

TERM OF COMMISSION: September Session of the August 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 7:05 p.m.

SUBJECT: Request by United States Cellular Corp. to increase the height of an existing transmission facility (cellular tower) from 190' to 240', located at 7130 Wehmeyer Road, Columbia. (Approved September 1, 1992)

Planning and Building Inspections Director Stan Shawver reported that the property is located approximately 2.5 miles west of Columbia on Wehmeyer Road, just south of the intersection with Sugar Creek Road. The property is zoned A-2 (Agriculture) as is the land located to the east, south and west. Land to the north is zoned A-R (Agriculture Residential). There is a transmission facility for cellular telephones on this property that includes a 190' tower. The applicants are requesting a permit to allow a taller tower that will provide collocation for multiple cellular services. The Master Plan designates this area as being suitable for residential land uses. If cellular service is considered a utility, then the proposed use is consistent with the plan. The existing transmission facility was approved in September 1992 and complies with all requirements of the Boone County Zoning Regulations. Staff notified 17 property owners concerning this request. The request was approved on September 18 by the Planning and Zoning Commission, with the condition that it meet all Boone County Requirements and that the applicant understands they must acquire the land or fall easements.

Stephen Kissel, Manager-Real Estate and Construction for Ameritech Cellular Services and Dennis Paul, President of Prime Site International approached the Commission as representatives of the applicant.

Mr. Kissel said they were appearing on behalf of U.S. Cellular and were requesting a height extension for an existing tower. Mr. Kissel explained that they had approached the issue from a land use stand point and that Boone County ordinances were specific in their requirements. Typically, he said, the company is not involved in collocation, but had found a collocater, as required by the ordinance. That relationship, he said, has also allowed them to work with U.S. Cellular on property on the eastern side of the county where they have managed to collocate two companies, as well. This site, he explained, has some challenges, and that's what they were here to discuss. Mr. Kissel said they appreciated the presence of concerned neighbors and that they had tried to provide them with more detailed information, like distances from the tower structure and their homes.

Mr. Kissel showed an exhibit that addresses the distances from the tower to neighboring structures. The existing tower is 190'. The request for a 240' tower will allow for maximum coverage, eliminating the need for other towers and applying the principle of having two users at the same location. He said that the tower needed to be taller, or they would have to come back to the Commission for future towers. The benefit of collocation is that it lessens the need for equipment, making the costs more practical.

Mr. Kissel said that the neighbors had expressed concerns regarding the structural integrity of the tower. He assured the Commissioners that if the tower cannot be raised properly it will be replaced with a freestanding or guyed tower. Nothing would be added to the tower if it didn't meet their standards. He said that they felt there was not a great risk of any kind of failure and that Ameritech had had no experience with failure in any of their five state markets.

The two houses in question, he said, are Ray Cockrum's, whose house sits 269' to the north and Gary Cockrum's, whose house sits 289' from the tower. The exhibit also shows the easement area required to obtain the setback. Mr. Kissel said that easements from Ray and Gary are in initial

discussion and they are negotiating the terms of those easements. The other concern the neighbors raised was the issue of lighting. He explained that the FAA requires towers above 200' to be lit during the day and at night. The day strobe will be a low power, daytime strobe. The night light will be a red beacon with a slight pulse that will be screened from below so it is not as easily seen by folks on the ground. The lighting requirements, he stressed, were FAA regulations. Mr. Kissel said he realized that the lighting would add something to the tower that wasn't there today, but that they did not have an option.

Having a second user, he said, will add to the diligence of the maintenance of the tower. U.S. Cellular, he said, does an excellent job of maintaining the tower, but now there will be two sets of people checking the tower, increasing the reliability and level of structural integrity.

Commissioner Miller asked Mr. Kissel to explain why Ameritech requires a higher tower than U.S. Cellular.

Mr. Kissel explained that the FCC divides the state into different service areas. Missouri 7 is to the west, and Ameritech serves an area to Holden, Missouri, along Interstate 70; which means they serve a different service area than does U.S. Cellular who is limited as to how far they can travel to the west. One of the key factors, he said, is the area to the north and south in Boone County that will be covered by this facility, which means they won't have to build another tower site in northern or southern Boone County.

