

TERM OF COMMISSION: June Session of the May Adjourned Term

PLACE OF MEETING: Boone County Government Center Commission Chambers

PRESENT WERE: Presiding Commissioner Don Stamper
District I Commissioner Karen M. Miller
District II Commissioner Linda Vogt
County Counselor John Patton
Deputy County Clerk Ashley Williams

The regular meeting of the County Commission was called to order at 9:30 a.m.

SUBJECT: Request by Ron and Teri McBee to rezone from A-2 (Agriculture) to C-GP (Planned Commercial) and to approve a Review Plan on 8.17 acres, more or less, located at 15160 N Old Hwy. 63 North, Sturgeon

Planning and Building Inspections Director Stan Shawver reported that the land in question was 8.17 acres at the intersection of highways 63, 124 west and Old Hwy. 63 North. The property had become an island of land separated by highways. There was an old house and a couple of buildings on the land. The request was to rezone from A-2 to Planned Commercial and the McBee's had submitted a plan for a convenience store type facility. Staff notified 20 property owners and there had been no opposition to the request. The Planning and Zoning Commission had approved the request. Mr. Shawver explained that the issue had been brought to the Commission on May 27, 1997 and because the Commissioners had some questions and the applicant was not present, the issue was tabled.

Ron McBee told the Commissioners that the eight acres were surrounded by state highways and had no other use than to build a convenience store. He said if the request is granted then he would come forth with a more detailed drawing.

Commissioner Stamper convened a public hearing. No one spoke in favor or in opposition and the hearing was closed.

Commissioner Stamper told Mr. McBee it was his understanding that the land had been targeted for acquisition by the state highway department for an interchange and that they considered it commercial property and would pay commercial values.

Mr. McBee said that he had not been contacted by the state highway department.

Commissioner Stamper said he was concerned that if the property was rezoned, the Commission would be in the position of approving a plan that might alter the highway department's intentions. He said if they put a building there, the highway department would be forced to buy it and he understood that the acquisition had been targeted for some time in the next twelve to eighteen months.

Mr. McBee said he wished they would contact the landowner.

Commissioner Vogt said it was her understanding that if the state highway department had stated their intention to acquire the property at its commercial value they would not be responsible for purchasing a building and could even condemn the property.

Mr. Shawver said he had seen a copy of the plan provided by the highway department. While he hadn't asked the department if they had contacted the owners, he said that the land had been surveyed and that when crews survey a right of way it's fairly common knowledge in a neighborhood.

Mr. McBee said that some property purchased across from them had been zoned A-2 and that it was not their intention to set a building on the site next week. He said they would wait for the highway department to contact them about the land, but wanted to make sure they also saw the land as commercial property.

Commissioner Vogt moved that the County Commission of the County of Boone approve the request by Ron and Teri McBee to rezone from A-2 (Agriculture) to C-GP (Planned Commercial) 8.17 acres, more or less, located at 15160 N Old Hwy. 63 North, Sturgeon.

Commissioner Miller seconded.

Commissioner Stamper said he didn't have any problem doing this, but he hoped the Commission didn't find themselves faced with building permits for the property. He reminded Commissioner Vogt that she had failed to include approval of the review plan in her motion and asked that the original motion be stricken.

Commissioner Vogt moved that the County Commission of the County of Boone approve the request by Ron and Teri McBee to rezone from A-2 (Agriculture) to C-GP (Planned Commercial); contingent that no building permits be issued for the property in the next 24 months and to approve a Review Plan on 8.17 acres, more or less, located at 15160 N Old Hwy. 63 North, Sturgeon and authorize the Presiding Commissioner to sign the plan.

Commissioner Stamper seconded.

Mr. McBee said it was not their intention to build immediately on the property.

Commissioner Vogt said it was her intention to ensure that.

Motion passed unanimously. **Order 235-97.**

SUBJECT: Maintenance of roadway and bridge

Commissioner Vogt reported that Darren and Michelle Hombs were in attendance to discuss a section of graveled road off of Route F that they feel is a County road. Commissioner Vogt said that she had met several times with the Hombs' and other people about this section of road and that not unlike many other County roads, this road is not accepted for maintenance. She said she cannot find any easements or rights of way or a name for the road. It does, she said, appear on a 1938 map before Highway F was built. A bridge on the gravel road washed away a few weeks ago and the Hombs' have been using a low water crossing they created as a detour. The Hombs' told Commissioner Vogt that the County had applied rock to the road up to the bridge in 1990. She said she has reported on this issue several times during Commission meetings.

Commissioner Stamper said that he and Commissioner Miller had toured the area this morning.

