

BOONE COUNTY PLANNING & ZONING COMMISSION WORK SESSION
BOONE COUNTY GOVERNMENT CENTER, CONFERENCE ROOM 301
801 E. WALNUT, COLUMBIA, MISSOURI
(573) 886-4330

Minutes

5:00 P.M.

Thursday, February 1, 2018

Present: Erik Kurzejeski, Carl Freiling, Jeff McCann, Greg Martin

Also Present: David Butcher, Mike Tompkins, Dan Brush, Phil Clithero, Stakeholder Committee

Staff: Stan Shawver, Bill Florea, Thad Yonke, Uriah Mach, Paula Evans

Those present were presented with an updated comment matrix of the unresolved issues and a written statement from staff outlining the unresolved issues and options for those issues.

The updated comment matrix was emailed to Commissioners and Stakeholders on Tuesday, January 30, 2018.

It was noted that there are not enough Commission members present to vote on changes however at the next regular meeting of the Planning and Zoning Commission, members present tonight may make a recommendation to the rest of the Commission based on the discussions tonight.

Thad Yonke read the following written statement for the record:

Subdivision Regulations Revisions: Outstanding Issues Overview of Choices

ABC's of Subdivision Regulations:

- The primary purpose of subdividing property is intensifying land use by adding more use, users, and more owners to an area.
- Subdivision Regulations form a system for the orderly creation of lots along with ensuring the provision of necessary services to support created lots in a manner that supports the public health safety and welfare.
- Subdivision Regulations must balance the level of simplicity of the rules and system against the richness of choice of possible design options. The most basic and easiest to understand Subdivision Regulations require all lots created to have a useable frontage on a public street that either exists or is created along with the division of the lots.
- The allowance in Subdivision Regulations for lots to be divided off private accesses inherently creates additional limitations on the lots being created. These limitations are a defect to the property that limit the property in ways that a lot with public roadway frontage does not incur. In most cases the defect is related to the ability to further subdivide regardless of whether smaller lots would be allowed under the zoning.
- Subdividing land costs money. The act of dividing the land should make the land more valuable overall but not all of the increase in value is profit, some of the potential increase in value is offset by the costs associated with dividing and providing adequate service.
- Subdivision regulations are intended to be amended from time to time to reflect the needs of a community with respect to development. With any regulatory change there will be winners and losers. In this case, the proposed regulations should result in a greater number of winners (more overall developability) than that found in the current regulations.

1. ISSUE: Division Threshold : 40-acres or 20-acres
Current Regulations Threshold 20.00 acres and larger

- A: Threshold is greater than 40.00-acres. Lots 40.01-acres and larger not subject to regulatory provisions. Rules related to land division are the same for lots ranging from 10.00-acres to 40.00-acres. (Currently proposed)
- B. Threshold is greater than 40.00-acres. Lots 40.01-acres and larger are not subject to regulatory provisions. Rules/standards related to lots ranging from 20.01-acres to 40.00-acres are possibly different/fewer than lots ranging from 10.00-20.00-acres.
- C. Threshold is greater than 20.00-acres. Lots 20.01-acres and larger are not subject to regulatory provisions.

2. ISSUE: Family Transfer Division specifics

Current Regulations require one-year hold before transfer, may be able to plat to remove hold.

- A. The Family Transfer lots and a single remainder are created. All lots have the three-year hold before further transfer. Removal of the hold is by platting, if possible. (Current proposed)
- B. The Family Transfer lots and a single remainder are created. All lots have the three-year hold before further transfer. Removal of the hold is by platting, if possible, or by relief from the Board of Adjustment after a showing of exceptional and demonstrable hardship circumstances. (This will require additional language to be created.)
- C. The Family Transfer lots and a single remainder are created, and all lots have a one-year hold before further transfer. (Removal of the hold by platting may be possible. Otherwise wait out the year.)

3. ISSUE: Land Divisions using Private Access Easements (PAE) to provide access from subdivided/surveyed lots to a publicly maintained road.

Current Regulations limit the use of private drives to provide vehicular access to lots in subdivisions and administrative surveys. Generally, the “four means six” interpretation governs where four platted or surveyed lots can use a single private drive, however, lots that have actual frontage on and access to a public road are not counted.