Commissioner Stamper convened a public hearing.

Glenn Klocke, from Sprint PSC, Sprint Missouri, said he had forwarded a letter to the County Commission, U.S. Cellular and Ameritech, expressing Sprint's interest in a site that would include the Columbia area. He said that his company would like to become a part of the collocators at this tower site and were willing to pay 1/3 of the costs. Sprint is looking for as many collocations as possible, he said, and this is a tower that they need and he wanted to express Sprint's interest in collocating at this site.

Elaine and Ray Cockrum, 7000 West Sugar Creek, said that they are north of the tower. Ms. Cockrum said that they had had a request for an easement and wanted to know how long those easement rights would last. She also said there had been discussion that if the tower was not increased by 50' there was the possibility that another tower would be put in due east of their home. She said she preferred to see the tower remain gray, instead of being painted red and white as had been suggested. Right now, she said, it blends with the skyline.

Commissioner Stamper clarified that the decision to paint the tower or use a daylight strobe, rested with the Commission.

Ms. Cockrum said that when a reporter from the paper came out to take a picture, he couldn't believe the tower was as big as it was and as close to their house as it was. Her response to him was, what if it was painted red and white. Now, she said, the tower isn't noticeable from the highway, but if they were going to paint it red and white, they might as well paint it purple and yellow. She also said she would rather see the low power strobe as an option for lighting. She said they were still in negotiations for the easement. She said they were taunted with the threat of another tower and would rather see the existing tower made taller than to have another one put in front of them. They already have a tower in their backyard, she said.

Kris and Barbara Knutson, 1001 Denninghoff, said they live on the property that backs up to the tower to the east. Ms. Knutson said they had attended the Planning and Zoning Commission meeting, but still had a few outstanding questions. They said their questions about lightning had been answered and they were also okay with the issue of daytime and night time lighting. They also preferred that the tower remains gray. The lesser of the two evils is to raise the tower, rather than the build a new one to the east, said Ms. Knutson. She also said their concern was not if the tower stands, but if it falls. Ms. Knutson said it might not fall today, but what about during a 90 mile per hour windstorm. She said there were a lot of winds on the top of the ridge and it was her concern the wind would carry the tower and it wouldn't fall in a spiral as it's designed to do. She asked about an earthquake, and how the tower would be affected by a tremor. Ms. Knutson

ended her comments by saying that the Cockrums, who sit closest to the tower, were opposed; therefore, she and her husband were also opposed.

Mr. Knutson asked if the structure would change and become obtrusive, depreciating the value of their land. Right now, he said, people don't notice the tower. He was also concerned if the ordinance addressed when the tower becomes useless, a when, not if, question, he stressed, is there a guarantee the cellular companies will remove the tower and what is the time frame given for removal.

Ms. Knutson said that current technology was moving in a direction that in the next twenty years, transmissions will be bouncing off satellites. Ms. Knutson said that in the next twenty years, she and her husband would still be living in their home, but they would like to see the obsolete tower removed.

Commissioner Stamper closed the public hearing.

Mr. Kissel began his rebuttal to the questions and concerns raised by the neighbors. He explained that the length of the easement is open to negotiation. It could be a permanent easement, or a lease agreement based on the term of need for the tower. Realistically, he said, if the tower is raised to 240' and then reduced again to 190', the easement lease agreement would end. He said that the company preference was to keep the tower galvanized with a low power daytime strobe and explained that the night red beacon would be a faint pulse, not a strobe.

In order for the tower to fall flat, he said, all of the guy wires would have to fail simultaneously. What causes the tower to fall in a spiral, Mr. Kissel explained, is the fact that the tower is attached at multiple points with multiple guy anchors. In a 50 mile an hour wind, he said, the tower will be the last thing to leave the ground. Factors of safety are built into every piece of steel, unlike the neighboring houses. Mr. Kissel said that his company serves an area down to the New Madrid fault and he has been told by the structural engineer that the wind loading capacity overrides that of the earthquake load. Steel has a certain flexibility, he said. The guy anchors used in St. Louis, a seismic zone 2 were constructed above standards to a seismic zone 4.