Public Works Director Frank Abart said that there was a 1938 map indicating the roadway was established as a public road at that time. Information from the state highway department shows the 1953 plan when Route F came through the area. Mr. Abart said there was no indication in the County records to show that the road was dedicated or vacated, there was just the 1938 map showing it as a public road. Mr. Abart said that two employees, one current motor grader operator as well as the motor grader operator prior, ever remember graveling or maintaining that road way. That information, he said, dates back to 1977, making it at least 20 years since the County has been on that road. Mr. Abart guesstimated there are 50-100 miles of public road currently in Boone County that are not maintained by the County.

Darren and Michelle Hombs, 17401 North Route F, Harrisburg, presented the Commissioners with a petition of 150 names in support of the replacement of the bridge on the Old Rocheport to Renick road. The packet of information outlined the fact that the bridge, providing the only access to their farm, washed away on May 25. The concern was for Leon Hombs, Darren's grandfather, who lives at the end of the road and requires daily medical attention.

Ms. Hombs said that she and her husband purchased the farm two years ago and that Leon Hombs had purchased the farm from his parents in the early 1940s. The abstract accompanying their deed dates back to the early 1930s. She said that four generations of Hombs' had lived on the property.

Ms. Hombs said that the road, prior to the construction of Route F, had been the main road of travel between Rocheport and Renick.

Commissioner Stamper asked if the Hombs' would provide the Commission with the deed or any information in the abstract that might identify the number of feet in the road. He explained that they needed some evidence that the road is the responsibility of the County.

Mr. Abart confirmed that the Public Works staff had found nothing denoting the roadway in their records.

Ms. Hombs asked if it was possible if work had been done to the road, but not recorded. She said the County used to maintain the entire distance of the road, but in 1990 only graveled up to the bridge, but would not cross the bridge because they felt it was unsafe. Ms. Hombs said that they created a low water crossing next to the bridge to accommodate hay equipment that was wider than the bridge. All cars and trucks used the bridge. She said they had been using the low water crossing since last Sunday when the bridge washed away.

Verdell Stidham, 15231 North Hwy. NN, Sturgeon, said that he and his wife own a farm that joins the Hombs' farm. Mr. Stidham said he was 77 years old and used to travel that road when he was first dating his wife. There was a bridge to the north and a bridge to the south and when they built Route F they did away with part of the gravel road. He said that the Hombs' had kept the little bridge up all this time and he doubted the County had spent anything on it. Mr. Stidham said the Hombs' had built the low water crossing because the bridge wasn't wide enough and that until the bridge washed out, the mailman had been delivering mail to the mailbox right up to Mr. Hombs' house. He said that all that was needed is a culvert with a rock pile around it. Mr. Stidham said the Hombs' had a right to a new bridge, they pay taxes and that the bridge needed to be fixed for them.

Commissioner Stamper said it was Mr. Stidham's presumption that the road was a County road.

Mr. Stidham said it had been a County road for longer than he could remember.

Commissioner Stamper said the County hadn't maintained the road in several decades.

Mr. Hombs' said that the road has been in continuous use.

Commissioner Stamper asked if the road hadn't become a driveway.

Mr. Hombs' said it was a County road to the end of their driveway and the mailbox is at the end of the County road.

Commissioner Stamper reiterated that the Commission needed evidence that the road had been a County road.

Mr. Stidham said if he said it was a County road, that should be evidence enough.

Commissioner Stamper suggested that Mr. Stidham listen while he talked. Was, he said, is the key word. Commissioner Stamper said that there may have been an arrangement made when they put in Route F that the graveled road was abandoned. However, he said, any documentation of such an abandonment has not been found.

Mr. Stidham said the County couldn't do away with a road that went to someone's house.

Commissioner Vogt said she had repeatedly asked the Hombs' to show an abstract or any kind of documentation to show that the County is responsible for the road. So far, she said, the County has nothing to show it is responsible.

Dwayne Hombs, 700 West Carr Lane, Harrisburg, said that his father bought the property in 1944 and that the road had been highly traveled in those days. Before they put in Route F, the road was the route from Highway 63 to Harrisburg between Highway 124 and Route J. When they put in Route F, from Harrisburg to Highway 63, the road virtually followed where the old road had

gone. The only difference in the route is that had they followed the gravel road, they would have had to build two bridges. Branching off, there was only one bridge needed. Mr. Hombs' assumed that was why the road was moved. Route F was built past their home in 1955 when Mr. Hombs' was a young boy, but to his recollection, there was never any agreement, written or verbal, about how the Hombs' would access their house. The County road went between their house and the barn on the north.