If all parcels are 10-acres or larger then additional 20.00-acre or greater parcels may be tacked on at the end. This was one of the items staff was directed by County Commission to propose for stricter regulation.

A provision for the creation of a standard public roadway should be the principle means to divide property. The proposed regulations add the provision of the Agriculture District Road, a 26-foot wide paved public road. PAEs and existing private roads are intentionally limited when related to subdividing.

There are three sub issues:

- 1. Number of Lots Served by a single PAE
- 2. Spacing between PAEs
- 3. NNOP prohibition on building

1 : Number of Lots served:

A : From point where the private access leaves the public road the PAE can serve up to 8 lots. For purposes of determining the count of 8, if the PAE touches or crosses a parcel it counts towards the 8. Once one has counted 8 lots that the PAE (or proposed PAE) touches or crosses it is maxed out and can't serve anything else. (Currently proposed)

B : From the point where the private access leaves the public road the PAE can serve up to 8 lots ranging from 5 to 20/40 (depending on the regulatory threshold)-acres plus, up to X additional parcels of greater than 20/40-acres. For purposes of determining the count of 8+X total, if the PAE touches or crosses a parcel it counts towards the 8+X total. Once one has counted 8+X total parcels the PAE touches or crosses it is considered maxed out and can't serve anything else for purposes of subdividing.

2 : Spacing Between PAEs:

A : A PAE is proposed to be a limited form of private roadway. Roadways are required to meet a minimum spacing requirement called a minimum block length. The minimum block length is 200 feet. The roadway network is made of both public and private roadway segments. The spacing requirement does not depend upon who maintains the roadway. (Current proposed)

B: A PAE is proposed to be a limited form of private roadway. Roadways are required to meet a minimum spacing requirement called a minimum block length. The minimum block length is 200 feet. The roadway network is made of both public and private roadway segments. The spacing requirement does not depend upon who maintains the roadway. Under the current proposed regulation, the minimum block length can be proposed to be less than 200 feet in a planned development. The current proposal contains a provision to allow reduction of the minimum block length in a planned development. Language could be added to allow for the PAE spacing minimum of 200 feet to be modified in a planned development as well.

3 : NNOP prohibition on buildings details

A: No building permits may be issued for parcels with an NNOP, including parcels that may have had dwelling units or other structures on the property prior to the subdivision action for which the NNOP was imposed. (Current proposed)

B: No building permits may be issued for parcels with an NNOP other than:

- for a single less than 1201 square foot non-commercial storage garage/shed
- where a pre-existing home is present and said home is damaged or needs a remodeling permit that does not increase the size of the structure This is a potentially much more complicated issue than it may seem. For example, is a deck addition allowed, can a remodel convert un-finished space to finished living space, can bedrooms be added, etc.

Please Note: The proposed options are for purposes of focusing the discussion towards productive solutions that will work within the framework of the subdivision regulation and associated amendments. The proposal is not fully exhaustive of all possible choices; however, it is likely that the choices presented will allow for a consensus on how to address each issue to be reached by the Planning and Zoning Commission.

Staff would like to discuss the 20/40-acre threshold first because it impacts the rest of the regulations.

Mr. Butcher stated Missouri State Statute 137.185 that states anything that is divided less than 40 acres is supposed to have a survey recorded for it. However, it has morphed in to raising the threshold of what was required to be regulated adding a lot more control over parcels of land above 20 acres that was not in place before. I was of the opinion that we should have some stipulations that say everything less than 40 acres required a survey but that it was not under the same regulatory control as the rest. We can still go by state statute and still allow us to keep the threshold at 20 acres.

Mr. Yonke stated the reason we wrote the regulation the way we did is the rules from 10 acres up are the same so instead of creating another set of regulations without knowing if this was going to be palatable those rules extend up to the threshold. If the Commission decides they are more interested in what Mr. Butcher was talking about, which is category B staff can look in to it. But, they will need direction from the Commission on what types of regulatory requirements we need for the 20 to 40 acre range.

Commissioner Freiling: What would be required in addition to the requirement of a survey.