Mr. Kissel said that the tower is owned by U.S. Cellular, but most of Ameritech's lease agreements state that if the tower is no longer in service it will be removed. He also said that even with new technology, towers would be around for awhile.

Commissioner Vogt asked how many times have towers failed. She said that she personally had never heard of any.

Mr. Kissel said that clearly, towers have failed. There was a 2,000 foot tower that failed in Poland, but said that failures are unique instances. He offered to provide the Commissioners with details of failed towers and said that many tower manufacturers have records and travel to sites of failed towers to gather information.

Commissioner Stamper said there had been a television tower failure in Kirksville and asked if there would be microwave dishes located on the tower.

Mr. Kissel said their plan was to serve by a span and explained that it is a telephone line into the site, not a dish.

Mr. Shawver, in response to a question from Commissioner Vogt said that when the regulations for towers were written, the committee felt there was a substantial investment in a tower. The scrap value, he said, makes the issue of removal of an unused tower self-policing and that towers will be removed in a timely fashion.

Commissioner Miller said that the proposal by Ameritech was very thorough.

Commissioner Miller moved that the County Commission of the County of Boone approve the request by U.S. Cellular to increase the height of an existing transmission facility (cellular tower) from 190' to 240', located at 7130 Wehmeyer Road, Columbia, with the following conditions: that U.S. Cellular acquire the required land or fall easements, and that the color of the tower shall

remain galvanized with daytime lighting a white low, powered strobe with a red, pulsing beacon at night, as required by the FAA.

Commissioner Vogt seconded.

Commissioner Stamper clarified that either this tower will be extended or another one will be built in its place. To build a tower adjacent to the current tower would be against County regulations.

Mr. Shawver explained that one tower might be constructed right next to the existing tower while the other tower was taken out of service and there was the possibility of some overlap.

Motion passed unanimously. **Order 407-97.**

SUBJECT: Petition to vacate and replat lots 6 and 30 of Oberlin Valley Subdivision, Plat 2 submitted by DDM Investments, Inc.

Mr. Shawver reported that Oberlin is near Obermiller and Creasy Springs roads. He said they had received a petition to vacate lots 6 and 30, zoned R-S, with a request to replat lot 6 into three lots and to combine lot 30 with lot 9 to also create three new lots. The developer is putting in a wastewater system and building the roads, so the issue is now coming to the County Commission.

Gene Basinger, surveyor and Dan Burkes, president of DDM Investment, Inc. approached the Commissioners.

Mr. Basinger said that Mr. Burkes has a home on lot 30, next to Oberlin Valley Dr. and Obermiller Road. The idea, he explained, is to replat lots 30 and 9 into three lots. Lot 9 is a very narrow lot and they wanted to increase its width. The land to the east is owned by Marie Obermiller and Mr. Basinger submitted a letter from Ms. Obermiller stating she had no objection to the vacation and replat proposed this evening. He said that replatting would not be detrimental to anyone in the area and the only adjoining landowner affected would be Marie Obermiller. The replat would be a net gain of one lot.

Mr. Burkes, in response to a question from Commissioner Stamper, said that his driveway is a circle drive that accesses both Oberlin Valley Dr. and Obermiller Road.

Mr. Basinger said that lot three, lot two and lot 30 all have houses on them and there are three houses to the west and none to the east towards Creasy Springs Road. The land between lot 9 and Creasy Springs Road is owned by Marie Obermiller.

Mr. Shawver explained that regulations have changed and require a property owner to submit a petition requesting a vacation and a petition to replat, both of which the Commissioners had regarding this request. The policy also requires that all property owners within 500 feet of the revision are notified. He said there are 31 different parcels and 21 different property owners who were notified about this evening's hearing.

Commissioner Stamper said he was a little sensitive to creating three additional driveways onto Obermiller Road.

Mr. Basinger explained that there will only be a net of one more driveway.

Commissioner Stamper asked Mr. Basinger if he anticipated any replatting on other lots.