Ms. Hombs said that when Granddad Hombs built the house, there was no question as to how to access the house because the County road went right by it. At the time, she said, there was no question that it would not be maintained and was the reason why they built where they did.

William Fenton, 1567 North Route F, said he had lived in the area most of his life. His grandfather lived where he now lives and he can remember traveling the road in question, which was the only road that went through there. Mr. Fenton was sure that Mr. Hombs' didn't build a house 100 feet from the road only to have Route F bypass it and leave him stranded. Mr. Fenton said that because the Stidhams' were on one side of the road and the Hombs' were on the other the County road has two owners. Mr. Fenton said that when he was young, the gravel road was traveled long after Route F went through.

Ms. Hombs' said the reason their family was the only one left on the road was because everyone else has access to Route F. For the Hombs', she said, the gravel road is their only way to Route F.

Danny Stidham, 7575 North Route F, also said the road had been one of the main roads in the area, otherwise, he argued, there would not have been a need for a state road to take care of the excess traffic. He said the Commission couldn't say that the road hadn't been graveled and that the County did not have any easements or rights of way.

Commissioner Stamper said that if there was documentation of graveled the road, there would be no question it had been a County road.

Mr. Stidham said that the road had been maintained before the County documented things on paper.

Commissioner Stamper explained that if the County spent money on anything, there was a paper trail to document it.

Mr. D. Stidham said the County had maintained the bridge and road. He said Michelle had already said that the County had graveled the road up to the bridge in 1990. The mail man, he said, has never stopped traveling the road to deliver the mail. He said there were a lot of County maintained roads that the mail man wouldn't even travel.

Commissioner Stamper said he did not think that was an accurate statement. He said there were other examples where a roadway was once used for public purposes, usually where an improvement was made, the roadway was abandoned and is now in the condition that this one is in.

Mr. D. Stidham asked if Commissioner had been to the road this morning and if it was grown over.

Commissioner Stamper said, yes, sir, he had been to the road that morning. He cited Lomar Lane with its documented evidence that it had been a public bridge, yet the lane today has grown over. He said the question is how to address this problem.

Mr. D. Stidham said that two big tubes have been installed at Carr Road. He said that this was a driveway to one man's house and there was no reason it couldn't have been kept up. Mr. Stidham said that Bill Carter, a County maintenance worker was still living and could testify as to how many times he'd worked that stretch of road. Mr. Stidham said he thought Mr. Carter's mind was still good.

Mr. Fenton said that some of the roads maintained by Boone County are dead ends. He said that Lomar Lane in front of Mr. V. Stidham's house is 1/4 mile long and the County maintains the bridge and road there.

Commissioner Stamper said he recalled Mr. V. Stidham didn't want the County to maintain that road.

Mr. V. Stidham said what he'd told the County and what he meant was to maintain the road to his little house. He'd had to gravel the road when his oldest son was born and liked to keep the gravel high in the middle. When the County maintained it, he said, they'd leave it muddy. That's why he maintains it, he said. Mr. Stidham said he'd paid for every little rock on that road and the County had raised Cain, but he said he pays taxes on some 500 odd acres and deserves something from the County.

Mr. D. Stidham said that the road hadn't cost the County money and that Mr. V. Stidham had paid for the rock down to his house since the 1940s.

Commissioner Stamper said there is documented evidence that Lomar Bridge is a County responsibility.

Ms. Hombs' said that Granddad Hombs had tried to close the gravel road that passed in front of his house, but some of the neighbors threw a fit. She said he never tried to press the issue after that.

Commissioner Vogt said that the attitude seemed to be that the County had the right to pick and choose what roads are maintained and what roads aren't. In Boone County, she said, there is a manual that says how roads will be built and there are policies that allow the Commission to accept or to not accept roadways for maintenance with public funds. The policies, she said, protect the public money. Commissioner Vogt said that from the Commissioner's side of the table, they needed documentation, a reason to approve or disapprove the request.

Richard Primus, Harrisburg, said as a former commissioner, he'd been on the other side of the fence for nine years. It seemed to him, that he had not been shown where the road was abandoned or closed and that it was not the Hombs' responsibility to prove that the road is open, it was the County's responsibility to prove that it had been closed. He asked for documentation showing the road had been closed.

Commissioner Stamper said he had no proof it had ever been opened.

Mr. Primus asked if the over 100 signatures who remember the road as a County road were of any value.

