100: Salaries and Wages	\$9,029.00
1262-10200: FICA	\$691.00
1262-10350: Life Insurance	\$8.00
1262-10400: Workman’s Compensation	\$42.00
1262-10325: Disability	\$42.00

Said budget amendment is for the Victim Witness Grant program, which is from October 1 to December 21, 2001. (CO277-2001)

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 2-2002**

Subject: Public Works

A. Second Reading and Approval of Contract for Architectural Services

Commissioner Miller stated this contract would allow for two phases of engineering services to develop a plan for the South Facility building expansion.

Commissioner Miller moved to approve the agreement between the County of Boone and Mitzel and Scroggs Architects, Inc for the Public Works South Facility building expansion.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 3-2002**

B. Acknowledgement of Petition for Ellis School Road (Chip and Seal)

Commissioner Miller acknowledged the receipt of a petition from residents on Ellis School Road requesting the County consider chip and seal for their roadway to diminish the dust.

Subject: Facilities Maintenance – Second Reading and Approval of Budget Revision (Housekeeping)

Commissioner Miller moved to approve the following budget revision:

Department Account and Title	Amount Decrease	Amount Increase
6101-86800: Emergency	\$1,100.00	
6101-23035: Expendable Supplies		\$600.00
6101-23050: Housekeeping Supplies		\$500.00
6101-59200: Local Mileage	\$400.00	
6101-23035: Expendable Supplies		\$400.00

Said budget revision is to transfer funds for needed housekeeping supplies.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 4-2002**

Subject: Planning and Zoning

Commissioner Stamper reviewed the procedures of the public hearing of Planning and Zoning issues.

A. Request by Anthony Scott and Beth Sebastian to rezone from A-R (Agriculture Residential) to R-M (Moderate Density Residential) of 1.62 acres, more or less, located at 6650 W. Sugar Creek Rd., Columbia

Stan Shawver stated this property is located one mile west of Columbia near the Highway 40/I-70 interchange. The property is zoned A-R (Agriculture Residential) as is all of the surrounding property. There is a tri-plex on the property that was built in 1971 prior to the adoption of zoning, which makes the structure a nonconforming use. This property is located in the Columbia School District. Electric service is provided by Boone Electric Cooperative. Water service is provided by Consolidated Public Water District No. 1. Wastewater is treated by a septic system. The original zoning for this tract is A-R. The master plan designates this area as being suitable for residential land uses.

Staff notified 14 property owners about this request. Staff recommends approval. Planning and Zoning Commission conducted a public hearing on December 20 and there were seven members present. At the public hearing, neighbors were present and were unclear about which property was in question. Planning and Zoning Commission made a motion to recommend approval of the request to the County Commission and that motion received unanimous support.

Commissioner Stamper asked what the intended use of the property would be after rezoning and would it bring the tri-plex into conforming use. Mr. Shawver stated the rezoning would be to bring it to conforming use.

Commissioner Elkin stated one of the concerns the neighbors had at the December 20 public hearing was that this property would be developed. Mr. Shawver stated some neighbors were concerned about development because an adjoining property owner was doing some clearing and thought this might be related.

Anthony Scott, 6650 W. Sugar Creek Rd., Columbia, stated the rezoning has been requested for refinancing purposes.

Commissioner Stamper opened the floor for a public hearing.

There was no one requested recognition to speak at the public hearing.

Commissioner Stamper closed the public hearing.

Commissioner Miller moved to approve the request by Anthony Scott and Beth Sebastian to rezone from A-R (Agriculture Residential) to R-M (Moderate Density Residential) of 1.62 acres, more or less, located at 6650 W. Sugar Creek Rd., Columbia.

Commissioner Elkin seconded the motion.

There was no discussion and no public comment.