Mr. Basinger said that those lots are owned by different investors and he did not know the answer to that question. He also said they were not sure how they would replat the lots once they were vacated. Mr. Basinger then submitted letters from the landowners to the north of the lots in question.

Commissioner Stamper convened a public hearing

Keith Branson, 1160 Obermiller Road, said he lives on lot two and also owns lot five. He asked for some clarification and said he did not have a problem with the vacation, his concern was what

would happen during the replatting of the vacated lots. The houses along Obermiller Road are fairly large lots and Mr. Branson said that when they purchased lot five and later lot two to expand the size of their lot. If lot 30 is replatted, he said, the approach from town will look more crowded than it does now. Lot 9, he said, may be small, but it's almost the same size as the lots created behind him in lots 14 and 15. He also said that a fair number of homes in the area have circle drives, creating potentially four entrances onto Obermiller Road. Mr. Branson was also concerned with the wooded area behind him, and said that if lot 6 is divided into three lots, the houses will be close enough that the majority of trees will be removed, leaving them with a small, hard to maintain woodland area. Mr. Branson said that he opposed the splitting of the lots and wanted to see the current housing density maintained.

Ron Bassford, 1140 Obermiller Road, said that he owns lots three and four. When he bought his lots, the preliminary plat for the 120 acre subdivision showed 1 1/2 acre lots. Lo and behold, he said, across the road is very dense housing. The proposed vacation and replat, he said, would change the character of the neighborhood. They bought large country lots that are now being transformed into dense city lots. Already, he said there is a significant dust problem that he feels will negatively affect the value of his property. When he purchased his home, there were underground utilities, so far, he said, they have run an electric line that parallels a high tension line and it is his fear that electric lines are going to run like spider webs over the whole valley. Mr. Bassford said that he was also concerned how the sewer system would handle additional houses and said there was a potential health problem for the entire area because when the Cow Branch fills it floods the whole area. Generally, said Mr. Bassford, he was opposed to this vacation and replat because it would negatively affect the value of his property and his personal happiness.

Joan Putnam, 3823 North Creasy Springs Road, said she was appearing on behalf of her mother who had purchased this property from Lawson Obermiller in 1968. Ms. Putnam said she was concerned about the character of the neighborhood. Like her neighbors, she said, she is not concerned about the vacation, but is concerned about the further subdivision of the lots. She said she considers the creek and flood plain to be very delicate and has seen the rubble and pieces of concrete that have been used for fill. Her concern is that there were no retaining walls to hold the dirt in and that fill was placed in a flood plain. When the Cow Branch fills in the spring it will wash out a lot of the fill they're planning to build on. Ms. Putnam said she was opposed to the vacation and to the itty bitty dirt road they'd built and unless they planned on making a tremendous amount of improvements, they were going to have a slum back there.

Mr. Basinger said there was a sewer treatment plant ready to be placed in the ground, and weather permitting, would be done this week. The water would discharge into Cow Branch. The land due south of the lots in question and to the west, is all owned by the applicants he said, who intend to maintain green space between the lots and the Cow Branch. The streets, he assured the Commission will be curb and gutter.

Commissioner Stamper asked if it was their intention to annex into the city of Columbia.

Mr. Basinger said that they had revised the original plat because they wanted to increase the road frontage for the lots to 125 feet. He said that the replat would create a net gain of three lots.

Commissioner Vogt clarified that the Commission may vacate the lots, but the replat will go to Planning and Zoning. She said that the issue of density could not be decided this evening.

Mr. Shawver said that replats will go to Planning and Zoning and that no subdivision plat may be vacated in whole or in part and read the Boone County Zoning regulation regarding lot vacations.

Mr. Basinger said that the streets originated from the original plat, but the sewer had been done on-site because of the larger tracts. The preliminary plat was done by Marie Obermiller, but then she sold everything she had left to the applicants and they replatted the area presented to the Commissioners. The sewage treatment plant is ready to go in. The fill is probably 90 percent complete, he said, and said that he did not anticipate an erosion problem.

Commissioner Vogt moved that the County Commission of the County of Boone approve the vacation of lot 30 of the Oberlin Valley Subdivision, Plat 2, submitted by DDM Investments, Inc.