Mr. Yonke: Does there need to be an access easement, does the easement have provisions for them to participate in the maintenance? If the Commission wants any of that in there it has to be regulated to 40 acres.

Commissioner Freiling: Is it possible in regulatory permissibility to require any land division in Boone County to have a state standard survey?

Mr. Yonke: Above the 40-acre cap?

Commissioner Freiling: Yes.

Mr. Yonke: Staff didn't look in to that. If the state statute says 40 acres then the County is in compliance with that. If someone wants to do a survey greater than 40 acres and want the survey recorded it can be submitted to staff and they can make sure it is not creating anything smaller staff can sign off on it and it can be recorded. There are provisions to deal with something larger but there is no requirement.

Commissioner Kurzejeski: So option B was simply tacking on the requirement of a survey?

Commissioner Freiling: My concern about this is a regulation in a growing county that stipulates a 40-acre minimum lot size under certain circumstances is unfriendly to both buyers and sellers. I am opposed to that and don't see a public interest. Do we require code compliant access to a public road and utility easements?

Mr. Brush: In large acreage tracts where property owners are fighting over access, matters are usually settled civilly; I don't know that it needs a regulatory requirement.

Commissioner Freiling: It is great to write maintenance agreements, my experience has been that it is difficult to enforce them; \$15,000 or \$20,000 and a year or two in court, you get a court order that is ignored then you get a judge to issue a contempt of court order which is also ignored. Enforcement is tough. While I think the presence of these agreements is necessary I am concerned that people may put too much faith in them. It is cheaper to take care of the repairs yourself than to try to enforce the agreement.

Commissioner Kurzejeski: When looking at changing regulations I look at what is the defined issue or problem that we are trying to help the public benefit by changing the regulations. What I see here is that we have a statute that says you have to survey anything under 40 acres. It doesn't tell me that we've had a real issue with tracts over 20 acres not being regulated. To fix that we just need to require a survey, it doesn't mean that we have to add any additional regulations unless you feel the current system is broken.

Mr. Yonke stated under that logic you would be looking at option B. What we proposed was not to write a new set of rules so if the Commission decides to require survey everything of under 40 acres or if they want to require access or a maintenance agreement then the threshold will still have to be 40 acres to impose that. If the Commission decides on option B staff will need direction on what will be required in the 20 to 40-acre standards. The Commission will have to vote in order to give staff direction but there needs to be a quorum present in order to vote.

Commissioner Freiling: If you are going to get title insurance you have to have public road access. If you can't get title insurance you won't get a loan. This may be an impractical problem.

Mr. Tompkins: I have done dozens of private access easements and most of the ones I have done have had provisions for annual assessments and there is a pool of money that is retained for maintenance. It is a lot less likely that there will be a big issue and no one will want to take care of it.

Commissioner Freiling: If you don't have a start up fund that system doesn't work. Are we going to require a certain amount of start up funds in these private road agreements?

Mr. Butcher: The Stakeholder group decided there should be a couple of main functions, one is a funding source and another that someone be in charge of it. We added criteria of what the PAE needs.

Mr. Florea stated we discussed seed money and that was strongly argued against.

Mr. Yonke stated having the money to do the maintenance assumes there is a surface there to begin with. That is where you run in to the issue with the NNOP. To make sure the cost of the road getting put in to begin with is why our point was that you build the road before it is recorded and that way you know the road is in whether you get a maintenance agreement or not.

Mr. Florea stated aside from 4 or 5 elements that must be included in the maintenance agreement it is up to the subdivider to come up with the plan. Staff will have a general sample available.

Mr. Tompkins stated there is no regulation right now and he doesn't want to push it too far to where it is too much. I would like to see something doable and better than we have now.

Mr. Yonke: Staff needs something that works within a framework of a system. It is staff's job to create a system that isn't full of holes. We are supposed to be heading off any problems we can see; that is the point of having a system that functions. What we needed out of it is if we are going to require this but we aren't going to set the particular standards staff doesn't want something that is going to be different every time; it is either going to have to have prescribed standards that we can look for particular requirements every time.

Family Transfers

Commissioner Freiling asked how many family transfers are done per year.