Commissioner Stamper said the names were valued, but that the Commission needed documentation. The issue, he said, is the possibility of setting a precedent and told Mr. Primus that, surely, as a former commissioner, he could understand that the Commission would be opening themselves to the possibility of maintaining a road every time 100 signatures were brought before the Commission.

Mr. Primus said that local people remembered the road as a County road. He asked what the state statutes said, that if the road had been used for ten continuous years, it was a County road. He asked if the County could abandon a road without notifying the citizens.

Commissioner Stamper said that it happens all the time. He cited old Highway 63 and said that it the County hadn't picked it up for maintenance when the state build the new Highway 63 the road would have disappeared not from intention, but from neglect.

Mr. Primus said he could understand the road being abandoned, but was sure there had been some kind of an agreement or way of notifying people.

Bud Stone, 907 East Nance Drive, Columbia, said he had known the Hombs' for several years and could remember commenting his surprise that Leon's mail was delivered at the house. He said

that the post office has considered the road a County road for years. Just because somebody didn't write down that it had been closed or opened was not important, he said. Nobody bothered to send the Hombs' notification that the road had been abandoned. Everyone assumed, he said, that the road was still recorded because the post office continues to deliver the mail.

Commissioner Vogt said she was curious as to why the post office still used the road.

Mr. D. Stidham said the post office delivers down every County road.

Commissioner Stamper said they seemed to be at an impasse. He said the Commission needed to look for additional documentation and check into the possibility of the formation of a special road district in the area. He asked Mr. Abart to look at the abstract for hints and to meet with the state highway department again to see if there are additional records on the Route F construction. He said the Commission would take another look at the documentation and bring the discussion back to the public agenda within the next 10 working days.

Ms. Hombs said that her concern, her emotional concern, was that Granddad Hombs needs nurses every day. In the nine days, she said, since the bridge washed away last Sunday, he had only received care on two days and that was only because she and Darren had met the nurses at the main road and driven them to the house. What if, she asked, we have a fire, what if Granddad needs an ambulance. We would have to watch our home and barn burn, she said. Right now, they have an electric line down and she said they had called Boone Electric. The electricity from that line electrifies the west pasture fence. She said they couldn't move their cows to the west pasture because Boone Electric wouldn't travel their road. God forbid, she said, Granddad suffers a stroke or there's a fire and they are left... She said it blows her mind the thought that they would have to pay for a bridge across the road.

Commissioner Stamper said that Boone Electric and the fire department could not have used the bridge in its original condition, anyway. He said he had tremendous faith in the capacity of air ambulances and in the capacity of the fire district in Harrisburg and the County. He said he was confident they would find a way to respond, but they could not have ever used the bridge. Commissioner Stamper said he understood that the lack of a visiting nurse is a concern and suggested that Granddad Hombs be relocated until the issue was resolved. He said that even if the issue was decided tomorrow, it would still take time to fix the bridge. He said if the Hombs' had any concern for public health or public safety to not to hesitate to call the Commissioners office.

Mr. D. Stidham said that before the bridge washed out, the emergency agencies could have traveled right across it. He said there was nothing left for the Commissioners to see this morning. Gas trucks, propane trucks and beans were hauled across that bridge. He said there was no doubt in his mind that the emergency agencies could cross the bridge.

Mr. V. Stidham said again that there was no doubt in anybody's mind that the road had been a public road.

Commissioner Vogt said they were not debating the fact that the road had been used by the public in the past. The debate, she said, and the issue was the lack of documentation to say that in 1997 the public is responsible for maintaining that road.

Commissioner Stamper said the road had not been maintained by the public in many, many years.

Mr. V. Stidham suggested that Commissioner Stamper was born in a different generation gap.

Commissioner Stamper said he was getting older by the second.

Mr. V. Stidham said that the Commissioners had forgotten about the rural people and the old boys who were out there every year. He said they spent County money at the fairgrounds or on the MKT Trail and said they didn't even know where half of the roads in the County were.

Commissioner Stamper said he took exception to those comments, but that Mr. Stidham was entitled to his opinion. He asked that the discussion refocus on the question of the roadway.

Ms. Hombs said that she didn't understand how Commissioner Vogt could have said she was not responsible for decisions made prior to her term of office. She said that her family could not be held responsible for not pursuing this issue in the past.

Commissioner Stamper said they had agreed to do the best they could and to look for documentation outlining the County's responsibility and to return with that documentation in ten working days. He said he didn't want the discussion to deteriorate into an argument and asked that the discussion be continued on June 17 at 9:30 a.m.