Commissioner Miller seconded.

Commissioner Vogt said that from the testimony, approval of the request was in keeping with the neighborhood, as they would rather see two larger lots rather than one large lot and one small lot.

Mr. Shawver explained that the vacation should not take affect until a replat has been submitted for consideration and approved. He asked Commissioner Vogt to amend her motion.

Commissioner Vogt moved that the County Commission of the County of Boone approve the petition to vacate lot 30 of the Oberlin Valley Subdivision, Plat 2, submitted by DDM Investments, Inc.; the vacation to become affective with the submission and approval of a replat.

Commissioner Miller seconded the amended motion.

Commissioner Stamper said that it gave him some indigestion when the Commission started shrinking lots in subdivisions. He said he scrutinized that heavily. Commissioner Stamper said he didn't automatically leap to the floor to change lots that were sold under certain conditions.

Commissioners Miller and Vogt voted in favor, Commissioner Stamper voted in opposition. Motion passed. **Order 408-97.**

Commissioner Vogt said they were not increasing density, they were increasing lot size. That is what they have told us they would do, she said. We have made no agreement with them and when they return with a replat, then we can discuss whether or not it's appropriate for the neighborhood.

Mr. Shawver said that the character of a neighborhood is a consideration of a replat. The replat, he said, must comply with the regulations for an area zoned R-S. Minimum lot size under Boone County regulations are 7,000 square feet, while these lots will be more than 20,000 square feet.

Commissioner Stamper said that the Commission's hands were somewhat tied at this point and that Planning and Zoning has no right to refuse the request.

Commissioner Miller said that she looked at lot 6 differently, based on the fact that the folks who testified against the vacation and replat surround the lot. She said she was more reluctant to vacate that lot.

Commissioner Vogt agreed. She said she was sympathetic with the people who spoke about purchasing a lot in the type of neighborhood they wanted to live in.

County Counselor John Patton explained that in order to deny the vacation of the lot, the Commission would have to draw up a facts or findings showing what criteria is not satisfied by the request. It is not reasonable to identify those things this evening, so any motion made should be contingent on the submission of a fact and finding conclusion of the law decision.

Commissioner Stamper moved that the County Commission of the County of Boone decline the petition submitted by DDM Investments, Inc. requesting the vacation of lot 6 of Oberlin Valley Subdivision, Plat 2; contingent on the submission of a fact and finding conclusion of the law decision by the County Commission.

Commissioner Vogt seconded. Motion passed unanimously. **Order 409-97.**

SUBJECT: Winfrey Estates Subdivision. S17-T47N-R12W. A-2. David and Tammy Winfrey, owners. C. Stephen Heying, surveyor.

Mr. Shawver reported that this two lot plat is located in the immediate southeast corner of the intersection of Cheavens Road and Tomlin Hill Road. The site is approximately 4 miles south of the municipal limits of the city of Columbia. The area being subdivided contains 9.92 acres. This property is zoned A-2 (agriculture) as is all the surrounding property, these are the original 1973 zonings. Water service will be provided by Consolidated Public Water Service District #1. There

is currently a 3" waterline along the east side of Tomlin Hill Road and another 2" waterline along the south side of Cheavens Road. Sewage treatment will be on site, the appropriate area is designated on a separate document in the file. The owner has requested a waiver of the requirement for traffic analysis and cost benefit analysis for sewage treatment. This plat has 26 points on the point rating scale. Staff recommends approval along with granting of the waivers for cost benefit analysis for sewage treatment and traffic analysis.

Commissioner Miller moved that the County Commission of the County of Boone receive, accept and authorize the Presiding Commissioner to sign the minor plat for Winfrey Estates Subdivision. S17-T47N-R12W. A-2. David and Tammy Winfrey, owners. C. Stephen Heying, surveyor.

Commissioner Vogt seconded. Motion passed unanimously. **Order 410-97.**

SUBJECT: Lake Breeze Subdivision. S34-T50N-R13W. A-2. Marvin and Linda Heishman, owners. Curtis E. Basinger, surveyor.