The motion passed 3-0. **Order 5-2002**

B. Request by Ross and Natalina Nichols to rezone from R-M (Moderate Density Residential) to M-LP (Planned Industrial) of 5 acres, more or less, located at 1401 E. Prathersville Rd., Columbia

Mr. Shawver stated this property is located just north of the Columbia municipal limits. The property is zoned R-M (Moderate Density Residential) as is property to the north and west. Property to the east is zoned M-LP (Planned Industrial), and to the south is M-L (Light Industrial) and R-M. There is a single family dwelling on this property. The property is located in the Columbia School District. Electric service is provided by Boone Electric Cooperative. Water is provided by the City of Columbia. The application indicates that wastewater is treated by an on-site lagoon. There have been no previous requests submitted on behalf of this property. The master plan designates this area as being suitable for residential land uses. Staff notified 51 property owners about this request. The applicants have not filed a review plan, and it should be noted that, if approved, the zoning for this tract will not change until both a review plan and a final

development plan are submitted and approved.

In forming their recommendation, staff notes that there is a contractor's lot adjacent to the site, and that a planned industrial tract is to the east.

Staff recommends approval to the Planning and Zoning Commission. There was no opposition to the request at the Planning and Zoning Commission hearing on December 20. Planning and Zoning Commission made a motion to recommend approval of the request to the County Commission and that motion received unanimous support.

Kelly Sanders, present on behalf of Natalina Nichols, stated this lot is surrounded by industrial zoning. The applicant is ready to sell the house and they believe the property will have more value if it is rezoned to an industrial zoning than a residential zoning.

Commissioner Stamper opened the floor for a public hearing.

There was no one requested recognition to speak at the public hearing.

Commissioner Stamper closed the public hearing.

Commissioner Miller moved to approve the request by Ross and Natalina Nichols to rezone from R-M (Moderate Density Residential) to M-LP (Planned Industrial) of 5 acres, more or less, located at 1401 E. Prathersville Rd., Columbia.

Commissioner Elkin seconded the motion.

Commissioner Stamper noted that this is an isolated five-acre tract surrounded by M-L and M-LP zoning and it is not out of the ordinary that the landowner would want to rezone the property to a similar land use.

There was no further discussion and no public comment.

The motion passed 3-0. **Order 6-2002**

C. Request by Simon Development & Equipment Co. on behalf of the Ancient Free and Accepted Masons of the Grand Lodge of Missouri to rezone from A-2 (Agriculture) to C-GP (Planned Commercial) of 6.67 acres, more or less, and to approve a *Review Plan* for the development, located at 6100 N. Masonic Dr., Columbia

Mr. Shawver stated the original rezoning request was considered at the November 2001 meeting by the Planning and Zoning Commission. An original review plan was also considered at that time but the review plan was revised and resubmitted in December 2001.

Mr. Shawver stated the subject tract located just north of Columbia near the intersection of Prathersville Road and Highway 63. It is 6.67 acres in area. The property is undeveloped. The current zoning of the property is A-2, which is the original zoning. The property adjacent to this tract is also zoned A-2. Property on the south side of Highway 63 is zoned C-GP. The proposed use is the State Office for the Masonic Home of Missouri. A request to rezone the property to C-GP with a review plan showing a 44,000 square foot building was approved last month. Since that approval the applicant has revised their plans. They are asking for approval of a Review Plan to allow construction of a 53,000 square foot office building.

Water service will be provided by the City of Columbia, electric service is provided by Boone Electric. The property is within the Columbia School District. Sewer service can be provided by the City of Columbia if a pre-annexation agreement is executed. The developer will be responsible for design and construction of the main extension. The applicant has initiated the pre-annexation process.

The property has frontage on N. Masonic Drive, which is a paved, publicly maintained road. Traffic generated by the proposed office building will have a negligible effect on traffic circulation in the area.

The property scored 83 points on the rating system.

Staff recommends approval of the rezoning and review plan subject to the following condition:

Prior to approval of the final development plan, the applicant must enter into a pre-annexation agreement with the City of Columbia and provide documentation that the City will provide sewer service to the property.

Planning and Zoning Commission, following a public hearing on this issue on November 15, 2001, made a motion to approve the rezoning request. That motion received seven "yes" votes and one "no" vote. The Planning and Zoning Commission made a motion to recommend approval of the review plan on December 20, 2001. That motion received six "yes" votes and one "abstention" vote.