County Counselor John Patton said the confusion was simple. Just because the road has been used as a public roadway, he explained, does not mean that the County is required or can expend money on it. A public roadway must be established by a County court order or it had to have been a public road used by the public for ten years or more. Many County roads were created in the 19th century by people who used cow paths. There is no documentation for them, he said. Some of those roads, however, were opened by County court order according to state statutes. Mr. Patton said that the law is very clear that County government cannot spend money for the maintenance of public roads unless established by County order or if the County is currently spending money to maintain it. He said if he opened a road and let people use it for ten years it would become a public road, but it wouldn't become a County responsibility.

Mr. Dwayne Hombs said there are four bridges on the old road, all beams and concrete. The road, he said, has always been gravel. He said he knew it wasn't done by one neighbor graveling one section and the next neighbor graveling the next section. He said that was evidence that it wasn't neighbors building bridges and graveling roads.

Commissioner Vogt said she did not mean to imply she was not responsible for past Commissions. She said as a Commissioner she had responsibility and authority for past commissioners. However, she said, she could not know history if it hadn't been written down. She said she was not debating the truth in what these folks were saying, she just didn't have any history, or documentation on the road.

Commissioner Stamper said that that would be the final word on this matter.

SUBJECT: Agreement with Joint Communications Information Center for Staffing of the Enhanced 911 System

Commissioner Vogt moved that the County Commission of the County of Boone approve the agreement between the County and the City of Columbia for \$17,532 to fund the three-quarter time Administrative Support Assistant I position for the purpose of entering information supplied by citizens of Boone County to the enhanced 911 system, and performing other duties related to the enhanced 911 system. The County agrees to fund the position from January 1, 1997 through December 31, 1997.

Commissioner Miller seconded. Motion passed unanimously. **Order 236-97.**

SUBJECT: Award Written Bid for Termite Control for Shed Behind the Johnson Building

Commissioner Miller moved that the County Commission of the County of Boone award a bid to Denning Pest Control for termite treatment services at the shed located behind and north of the Johnson Building, 601 East Walnut: drill and treat exterior slabs and interior walls along foundation walls as well as interior slab offset for a lump sum amount of \$500.

Commissioner Stamper seconded. Motion passed unanimously. **Order 237-97.**

SUBJECT: Budget Revision for New Chair in the Treasurer's Office

Commissioner Miller moved that the County Commission of the County of Boone approve the following budget revision:

Dept.	Account	Account Title	Transfer From	Transfer To
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1140	91000	Task Chair		\$360
1123	86800	Emergency Fund	\$360	

Explanation: The Treasurer’s office was shorted one chair when we moved into new building, we have been using an executive chair from the Recorder’s office. This chair is too high for the new employee, therefore I would like to purchase one that fits the employee. I have tried one from the Clerk’s office and we have found one that would fit and be more comfortable.

Commissioner Stamper seconded. Motion passed unanimously. **Order 238-97.**

SUBJECT: Issues Regarding Proposed Competition in the Electric Industry

Commissioner Stamper reported on a memo from Municipally Owned Utilities Richard Malon, Director Columbia Water and Light and Rural Electric Cooperatives Bob Alderson, Executive V.P. Boone Electric Cooperative dated May 28, 1997.

SUBJECT: Reappointments to the Boone County Waste Committee and the Building Code Commission

Commissioner Vogt moved that the County Commission of the County of Boone approve the following reappointments: Llona C. Weiss for a three year term to the Boone County Solid Waste Committee; Steve Koivtyohann, Brian J. Pape and Steven Paulsell to two year terms on the Building Code Commission.

Commissioner Miller seconded. Motion passed unanimously. **Order 239-97.**

SUBJECT: Reports from Commissioners

Commissioner Miller said she had received a request from Crockett Engineering regarding the Pride Soccer Club. The request was to change the grade on 20 feet of the hillside next to the jail property. She said it would take two feet of County property, would save the soccer club \$10,000 and would not really affect the County land. She asked that the Public Works department take a look at the situation and to report back to the Commission.

Commissioner Vogt reported on information from the University of Wisconsin on a storm water seminar to be held in June and asked that the Public Works department send a representative to the seminar.

Commissioner Stamper reported that he had met with a group to discuss the downtown’s special business district request for payment in lieu of taxes. The bottom line is, every time public space is acquired downtown it has a negative affect on the downtown revenue. They are asking the County for \$7,500. He is discussing the issue with Boone County Auditor June Pitchford.

The meeting adjourned at 11:05 a.m.

Attest:

Wendy S. Noren
Clerk of the County Commission

Don Stamper
Presiding Commissioner

Karen M. Miller
District I Commissioner

Linda Vogt
District II Commissioner