Mr. Shawver stated in 2016 there were sixteen family transfers and fifty administrative surveys. In 2017 there were twelve family transfers and 53 administrative surveys, 36 surveys were larger than 20 acres. Some of them were single lots and some were multiple.

Commissioner Freiling: That is a decent percentage of land divisions.

Commissioner Martin left at 6:00 pm.

Mr. Yonke: The really open issue for family transfers was how long you hold the tract after the transfer.

Commissioner Kurzejeski: Staff had mentioned that family transfers aren't really a current problem; does staff view them as a problem?

Mr. Yonke: Family transfers have always been a problem because the intent of the family transfer was to allow someone to stay on the farm, with farm acreage. We don't really see that now, a significant amount of these are smaller acres that get further divided. We have also seen people who just want to sell the house off so they don't really worry about what they are giving to the family member. We see a lot of things that the family transfer was not intended for.

Mr. Florea: One of the biggest problems is a lack of formal process. The regulation is an exemption; it says we can require that it be documented on our form but that is really the only stipulation. We have people that don't want to survey them and just come in with a description. Administratively we tell them that if they come in with only a description it has to have a surveyor's seal on it, that forces the surveyor to decide whether that property needs to be surveyed, most of them say it has to be surveyed, they won't just put their seal on a description.

Mr. Butcher: It has evolved from keeping someone on the farm to wanting a family member living close.

Commissioner Kurzejeski: I can see the survey solving a dilemma for the public. Is the three-year waiting period to discourage family transfers?

Mr. Florea: It is to discourage people who don't really want to live on the property and are trying to avoid the subdivision regulations.

Mr. Shawver: We have had backyard developers who purchase 20 acres and split it up by family transfer and build houses on them and hold it for a year then take the property back and sell the lots and then buy another 20 acres and do the same thing. I know of three people who have done that on four different occasions. It becomes a subdivision and they have avoided the subdivision regulations. At least now they will have to hold the property for three years and they have carried the debt for a while.

Commissioner Kurzejeski: I am most concerned about having to hold the parent parcel because I see a lot of problems there with divorce and other things.

Mr. Yonke: That is the reverse transfer where you end up with the child holding their piece then you have in effect divided the other piece off. We have made people plat because they wanted to sell before the one-year hold.

Commissioner Kurzejeski: We are saying the remainder can't be sold?

Mr. Yonke: The remainder would have to be held for the same amount of time unless it is platted or unless a relief mechanism is built in.

Commissioner Freiling: I would like to see a mechanism for relief from the holding period. For the legitimate families that do this, is there a mechanism to provide relief in these exceptional hardships other than Board of Adjustment? The Board of Adjustment is very restrictive on what they can consider and approve.

Mr. Shawver: The alternative is to make it an administrative decision; people aren't always truthful. I don't want to be in that position in determining who is telling the truth.

Mr. Yonke: If you leave it an administrative decision and the property owner is told no, if they want to move forward they will have to appeal that decision to the Board of Adjustment which will be even harder for the property owner because they are appealing a decision.

Commissioner Freiling: If it goes before the Board of Adjustment and there is a true tragedy what hurdles does the Board face in granting relief? Do they have that option?

Mr. Yonke: Right now they don't because it doesn't qualify for any of the variance procedures. Staff would have to create a special circumstance. The Board hears variances but they also grant special permits; there is one special permit currently and that is the temporary placement of a singlewide for a period of two years. It is specifically written that this is something that the Board can grant. Staff would have to write a provision in both the subdivision regulations and the zoning regulations.

Mr. Shawver: It can be done through the subdivision regulations which has the power to grant a variance based on the staff recommendations. The applicant can present the information to staff and staff could examine the request and make a recommendation to the Board. One of the criteria is that it doesn't thwart the public safety or the intent of the subdivision regulations and that it is a true hardship.

Mr. Tompkins: There are more than family tragedies; there are sales that need to happen, foreclosure, a tax sale, and if there is a divorce and the judge says to sell the property it has to happen, they aren't going to the Board of Adjustment.

Mr. Yonke: Sometimes when the judge orders it is not a legal land division it is just an undivided interest; the judge can't ignore all of the rules either.

Commissioner Freiling: In a divorce the judge can rule that the assets be sold.

Mr. Yonke: Right, but it is still an undivided interest.