Commissioner Stamper asked John Patton, Boone County Counsel, if membership in the Grand Lodge is a conflict of interest. Mr. Patton stated he did not believe so.

Tim Reed, Engineering Survey and Services, stated they are preparing this plan on behalf

of the Masonic Home of Missouri. They conducted two separate neighborhood meeting which were held at the Scottish Rite Lodge. At the first meeting, there were only three neighbors present with questions about lighting. There was no one present at the second meeting. He believes this is a light use of the property and will be a significant asset for Boone County.

The plan shows a maximum of a 53,000 square foot building on one-level with a basement. It is to Mr. Reed's understanding that the building will be used as their state office and will have a Masonic Museum and Library.

Commissioner Stamper opened the floor for a public hearing.

There was no one requested recognition to speak at the public hearing.

Commissioner Stamper closed the public hearing.

Commissioner Elkin moved to approve the request by Simon Development & Equipment Co. on behalf of the Ancient Free and Accepted Masons of the Grand Lodge of Missouri to rezone from A-2 (Agriculture) to C-GP (Planned Commercial) of 6.67 acres, more or less, and to approve a *Review Plan* for the development, located at 6100 N. Masonic Dr., Columbia.

Commissioner Miller seconded the motion.

There was discussion between Commissioner Stamper and Mr. Shawver about the address of the property at hand.

There was no discussion and no public comment.

The motion passed 3-0. **Order 7-2002**

D. Request by Jim Hayes and Dean Mayfield on behalf of Bo Nagai for a permit for a massage parlor located at 5207 Hwy 763 North, Columbia (appeal)

Mr. Shawver 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.)

Mr. Shawver stated this property is located generally north the City of Columbia limits. The site is immediately west of a portion of land that has been annexed into the City. The site is approximately 1/4 mile north of the intersection of Brown School Road and Highway 763. The tract is 2.33 acres. The property is zoned C-G (general commercial). It was rezoned from R-S (residential single-family) in 1995. Land to the north is zoned C-G and was also rezoned from R-S in 1975. Land to the west and south is zoned

predominantly R-S and is developed as part of Shalimar Gardens residential subdivision. There is some commercial property mixed into the subdivision that is utilized by the modular home sales operation associated with Shalimar Gardens. This was also rezoned in 1975. Land to the east across 763 has been annexed into the city. The property currently contains a house, garage, and sheds. A building permit to convert the house into a commercial structure was taken out a few years ago but the conversion was not legally completed, then a permit to return the house to a residential structure was taken out which also was not legally completed. The structure currently does not have an occupancy permit for any use. After disposition of this hearing a permit will have to be taken out to bring the structure into compliance with county ordinances. This request is for a conditional use permit to operate a massage parlor/spa on the property. The planning office has received a number of complaints about the operation of a massage parlor on the property over the last few years both under the current and previous owners. Granting of a CUP would make the use legal at this location. The planning department file on this property is hereby made part of the formal record of this hearing.

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 staff has concerns related to criteria 1,2, & 7. Based upon the complaints received in the past from alleged massage parlor/spa activities conducted at the site staff feels it will be difficult for this request to meet all the 7 criteria. We have received complaints that clients of the operations on the property have been wandering the adjoining residential property disturbing the residents. This concern is related to criteria 1 & 2 as some of these incidents have been in the evening and late at night. With respect to criteria 7, there is an existing massage parlor operating in compliance with the zoning ordinance slightly to the north and east of the property of this request, across Highway 763, and so there is no public necessity for the proposed facility at this location, as any potential need should be already adequately served for the area. The existing massage parlor is buffered from the bulk of the residential uses in the area by Highway 763. Staff notified 92 property owners about this request.

Staff recommends denial of the permit, as it seems to be questionable that the request can meet CUP criteria 1,2, & 7. Should the commission decide to grant the CUP then the following conditions will be required to lessen impacts of the CUP.