Mr. Shawver reported that this three lot minor plat is located immediately southwest of the intersection of Route VV and Gilbert Road, approximately six miles north of Columbia. There are four existing structures and two lagoons on the property. The house and one shed are located on proposed lot 3. The two remaining sheds and two lagoons are located on proposed lot 2. The property is zoned A-2 (agriculture). All of the lots have frontage on Gilbert Road, lot 1 also has frontage on Route VV. A dedication of land sufficient to provide a 33" half width right of way is shown on this plat. The applicant has submitted a request to waive the requirement to provide a traffic analysis. Wastewater will be disposed of using on-site systems. The lagoon serving the existing house will not be on the same parcel as the home that it serves, however, an easement will be established. All wastewater systems must comply with Health Department regulations for on-site wastewater disposal. The applicant has submitted a request to waive the requirement to provide a central sewer cost benefit analysis. Water service will be provided by Water District Number 7. The District has a four inch line along Dripping Springs Road, a four inch line on the east side of Gilbert and a two inch line on the west side of Gilbert. There is adequate capacity to serve this subdivision. This subdivision scores 23 on the Point Rating System.

Commissioner Vogt moved that the County Commission of the County of Boone receive, accept and authorize the Presiding Commissioner to sign the Lake Breeze Subdivision. S34-T50N-R13W. A-2. Marvin and Linda Heishman, owners. Curtis E. Basinger, surveyor.

Commissioner Miller seconded. Motion passed unanimously. **Order 411-97.**

SUBJECT: Valley Creek PRD - replat of lots 81 and 82. S3-T48N-R12W. R-M. Patrick R. McClung, owner. James V. Patchett, surveyor.

Commissioner Vogt moved that the County Commission of the County of Boone receive, accept and authorize the Presiding Commissioner to sign the Valley Creek PRD, replat of lot 81. S3-T48N-R12W. R-M. Patrick R. McClung, owner. James V. Patchett, surveyor.

Commissioner Miller seconded. Motion passed unanimously. **Order 412-97.**

Commissioner Vogt moved that the County Commission of the County of Boone receive, accept and authorize the Presiding Commissioner to sign the Valley Creek PRD, replat of lot 82. S3-T48N-R12W. R-M. Patrick R. McClung, owner. James V. Patchett, surveyor.

Commissioner Miller seconded. Motion passed unanimously. **Order 413-97.**

SUBJECT: Burnett School Road Bridge Contract

Commissioner Stamper moved that the County Commission of the County of Boone approve and authorize the Presiding Commissioner to sign a contract for engineering services between Harrington & Cortelyou, Inc. and Boone County for the preparation of rehabilitation plans and potential construction observation of Bridge No. 3850011 (Burnett School Road Bridge over Cedar Creek) at a cost not to exceed \$7,700.

Commissioner Miller seconded.

Commissioner Stamper said he had spoken with a representative from the Callaway County Commission who wanted to schedule a meeting between the two Commissions for a tour of the bridge.

Motion passed unanimously. **Order 414-97.**

SUBJECT: Reports from Commissioners

Commissioner Stamper asked Deputy County Clerk Ashley Williams to schedule the acceptance of the recommendations submitted by the Airport Advisory Group for the Thursday Commission meeting.

Commissioner Stamper clarified that they had been requested to meet in Ashland on October 2 for a town meeting. The request was that the Commission make formal decisions on the Centre Pointe rezoning issue, the Track and Field of Dreams and Senior Center funding requests. Dave Westoff, of the Ashland Chamber of Commerce had said that if the town meeting was not for the purpose of rendering a decision on those issues, then they did not need to have a meeting.

Commissioner Vogt reported that she had been working with Tom Ratermann on the Pin Oak Pilot Sewer NID and had received calls from property owners, most of whom are anxious to see the project go. A handful of the owners would like to meet and discuss the project and Mr. Ratermann will go to that meeting to provide them with technical information. Commissioner Vogt said that it's too early for anyone to be up in arms about the project and there has been concerns that some of the easement awards were not reasonable.

Commissioner Stamper said he hoped to see that by next summer, the property owners in the Pin Oak neighborhood aren't walking in sewage.

The meeting adjourned at 8:35 p.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