Mr. Shawver: That is your justification to the Board of Adjustment, it is court ordered.

Mr. Yonke: Treating it similar to the mobile home as a specific provision means it can be a lesser threshold.

Commissioner Freiling: The heartburn I have is the lock on the land; the purpose is to prevent abuse.

Commissioner Kurzejeski: Can we do a three-year hold on the transferred property and a one year hold on the parent tract?

Mr. Yonke: If we are going to have a one-year hold then you probably don't need a mechanism for relief.

Commissioner Kurzejeski: Has the family transfer outlived its original intent? I am not opposed to them. What do we file on these to say they can't be sold for a year, what if it is sold before the year is up? Is there some sort of lien on the property?

Mr. Yonke: There is a notice on the land records because you have to record the family transfer document and the property owner has to sign that they acknowledge the property can't be sold for one year. Staff never looked in to having the holds be three years on the transferred property and one year on the parent tract; we can look in to that. The Commission would have to decide there is value in doing that before staff could write language.

Commissioner Freiling: If a farmer has a 200-acre farm and transfers five acres to the child it is odd to tie the rest of the property up if it is over 20 acres.

Mr. Yonke: If it is over 20 acres it really doesn't apply.

Commissioner Kurzejeski: I can understand holding the transferred property for three years, it seems to help the issue of abuse. I am not as concerned about tying up the parent tract.

Mr. Yonke: The issue with that is transferring a small amount of acreage off the parent tract so you could sell the parent tract. That is why there should be a hold on both tracts.

Commissioner Freiling: If a standard was written for considering relief could one of those standards be something to the effect that relief can be granted if this is not an attempt to circumvent the regulations?

Mr. Yonke: That is one of the things the Board can't grant in the first place. If the Board believes it is an attempt to circumvent the regulations they should vote no.

Commissioner Kurzejeski: I don't believe all the reasons are exceptional hardship. It could be exceptional opportunity.

Mr. Yonke: The Board is not allowed to grant a variance for economic reasons. The demonstrable hardship is the standard they have to meet.

Commissioner Kurzejeski: That is one of the reasons I am looking at the one and three year holds.

Mr. Yonke: The other question that had come up is if you have a 20-acre piece and you want to transfer five acres to the oldest son and two years later another son needs five acres. You could interpret the proposed regulations as both tracts are tied up for the full three years; that is not what was intended, what was intended is you use some other mechanism such as platting to do the land division. If you want to do another family transfer for the next child, that is allowed. Staff is going to write language allowing for additional family transfers from the parent tract. Technically the tree years resets on the parent tract with the new family transfer but a mechanism for relief could be written in. It was always intended that you could do another family transfer for a separate recipient from the parent tract.

Commissioner Freiling: My time on the Commission I have come to realize that the split between staff and their roles and the Commissioners and their roles are quite different. Commissioners are supposed to represent the citizens of Boone County and staff is to represent good planning and that is not always the same. You don't want to burden everyone just to control a few bad apples. On the other hand, the purpose is to have a structure that creates orderly development.

Commissioner Kurzejeski: If I transfer five acres to my daughter and I don't have a PAE but just an easement, are family transfers going to trigger having to construct a PAE to specs?

Mr. Florea: Yes.

Commissioner Kurzejeski: Is that an unreasonable request given what we see this family transfer as being able to do for people?

Commissioner Freiling: Even if it is just creating one more lot?

Mr. Yonke: Any land division going forward that is not on public road is going to have to be served by a PAE.

Commissioner Freiling: If I transferred property by family transfer that was going to be served by a private driveway to one residence the proposed regulations will require that driveway to meet PAE standards.

Mr. Florea: It is serving two residences because it touches the parent tract. To become a PAE it would have to use the same driveway as the parent tract.

Mr. Tompkins: It would just have to touch the parent tract.

Mr. Yonke: No, that is just for counting how many are served by the PAE. That is a different issue.

Commissioner Freiling: You could have a private driveway as long as you don't share the same driveway.

Mr. Yonke: It also depends on if the road you are on has public road frontage and whether the tract you give them has public road frontage.

Commissioner Kurzejeski: If you transfer property and they use the same driveway as the parent parcel then it has to be upgraded to a PAE.