- The hours of operation of the massage parlor/spa be limited to 10am to 10pm.
- That the use of the property be limited to the massage parlor/spa and the associated incidental residential use of the owner of the business only. No other types of additional commercial or other activity will be allowed on the property. A single structure shall be utilized for the massage parlor/residence.
- That the parking lot be lighted with lighting fixtures oriented with light directed inward and down so as to light the parking area. A lighting plan will be required that will have to be acceptable to the director of planning to minimize light trespass onto adjoining properties.
- That the existing pole-sign that was placed without a building permit be re-located behind any right-of-way line or utility easement. The owner is responsible to have the survey work performed to show the compliance of the sign with this condition.
- That it is recognized that all drive and parking areas will have to be brought up to a minimum of a chip-seal surface within 6 months of issuance of the conditional use permit.

The staff recommendation was for denial. Planning and Zoning Commission, after a public hearing on December 20, made a motion to recommend denial of the request. This motion received seven "yes" votes. The applicants did file an appeal in a timely fashion.

Commissioner Stamper requested Mr. Shawver to give a historic overview of this property because it does not have a conditional use permit or an occupancy permit. Mr. Shawver stated there has never been a request for an occupancy permit for this type of use. Commissioner Stamper asked if it was correct, at one time, there was a request to bring this property to commercial standards. Mr. Shawver stated that is correct.

Mr. Shawver stated the property was originally zoned residential. In 1995, the previous property owner requested it be rezoned to general commercial and the Commission

approved that rezoning request. This property was occupied for sometime by Tiger Fencing Company. The property was obtained in some way by another person who applied for a building permit to remodel for commercial use. They did not follow through with the permit and no certificate of occupancy was issued. The department requested several times that the property owners follow through with the items that were not in compliance with building codes. The property owners then wanted to change the permit back to residential use and did not follow through with this permit either. When the property was obtained by the present owners, the business was opened without any remodeling or an occupancy permit.

Commissioner Stamper stated under the Boone County Zoning Laws, such type of use that is being proposed would require a conditional use permit even in the general commercial district. Mr. Shawver stated this was correct.

Jim Hayes and Bo Nagai were present to testify in favor of issuance of the conditional use permit. Commissioner Stamper explained the applicant or agent of the applicant should offer any testimony that was not covered in the previous hearing, which would support their request.

Mr. Hayes stated they were not aware that the appeal would be heard and they had no notification of the hearing at all. He requested to postpone the hearing because Ms. Nagai seems to be having a problem convincing neighbors that this is not a massage parlor like the idea of a "massage parlor" is in Boone County.

Commissioner Stamper asked Mr. Shawver if he has any reason to believe there was no notice given to the applicant of the public hearing. Mr. Shawver stated the applicant filed the appeal as required the night of the Planning and Zoning Commission hearing. The applicants were informed that if an appeal was filed, the appeal would go before the County Commission on January 3, 2002 at 7:00 p.m. in the Commission Chambers and the applicants needed to be present at the County Commission hearing. Mr. Hayes stated he was unaware of this.

Ms. Nagai stated she did not know of this hearing this evening. If she did know about it, she would have an interpreter present and she would like to postpone this hearing.

Commissioner Stamper stated the Commission prefers if there is a request for a delay of an appeal to be requested before a hearing begins. There are people present to testify at this meeting. Commissioner Stamper explained why the applicants needed a hearing and be present for their appeal.

Mr. Hayes stated the only reason this request is being considered as a massage parlor is because Ms. Nagai has water showers in massage rooms. Mr. Shawver stated he did not know what Mr. Hayes is talking about.

Commissioner Stamper asked Mr. Shawver if the tapes and minutes were reviewed from the December 20, 2001 Planning and Zoning Commission meeting there would be notice of January 3, 2002 being the hearing date. Mr. Shawver stated the opening statement made by the Chairperson of the Planning and Zoning Commission explains the process of when hearings are to take place and no other notices are sent out. He found it interesting to notice all the other people that were present that did understand when the hearing was.

Ms. Nagai stated that she requested to speak with a lawyer.