Mr. Yonke: Yes. If you have no frontage to begin with then you are on a private access and that private access has to be restructured as a PAE.

Commissioner Kurzejeski: I have a friend who wants to give a piece of property to his son and he has a half mile of driveway so he will have to make a PAE out of that driveway due to the family transfer. Fiscally it becomes impossible. I wonder if these should be exempted from the PAE.

Mr. Yonke: Nothing is exempted, it may be a specific provision that allows for a lesser standard.

Commissioner Kurzejeski: They have been using this driveway for years and now it has to be so many feet wide with turnarounds that can handle 50,000-pound loads.

Mr. Yonke: The reason for that is for fire safety because the purpose of giving them that land is for them to put a house on it. That is the standard for the PAE.

Commissioner Kurzejeski: If I built my own personal residence you aren't going to make me build a road to that standard. You don't exempt me from building codes for my house but I can build a crummy driveway that doesn't have a 50,000 pound capacity and that is okay.

Mr. Florea: There are always thresholds; the fire code doesn't address driveways to a single-family residence but the threshold is two. It makes a difference, there is a regulatory acceptance for a single-family dwelling and you can build it however you want but when you add a second you are in a different category. How is it different if you did it for a commercial purpose? If someone wants to do that for commercial purposes and sells both lots but he doesn't want to put in a PAE for the second lot. Why would he have to do it when you don't have to in a family transfer when it is exactly the same? It is not always going to be family members living out there.

Commissioner Kurzejeski: I had asked the County Engineer a while back to find out how many private drives there are in Boone County and he came up with over 900. We have people that are very comfortable living in situations where they know that it might be hard for the ambulance or fire truck to get to their house. People buy property knowing that they are giving up some of these options. While I can see staff's point I don't believe that is the view everyone has. The perception of what the public needs and what they desire are different. It seems we have a fair amount of people in Boone County that aren't as concerned about living in an ideally accessible location.

Mr. Florea: There are people that are comfortable living in a home that don't meet building codes; we don't let them build those homes.

Commissioner Kurzejeski: If someone did a family transfer they would have an NNOP on the property until they build the driving surface.

Commissioner Freiling: There is a future that doesn't involve the people involved in the transfer.

Commissioner Kurzejeski: There are people that are happy to live in those situations who have a well because they don't have access to public water.

Mr. Butcher: If you have the family transfer and require a PAE I think they will still be used.

Commissioner Kurzejeski: I just think it is a financial lug that you may not have the money to build a PAE.

Mr. Yonke: The purpose was not to make it not cost anything. Land division and giving someone the ability to have a separate piece of property inherently is going to cost money somewhere, whether it is the building of the

house or the building of the road or bringing utilities in. Land division does cost money. The big key is making sure it doesn't break the scale so it's impossible to do.

Commissioner Kurzejeski: I was just seeing the family transfer as a freebee and we are adding something to it.

Mr. Yonke: It was never meant to be a freebee, just an easier mechanism and not necessarily one that had no cost involved.

Commissioner Freiling: I would like to have a ballpark to construct a road that will meet these PAE standards of a normal tract.

Mr. Butcher: I talked with my geo-technical engineer about how to build a road that meets these standards. He told me that it is probably going to be less expensive to pave it and be concrete than it will to be gravel.

Mr. Yonke: Is that because of the load?

Mr. Butcher: Yes.

Mr. Tompkins: That gets up to \$75 or \$100 per foot.

Mr. Butcher: You use so much gravel to do it or you are going to have to put the geo-fabric under it; he said it would be cheaper to put the concrete in.

Commissioner Freiling: I just want to know when we are voting on this if we are creating a bridge too far.

Mr. Yonke: We have one more work session then we will start formal discussions at the regular work sessions and at Planning and Zoning Commission meetings, that way we will have a quorum present so we can move forward and get some decisions made on some of these issues.

The meeting ended having reviewed options for the 20/40-acre threshold and Family Transfers. The next work session is scheduled for Monday, February 5, 2018 at 5:00 pm.

The work session adjourned at 6:50 pm

Minutes taken by Paula Evans, Administrative Coordinator, Boone County Resource Management