Commissioner Stamper asked what was the pleasure of the Commission on the request to postpone this hearing.

Ms. Nagai stated she did not know anything about this hearing. Commissioner Stamper stated that from the minutes of the December 20, 2001 meeting, Ms. Nagai was more expressive and understand than she is being at this meeting. He is not convinced there is any confusion in the reason behind postponing this hearing.

Commissioner Elkin stated based on the testimony from the Planning and Zoning Commission meeting, he does not believe there is anything that could be added that would justify delaying this hearing. He suggests moving forward with this hearing.

Commissioner Miller agreed to proceed with the public hearing on this issue.

Commissioner Stamper noted for the record that the County Commission has heard the request for a delay and they are unwilling to provide a delay at this time. The applicants should offer at this time any testimony in support of the appeal, which was filed.

Mr. Hayes stated they have nothing more to add to what was said at the Planning and Zoning Commission.

Commissioner Stamper asked Mr. Hayes if he would submit the testimony that was given on December 20, 2001 as testimony for this meeting. Mr. Hayes stated yes.

Commissioner Stamper asked if there were any questions for the applicant. Commissioner Stamper asked the applicant to explain the water issue. Mr. Hayes stated when he spoke with Thaddeus Yonke, Boone County Planning and Zoning, about why this business was considered a massage parlor. Mr. Yonke told Mr. Hayes that because of the use of a Jacuzzi and a shower that these are the reasons this business falls under the massage parlor regulations.

Commissioner Miller asked why Ms. Nagai is going to school for her massage therapy license if she will not be operating a massage parlor. Ms. Nagai stated she has a Jacuzzi, sauna, and other items and this is the reason she needs a license. She contacted a friend in Boonville who told her that she did not need a business license or anything like that, she

just needed to pay the taxes. Ms. Nagai took over the business in October 2001. She stated she was told that because she uses the Jacuzzi and shower she needs a massage license. Ms. Nagai stated she does not do massages. Before she took over the business if she would have known about any of this she would not have moved to Columbia. She does not know what a massage parlor is. Ms. Nagai stated she did not know about the hearing and if she would have known, she would have gotten her lawyer or interpreter to come with her to the meeting.

Commissioner Stamper stated an application for appeal was filed and there was no one else that could have done this for her. Ms. Nagai stated she was told she would receive a letter about the hearing and never did. The only reason she knew about the hearing is because Didi Tang, reporter for the Columbia Daily Tribune, went to Ms. Nagai's house this morning.

Didi Tang stated she was working on a story about this issue and she contacted Ms. Nagai. Ms. Nagai stated she received a telephone call from Ms. Tang and asked Ms. Tang to call later. When Ms. Tang did call, she informed Ms. Nagai about the hearing.

Commissioner Miller asked Ms. Nagai if this was not a massage parlor, what does she do at her business. Ms. Nagai stated she did Jacuzzi, sauna baths.

Commissioner Miller asked if there were massage tables at her business. Ms. Nagai stated that was correct.

Commissioner Miller asked why there were massage tables if she did not do massages. Ms. Nagai she has vibration table and massage mats. People at the sauna use these for relaxation.

Commissioner Stamper asked for additional testimony from the applicant. They offered no more additional testimony.

Commissioner Stamper opened the floor for a public hearing on the request by Jim Hayes and Dean Mayfield on behalf of Bo Nagai for a permit for a massage parlor located at 5207 Hwy 763 North, Columbia.

Kimberly Buxton, 5080 North Burning Bush Road, stated her property is directly west of the property requesting the permit. Ms. Buxton stated this is a massage parlor. Traffic is frequent around the property and happens at all hours of the day. To the best of Mrs. Buxton's knowledge, massage therapists work doctor's hours and are not open for business at 4:00 a.m. She did a search on the Internet for Rangeline Sakura Spa. The results from this keyword search were World Sex Guide – The Ultimate Escort Director: North America / United States / Missouri. This print out was submitted to the public record.

Mrs. Buxton stated last July the Sheriff's Department knocked on her door and asked if they could search for bloodstains in her backyard because there had been a shooting in the middle of the night. She operates a child care facility in her home and Ms. Nagai is constantly chasing her dogs in Mrs. Buxton's backyard. The parents of the children she watches ask questions about Ms. Nagai and what she is doing. Mrs. Buxton has five children of her own and does not like the negative influence of the business.

Sheriff Ted Boehm stated that he testified at the Planning and Zoning Commission meeting on December 20, 2001. He would not repeat any testimony from the Planning and Zoning Commission meeting but what he was trying to do was compare one commercial business to another commercial business in the same neighborhood. Sheriff Boehm was notified an appeal was filed and is present to answer any questions the Commissioners have on the statistics he presented at the Planning and Zoning Commission meeting.

Sheriff Boehm also reviewed previous law enforcement concerns before any of this taking place. In 1998, there was no such thing as a massage parlor or spa at the 5207 Highway 763 North location. There were four reports taken in the stretch of commercial businesses. In 1999, when the first massage parlor opened at the address in question, the number of reports taken increased to fourteen. Only six of the fourteen reports taken were from other businesses in the area, the remainder of the reports were taken from Abby's Massage Parlor.

Sheriff Boehm noted that the statistics given at the Planning and Zoning meeting was that of the past, trying to reflect what the Sheriff's Department has experienced in the Prathersville area with this type of business being there. In the appeal, Sheriff Boehm was advised of a statement made about no police have been at the address for one and one-half years. Sheriff Boehm submitted to the public record a report taken at 5207 Highway 763 North in 2001. This report was in reference to a theft of property from that location. The report is in reference to a stolen Rolex watch, valued at \$18,000. The victim of this is Bo Nagai. During the investigation of the theft, there were people from Texas, Colorado, South Africa, Columbia, and the Kansas City area at the location. In the follow up of this theft, the Sheriff's Department contacted the victim again and she wanted no part of police involvement.

The Sheriff's Department has been at the address in 2001 regardless of what has been stated in the appeal. Someone contacted the Sheriff's Department in reference to their safety and requested to do drivebys at 5207 Highway 763 North. A follow up was done on the theft investigation. The Sheriff's Department received a request for a check on a suspicious person. They received a 911 call from 5207 Highway 763 North and the Sheriff's Department responded with no one willing to come forward to discuss why 911 was called.

Sheriff Boehm stated the Sheriff's Department does not make up these reports just to fill

their files, these are real reports. Sheriff Boehm finds it interesting that one day there was a report of a \$18,000 Rolex watch and a few days later the victim did not want anything to do with law enforcement, this is the reason this case was inactivated.

Larry Benton, 2900 Chinaberry Drive, owns Benton Homes and is the developer of Shalimar Gardens. Mr. Benton stated he testified at the Planning and Zoning Commission meeting and will not repeat anything from that meeting. He believes a conditional use permit for a massage parlor would affect property values in Shalimar Gardens and be detrimental to future development of Shalimar Gardens. More importantly, there are a lot of children in Shalimar Gardens and this is not the type of business would be appropriate to be located next to a subdivision.

Julie Fairchild, 5111 N. Burning Bush Road, stated she would like to testify in opposition to the appeal. Mrs. Fairchild stated the neighbors know what this business really is, the applicants know what this business really is, and she does not want this in front of her subdivision. It brings bad elements into the neighborhood and makes her fearful for her life. She does feel that it diminishes her property value and does get in the way of the enjoyment of her property. She is embarrassed when she turns into her neighborhood or is giving directions to her house; to get to the neighborhood, make a turn at the massage parlor.

Ronda Benton, 5021 Lotus Loop, is the secretary of the homeowners association of Shalimar Gardens. Mrs. Benton submitted a print out of Escort Reviews from the World Sex Guide web site and submitted this for the public record.

Mr. Shawver stated the Planning and Zoning Commission received a petition in opposition to this request and submitted the petition to the public record.

Commissioner Stamper closed the public hearing and invited Ms. Nagai back to the table to offer any rebuttal to any of the comments just made.

Ms. Nagai stated she heard that anyone can put anything they want on the Internet and not everything should be believed. She told a story about a time when her dogs got out of her yard and the neighbor behind her, Mrs. Buxton, tied the dogs up.

Commissioner Stamper asked Ms. Nagai to refocus her testimony.

Ms. Nagai stated she took over the property in October 2001. Her friend told her that the neighbors did not like the business there because they believed the business to be a warehouse. She explained the translation of Sakura. Sakura is Japanese for flower. She stated she has done nothing wrong and does not bother anyone. If the neighbors are curious about what she is doing, they are welcome to come into the house and look around.

Commissioner Stamper asked if the business was listed in the telephone book. Ms. Nagai stated she just opened the business in October 2001.

Commissioner Stamper stated he had a copy of the wanted advertisements from the Columbia Daily Tribune from December 2, 2001. Ms. Nagai explained that the previous owners business and her business are different. She did not understand the effect on her business and has continued to run the advertisement in the paper. The previous owner did not and Ms. Nagai does not have advertising in the Yellow Pages.

Mr. Hayes stated that he did not believe that the Sheriff's Department has been at the property.

Commissioner Miller stated that she was sorry that Ms. Nagai did not understand the rules and regulations of Boone County. All the evidence that has been presented goes against the claim that Ms. Nagai does not own a massage parlor. In looking at the Planning and Zoning meeting records, Ms. Nagai had identified her business as a day spa. Daytime is daytime hours and is not twenty-four hours. She does not believe that this hearing would be necessary if this business was a day spa. In listening to the testimony this evening and reading the testimony from the Planning and Zoning Commission, Commissioner Miller believes that there are four requirements for a conditional use permit that do not apply towards this request.

Commissioner Elkin stated the Commissioners sit at the table month after month and are presented a variety of zoning requests. In looking over the Internet sites submitted of inappropriate activity going on at this address, he believes it is making a mockery of what the Commissioners are here to do and is insulted because of this. He does not support the request.

Commissioner Stamper stated this issue at the table is land use. All the sex issues, dog issues, and other issues that have been brought forward this evening, the request is about land use and whether this is an appropriate land use. There is a history on this property. He stated he could not support the request because he does not believe that this is an appropriate land use.

Commissioner Stamper explained to the applicants that the business in which is being hosted in this facility is a nonconforming use. Under County Zoning Regulations, it is illegal. If the business continues after the motion is made to deny the request, then it will be forwarded to the Prosecuting Attorney's Office where they would pursue prosecution on a noncompliance with the Zoning laws. This is a significant event that is about to happen and he does not know how to explain this to the applicant. If a motion is made to deny the request, the activity on the property would have to cease.

Commissioner Miller stated the signs need to be taken down immediately and the whole issue needs to be dealt with. She explained that it would not have matter if Ms. Nagai had

an attorney for this hearing. There could not have been enough evidence brought forward that would make her feel like this request for a conditional use permit should be approved.

Commissioner Elkin moved to deny the request by Jim Hayes and Dean Mayfield on behalf of Bo Nagai for a permit for a massage parlor pending submission of findings of facts and conclusions of law, located at 5207 Highway 763 North, Columbia.

Commissioner Elkin noted the following conditional use permit criteria were the reason for denial of the request:

- Criteria 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.
- Criteria 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, and
- Criteria 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.

Commissioner Miller seconded the motion.

Commissioner Miller added Criteria 3: The conditional use permit will not substantially diminish or impair property values of existing properties in the neighborhood.

There was no discussion or public comment.

The motion passed 3-0. **Order 8-2002**

Commissioner Stamper stated the appeal has been denied and asked if the applicants had any questions. The applicants had no questions.

There was no public comment.

The meeting was adjourned at 8:12 p.m.

Attest:

Don Stamper
Presiding Commissioner

Wendy S. Noren
Clerk of the County Commission

Karen M. Miller
District I Commissioner

Skip Elkin
District II Commissioner